

Chapter 6: Domestic violence and care and protection

Victims of domestic violence who have children are at risk of statutory child protection intervention on the grounds that perpetrators may also abuse their children or children may be injured by exposure to domestic violence perpetrated between members of their family. Children are also at risk of harm when the impact of domestic violence prevents a parent or caregiver from appropriately responding to their needs.

This chapter aims to help practitioners advise their clients about how to avoid statutory child protection intervention and respond effectively to intervention when it occurs.

WATCH THIS SPACE

There are potential changes coming to the child protection system so please ensure that you are up to date with any changes that may have been introduced following the writing of this chapter.

Legislation

The main statutes are:

- ▶ Children and Young Persons (Care and Protection) Act 1998 (NSW) (CYPA);
- ▶ Children and Young Persons (Care and Protection) Regulation 2012 (NSW) (CYPR); and
- ▶ Family Law Act 1975 (Cth) (FLA).

Objects and principles in the CYPA

The objects in section 8 of the CYPA include:

1. it is best for children and young people to have long-term, safe, nurturing, stable and secure environments, which are to be provided in accordance with the permanent placement principles;
2. those working with children and young people are to provide an environment for them that is free of violence and exploita-

tion and provide services that foster their health, developmental needs, spirituality, self-respect and dignity; and

3. appropriate assistance is to be given to parents and other persons responsible for children and young persons in the performance of their child-rearing responsibilities in order to promote a safe and nurturing environment.

The principles in section 9 of the CYPA include:

1. the safety, welfare and wellbeing of children and young people are paramount;
2. children and young people are to be given the opportunity to freely express their views to the best of their capacity and appropriate weight is to be given to those views;
3. the culture, disability, language, religion and sexuality of the child or young person and their carers must be taken into account;
4. the least intrusive intervention is to be preferred;
5. identity, language, cultural and religious ties should be preserved where possible;
6. decisions about children or young people in out of home care should be made as quickly as possible;
7. relationships with people significant to the child or young person are to be maintained where it is in their best interests to do so; and
8. the permanent placement principles apply to all children and young people in out of home care.

The principle of participation

There is a separate principle in section 10 of the CYPA to ensure that children and young people are supported to participate to the best of their age and developmental capacity in making decisions that have a significant impact on their life, such as Children's Court applications, the development and review of care plans and contact with family or other relevant people.

The permanent placement principles

Section 10A of the CYPA says that a permanent placement is a long term placement of children or

young people who have been removed from the care of their parents. There is a hierarchy of preferred placements, which depend on what is practicable and in the best interests of the child or young person being:

- ▶ restoration to the care of parents to preserve the family relationship;
- ▶ guardianship to a relative, kin or other suitable person;
- ▶ adoption, except for Aboriginal and Torres Strait Islander children, where adoption is the last preference;
- ▶ parental responsibility to the Minister.

Aboriginal and Torres Strait Islander children and young person placement principles

Section 13 of the CYPA sets out the hierarchy for the placement of Aboriginal and Torres Strait Islander children and young people:

- ▶ their extended family or kinship group, as recognised by their community;
- ▶ a member of the Aboriginal or Torres Strait Islander community to which the child or young person belongs,
- ▶ a member of some other Aboriginal or Torres Strait Islander family residing in the vicinity of the child's or young person's usual place of reside;
- ▶ a suitable person approved by the Secretary after consultation with:
 - members of the child's or young person's extended family or kinship group, as recognised by the Aboriginal or Torres Strait Islander community to which the child or young person belongs; and
 - such Aboriginal or Torres Strait Islander organisations as are appropriate to the child or young person.

Definition of domestic violence

There is no definition of domestic violence or family violence in the CYPA. Domestic violence is identified in section 23 as a circumstance that may give rise to a finding that a child is at risk of significant harm.

The NSW Mandatory Reporter Guide (MRG) describes domestic violence in the context of being a carer and having concern about a child as 'observations of extreme power/control dynamics (eg

extreme isolation) or threats of harm to adults in household'. The MRG also provides detailed definitions for abuse and neglect to assist in determining whether there is a risk of significant harm. More information about the MRG is below.

Risk of significant harm

Risk of significant harm (ROSH) is the statutory threshold as set out in section 23 of the CYPA:

(1) ... a child or young person is at risk of significant harm if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence, to a significant extent, of any one or more of the following circumstances:

(a) the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met,

(b) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care,

(b1) in the case of a child or young person who is required to attend school in accordance with the Education Act 1990—the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act,

(c) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,

(d) the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm,

(e) a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm,

(f) the child was the subject of a pre-natal report under section 25 and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.

Note. Physical or sexual abuse may include an assault and can exist despite the fact that consent has been given.

(2) Any such circumstances may relate to a single act or omission or to a series of acts or omissions.

A child or young person can also be determined at risk of significant harm if an unauthorised person provides their out of home care (s 154(2)(a)), or they have exceeded the maximum length of time in

voluntary out of home care and this is determined to be a significant contravention (s 156(3)).

Taking instructions

While your primary focus is likely to be assessing the level of risk to a child or young person, there are other factors that are important to take into account in order to reduce the need for statutory intervention and best support vulnerable children and young people and their families.

Aboriginal and Torres Strait Islander children and young people

Aboriginal and Torres Strait Islander children are overrepresented in child protection services. Various legislative, policy and practical measures are now in place to address the disproportionate representation of Aboriginal and Torres Strait Islander children. For example, Part 2 of CYPA sets out Aboriginal and Torres Strait Islander Principles.

It is very important that Aboriginal and Torres Strait Islander children are identified as early as possible to ensure that they have the opportunity to access culturally appropriate pathways. Always check if any of the children are identified as Aboriginal and Torres Strait Islander by any parent or caregiver. The meaning of 'Aboriginal' and 'Torres Strait Islander' is outlined in section 5 CYPA.

Previous contact with Family and Community Services (FACS) – 'known to DoCS'

It is very important to ask your client if they think they or their children are 'known to DoCS', as prior contact with FACS is likely to increase the chance of statutory intervention if risk factors are present.

Carer options if parents are not appropriate caregivers

In our experience when FACS remove children they do not always ask parents who they would like to care for their children. If there is a risk that children may be removed and placed with alternative carers, immediately obtain detailed instructions from your client about their preferred caregiver. This is particularly important for Aboriginal and Torres Strait Islander children. This information should be provided to FACS as soon as possible and ask FACS to assess the nominated people before any decisions are made about out of home care placements.

Family law pathway

Where FACS has not yet intervened, it may be prudent to advise your client to commence family law proceedings to seek appropriate orders. This demonstrates insight into the potential risk factors for children living in a violent household and a willingness to take responsibility for their care and welfare. It may also prevent FACS from seeking orders in the Children's Court, which is very important as parents typically have less control over outcomes once there is state intervention.

Reporting children at risk

Mandatory reporters

Mandatory reporting requirements are set out in section 27 CYPA and apply to people working in or managing organisations that provide health care, welfare, education, children's services, residential services or law enforcement to children. Such individuals must report any reasonable grounds for suspecting a child is at risk of significant harm (ROSH) to FACS as soon as practicable.

There is no definition of 'significant', however the Mandatory Reporter Guide (MRG) provides structured decision-making tools to determine whether a matter meets the ROSH threshold and needs to be reported to FACS. An online version of the MRG is available at reporter.childstory.nsw.gov.au/s.

Section 29 CYPA provides protection to people notifying child protection concerns. Their identity can only be disclosed in very limited circumstances, primarily when law enforcement agencies are investigating a serious offence against a child or young person. Reports made in good faith do not constitute a breach of professional ethics or expose the reporter to liability for defamation.

Legal professionals are not mandatory reporters, but in very rare circumstances may be required to assess whether they need to make a voluntary ROSH report to FACS. The Legal Profession Uniform Law Australian Solicitor's Conduct Rules 2015 provide exceptions to the duty of confidentiality, which may permit disclosure of information about a risk of significant harm to a child, being:

9.2.4 the solicitor discloses the information for the sole purpose of avoiding the probable commission of a serious criminal offence;

9.2.5 the solicitor discloses the information for the purpose of preventing imminent serious physical harm to the client or to another person.

Practitioner tip

It is strongly recommended that any circumstances which may give rise to a breach of confidentiality be first discussed with the NSW Law Society's Ethics Solicitor if time permits.

NSW Interagency Guidelines

The *Child Wellbeing and Child Protection – NSW Interagency Guidelines* (the Guidelines) provide information and guidance to agencies working in child wellbeing and child protection services. The Guidelines encourage collaborative practice characterised by streamlined service provision, effective referrals and sensitive exchange of information. They establish that reports to the Child Protection Helpline must meet the ROSH threshold.

Child Wellbeing Units

In 2010 Child Wellbeing Units (CWUs) were established in the government agencies that make the majority of child protection reports, which are the police and the Departments of Education, Health and FACS. The primary function of CWUs is to assess the level of risk for children and young people and to determine if the matter meets the ROSH threshold, which requires a report to the Child Protection Helpline. CWUs also assist with case management options and referrals.

Mandatory reporters without a CWU in their agency use the MRG and for non-ROSH matters may follow their agency policies or use local contacts or the Family Referral Service.

Responding to reports

The following agencies are responsible for identifying and responding to reports that children are at risk of harm:

- a) Family and Community Services (also known as FACS or DoCS or 'the welfare') and funded non-government organisations (NGOs);
- b) police;
- c) Joint Investigative Response Teams (JIRT).

FACS

The key role of FACS is to keep children and young people safe from abuse and neglect and support vulnerable families. FACS is responsible for investigat-

ing notifications of children at risk of harm and neglect, primarily matters which have met the ROSH threshold.

FACS also funds a range of NGOs to provide prevention, early intervention, support and out of home care (OOHC) services to children, families and carers. NGOs must operate in accordance with their funding contract and any relevant legislation, policies and guidelines. There may also be additional obligations arising from accreditation requirements, such as those required by the Office of the Children's Guardian for statutory OOHC and adoption service providers.

FACS also has responsibility for the employment of children, care proceedings in the Children's Court, and matters where the state has parental responsibility for children and young people.

Police

Police are mandatory reporters. The *Code of Practice for the NSW Police Force Response to Domestic and Family Violence* (NSW Police Force, 25 Nov 2013) sets out the child protection requirements when police respond to domestic and family violence and states that police can use professional judgment to determine when a child meets the ROSH threshold. Police can decide a child is at ROSH even if the child was not present at the time of the domestic violence incident.

Joint Investigative Response Teams (JIRT)

JIRT is made up of FACS, police and NSW Health professionals who undertake joint investigation of child protection matters when there is a possibility that the abuse constitutes a criminal offence (JIRT Memorandum of Understanding August 2006). JIRT aims to conduct investigations in a child friendly and minimally intrusive manner.

There is also a *JIRT Aboriginal Consultation Protocol: Guidelines for utilising Aboriginal staff for JIRT Consultation*, which provides step-by-step guidelines about consulting with Aboriginal staff within the three JIRT agencies throughout the JIRT process and emphasises the importance of respectful inquiries to identify Aboriginal clients. Further information about the types of matters that may require a JIRT response can be found in the *NSW Joint Investigation Response Team (JIRT) Criteria*.

Information sharing

Exchange of information and co-ordination of services

Chapter 16A CYPA allows government agencies and NGOs who are prescribed bodies to exchange information. Prescribed bodies include:

- ▶ police;
- ▶ a public service agency or a public authority;
- ▶ schools and TAFEs;
- ▶ public and private health organisations;
- ▶ the Family Court of Australia and the Federal Circuit Court; and
- ▶ the Department of Immigration and Border Protection.

There is also a very broad prescribed category under regulation 8(j) of the CYPR, for 'any other organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly to children' to exchange information.

Information can also be exchanged in relation to an unborn child who is the subject of a pre-natal report under section 25 CYPA and in relation to the family of such an unborn child.

Chapter 16A of the CYPA also requires prescribed bodies to take reasonable steps to coordinate decision making and the delivery of services regarding children and young people. FACS encourages prescribed bodies to obtain the consent of the client for the release of information, but information may be provided without consent. FACS provide a template letter for providing information under Chapter 16A and include a checklist for providing information or responding to a Chapter 16A information request in the NSW interagency Guidelines.

Courts

The following courts deals with allegations that children are at risk of harm:

- ▶ NSW Children's Court;
- ▶ NSW Supreme Court;
- ▶ Federal Circuit Court and Family Court of Australia.

NSW Children's Court

The Children's Court deals with a range of matters including criminal cases, care and protection of children, AVOs, and compulsory schooling orders for children and young people under 18 years of age.

The Children's Court has specialist children's magistrates and three designated courthouses located in Parramatta, Broadmeadow and Surry Hills. The Children's Court also sits on a permanent basis in Local Courts at Campbelltown, Woy Woy, Wyong and Port Kembla. In other locations specialist children's magistrates on circuit and Local Court magistrates conduct regular sittings of the Children's Court.

Courts sitting as a Children's Court are closed to the general public. Judges and magistrates wear black robes, but no wigs and are called 'your honour'. Most courts also require you to have security checking on entry and have safe rooms available. Remote witness facilities are available in some courts to allow vulnerable witnesses to give evidence in a room that is separate from the courtroom.

NSW Supreme Court

The Supreme Court can intervene in Children's Court matters in exceptional circumstances under its protective jurisdiction, also known as the *parens patriae* or inherent or wardship jurisdiction of the court. Section 247 CYPA provides that '[nothing] in this Act limits the jurisdiction of the Supreme Court'. Also see *CAC v Secretary, Department of Family and FACS* [2014] NSWSC 1855; *Re Frieda and Geoffrey* [2009] NSWSC 133; 40 Fam LR 608; *Re Victoria* [2002] NSWSC 647; 29 Fam LR 157 at [37]-[40]; *Re Baby S* [2014] NSWSC 871 at [16] and [19]-[23]).

Federal Circuit Court and Family Court of Australia

Under the *Family Law Act 1975* (FLA) courts have jurisdiction to make orders for the welfare of children under section 67ZC. However, according to section 69ZK, they cannot make orders in relation to children under the care of a person under a child welfare law unless they commence after the child ceases to be in that care arrangement or where the child welfare agency provides written consent.

FACS has entered into memorandums of understanding and protocols with both the Family Court of Australia and the Federal Circuit Court (com-

menced when it was the Federal Magistrates Court) (*Memorandum of Understanding between the Family Court of Australia and the NSW Department of FACS, Memorandum of Understanding between Department of FACS and the Federal Magistrates Court of Australia, Protocol between DoCS and the Family Court, Protocol between Department of FACS and Federal Magistrates Court of Australia*). These documents set out a range of procedures including for case management, intervention, disclosure and information sharing, location orders and recovery orders.

FACS can elect to intervene in any family law proceedings if they have concerns for the safety and wellbeing of a child.

Steps after a report is made

If FACS forms the opinion that a child or a young person is in need of care and protection, they are required under section 34 of CYPA to take whatever action is necessary to safeguard or promote the safety, welfare and wellbeing of the child or young person, including:

- ▶ refer the child and their family to a support service;
- ▶ develop a care plan;
- ▶ develop a parent responsibility contract (PRC);
- ▶ exercise their emergency protection powers;
- ▶ seek orders from the Children's Court.

FACS is required under section 37 to consider alternative dispute resolution (ADR) as a way to resolve problems at an early stage.

Referral to support services

If it is deemed that a child does not meet the ROSH threshold, their family may be referred to a support service such as a Family Referral Service, which will refer the family to appropriate services such as Brighter Futures which provide a range of tailored services including case management, casework focused on parent vulnerabilities, structured home visiting, quality children's services, parenting programs and brokerage funds.

Care plans

A care plan is a plan developed through agreement with the parents of the child or young person including an agreement reached in the course of alternative dispute resolution (ADR) (s 3 CYPA). It can be registered with the Children's Court and used as

evidence of an attempt to resolve the matter without bringing a care application (s 38(1)).

A care plan can also be a set of proposals for consideration by the Children's Court (S.3 CYPA) and forms the basis of orders made.

See below for more information about 'care applications'.

Parental responsibility contracts

A PRC is an agreement between FACS and one or more primary caregivers for a child or young person that contains provisions aimed at improving the parenting skills of the primary caregivers and encouraging them to accept greater responsibility for the child or young person (s 38A(1)(a)).

A PRC, or a refusal to enter into a PRC, may be used as evidence of an attempt to resolve a matter concerning a child or young person's need for care and protection (s 38D(1) and (2)).

Section 38A(2) provides that a PRC must:

- (a) be in writing, and
- (b) be signed by the Secretary and each primary care-giver or each expectant parent who is to be a party to the contract, and
- (c) be in the form (if any) prescribed by the regulations, and
- (d) be registered with the Children's Court, and
- (e) specify the period (not exceeding 12 months) during which the contract will (unless varied under section 38B) be in force, commencing on the date on which the agreement is registered with the Children's Court, and
- (f) specify the circumstances in which a breach of a term of the contract by a party to the contract will authorise the Secretary to file a contract breach notice with the Children's Court.

Subsection 38A(3) mandates that no more than one PRC may be entered into within any period of 18 months between FACS and any of the same primary caregivers for a child or young person.

Before entering into a PRC, section 38A(4) requires FACS to give the other proposed parties to the contract a reasonable opportunity to obtain independent advice concerning the provisions of the contract.

Section 38A(5) provides that a PRC may make provision for or with respect to any or all of the following:

- (a) attendance of a party to the contract for treatment for alcohol, drug or other substance abuse during the term of the contract,*
- (b) attendance of a party to the contract for counselling,*
- (c) requirements relating to alcohol or drug testing that a party to the contract must undergo during the term of the contract,*
- (d) permitting information about the contract (including compliance with the contract) to be shared between persons and agencies involved in the implementation of the provisions of the contract,*
- (e) participation in courses aimed at improving the parenting skills of any party to the contract (including, for example, courses relating to behavioural management and financial management),*
- (f) monitoring of compliance with the terms of the contract.*

A PRC cannot make provision for or with respect to the allocation of parental responsibility for a child or young person or the placement of a child or young person in OOHC (s 38A(6)).

A PRC takes effect only if (and when) it is registered with the Children's Court under section 38A(8). If a party to a PRC breaches the PRC, FACS may under section 38E, file a contract breach notice in the Children's Court and seek care orders. See 'Care orders' below for more information.

Emergency protection powers

If FACS or a police officer is satisfied, on reasonable grounds, that a child or young person is at immediate risk of serious harm, and that the making of an AVO would not be sufficient to protect the child or young person from that risk, they can remove the child or young person from the place of risk under section 43(1).

According to section 45, if a child or young person is removed without a warrant FACS must make a care application to the Children's Court within three working days after the removal and must satisfy the court why the removal of the child or young person without a warrant was considered to be necessary.

Under section 46(1), the Children's Court may make an order for the emergency care and protection of a child or young person if it is satisfied that the child or young person is at risk of serious harm. The order, while in force, places the child or young person in the care of the Secretary or the person

specified in the order under section 46(2). According to 46(3) and (4), the order has effect for a maximum period of 14 days, however it can be extended once for a further maximum period of 14 days.

Children's court orders

FACS and other relevant parties can apply to the Children's Court for the following types of orders:

- ▶ care orders;
- ▶ guardianship orders;
- ▶ parent capacity orders; and
- ▶ contact orders.

Proceedings before the Children's Court are not to be conducted in an adversarial manner and should proceed with as little formality and legal technicality as possible (s 93(1) and (2)). The Children's Court is not bound by the rules of evidence and the standard of proof is proof on the balance of probabilities (s 93(3) and 93(4)).

Care orders

Section 71 of the CYPA sets out the grounds on which an application for care orders can be made:

(1) The Children's Court may make a care order in relation to a child or young person if it is satisfied that the child or young person is in need of care and protection for any reason including, without limitation, any of the following:

- (a) there is no parent available to care for the child or young person as a result of death or incapacity or for any other reason,*
- (b) the parents acknowledge that they have serious difficulties in caring for the child or young person and, as a consequence, the child or young person is in need of care and protection,*
- (c) the child or young person has been, or is likely to be, physically or sexually abused or ill-treated,*
- (d) subject to subsection (2), the child's or young person's basic physical, psychological or educational needs are not being met, or are likely not to be met, by his or her parents or primary care-givers,*
- (e) the child or young person is suffering or is likely to suffer serious developmental impairment or serious psychological harm as a consequence of the domestic environment in which he or she is living,*
- (f) in the case of a child who is under the age of 14 years, the child has exhibited sexually abusive behaviours and an order of the Children's Court is necessary to ensure his or her access to, or attendance at, an appropriate therapeutic service,*

(g) the child or young person is subject to a care and protection order of another State or Territory that is not being complied with,

(h) section 171 (1) applies in respect of the child or young person.

(1A) If the Children's Court makes a care order in relation to a reason not listed in subsection (1), the Court may only do so if the Secretary pleads the reason in the care application.

(2) The Children's Court cannot conclude that the basic needs of a child or young person are likely not to be met only because of:

(a) a parent's or primary care-giver's disability, or

(b) poverty.

When FACS is seeking care orders sections 78(1) and 78(2) require that it include a care plan, which addresses the following:

(a) the allocation of parental responsibility between the Minister and the parents of the child or young person for the duration of any period for which the child or young person is removed from the care of his or her parents,

(b) the kind of placement proposed to be sought for the child or young person, including:

(i) how it relates in general terms to permanency planning for the child or young person, and

(ii) any interim arrangements that are proposed for the child or young person pending permanent placement and the timetable proposed for achieving a permanent placement,

(c) the arrangements for contact between the child or young person and his or her parents, relatives, friends and other persons connected with the child or young person,

(d) the agency designated to supervise the placement in out-of-home care,

(e) the services that need to be provided to the child or young person.

Section 63(1) provides that FACS must:

- ▶ advise the court about the support and assistance provided for the safety, welfare and well-being of the child or young person; and
- ▶ the alternatives to a care order that were considered before the application was made; and the reasons why those alternatives were rejected.

A court cannot dismiss a care application on the basis that appropriate alternative action that could

have been taken in relation to the young person was not considered or taken (s 63(2)).

A care order may be made only if the Children's Court is satisfied that the child or young person is in need of care and protection. If the court is not satisfied, it may make an order dismissing the application (s 72).

Guardianship orders

A guardianship order is the allocation by the Children's Court of all aspects of parental responsibility for a child or young person who is in statutory OOHHC or supported OOHHC or who it finds is in need of care and protection until the child or young person reaches 18 years of age to a suitable person (s 79(2)).

The following people can seek a guardianship order:

- ▶ FACS;
- ▶ an agency responsible for supervising the placement of the child or young person (with the written consent of FACS); or
- ▶ a person who is seeking to be allocated all aspects of parental responsibility for the child or young person (s 79B(1)).

Each parent must be given a reasonable opportunity to obtain independent legal advice about the application and is entitled to be heard at the hearing of the matter (s 79B(4)).

The Children's Court must not make a guardianship order unless, according to section 79(3), it is satisfied that:

(a) there is no realistic possibility of restoration of the child or young person to his or her parents, and

(b) that the prospective guardian will provide a safe, nurturing, stable and secure environment for the child or young person and will continue to do so in the future, and

(c) if the child or young person is an Aboriginal or Torres Strait Islander child or young person – permanent placement of the child or young person under the guardianship order is in accordance with the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles that apply to placement of such a child or young person in statutory out-of-home care under section 13, and

(d) if the child or young person is 12 or more years of age and capable of giving consent – the consent of the child or young person is given in the form and manner prescribed by the regulations.

Parent capacity orders

Section 91A states that a parent capacity order (PCO) can require a parent or primary caregiver of a child or young person to attend or participate in a program, service or course or engage in therapy or treatment aimed at building or enhancing his or her parenting skills.

Section 91E(1) empowers the Children's Court to make a PCO in relation to a parent or primary caregiver of a child or young person if it is satisfied that:

(a) there is an identified deficiency in the parenting capacity of the parent or primary care-giver that has the potential to place the child or young person at risk of significant harm and it is reasonable and practicable to require the parent or primary care-giver to comply with the order, and

(b) the parent or primary care-giver is unlikely to attend or participate in the program, service or course or engage in the therapy or treatment required by the order unless the order is made.

Contact orders

Under section 86(1), the Children's Court can make any of the following orders about contact:

(a) stipulating minimum requirements concerning the frequency and duration of contact between a child or young person and his or her parents, relatives or other persons of significance to the child or young person,

(b) requiring contact with a specified person to be supervised,

(c) denying contact with a specified person if contact with that person is not in the best interests of the child or young person.

Varying Children's Court orders

Your client may be able to apply to the Children's Court to vary orders that were made in relation to their children.

If they want to vary (or seek) contact orders, they need to seek leave of the court under sections 86(1A) and 86(1B) by satisfying the court there has been a significant change in any relevant circumstances since a final order was made.

Before granting leave, section 86(1D) requires the Children's Court to also consider whether they have attempted to reach an agreement about contact arrangements by participating in ADR, and may order them to attend ADR. Legal Aid NSW facilitates

mediations in relation to contact disputes in care and protection matters.

Your client can seek leave of the Children's Court to vary or revoke care orders if they can satisfy the court under section 90(1) and (2) that there has been a significant change in any relevant circumstances since the care order was made or last varied.