

Child Contact Orders
Enforcement and Penalties
The Family Law Council Report

The Family Law Council published its report 'Child Contact Orders: Enforcement and Penalties' in June 1998 which indicates that many breaches often occur as a result of the refusal to deliver or make the child available for contact by the resident parent, who is usually the mother.

The most frequent reason given for their action was the late return and pick up of the child by the contact parent and the poor quality of time the child had with the contact parent, who is usually the father.

We know that both mothers and fathers are guilty of Child Contact breaches and that a heavy penalty or a jail term to deter this offence will affect many mothers who are often the main care givers and therefore such penalties would be detrimental to the child.

Litigation statistics indicate the mothers tend to have mitigating reasons for their breaches more often than the fathers do. More fathers appear to be successfully prosecuted in respect to their contravention of the Order than are mothers.

Civil prosecution of breaches is costly and the government has reduced the amount of legal aid funding to Family Law issues, hence fathers, who usually are in a better financial position to litigate against their spouses, are possibly more likely to initiate litigation in respect to breaches than mothers.

These are simplifications of the situation in respect of breaches of Child Contact Orders but they do serve to show how complicated the problem is. Also, court statistics alone are a poor reflection as to the number of breaches actually occurring, let alone who is committing those breaches and why.

Another complication is the Family Court's current reluctance to deny contact to a parent even though there may be demonstrated events where the parent has shown a definite lack of responsibility toward their child.

The need for young children to maintain contact with both parents to ensure their long term 'sense of identity', appears to currently overshadow other considerations under S68E which must be considered

before a Justice issues a Contact Order.

Even in the face of allegations of abuse or welfare concerns directed at the contact parent, until properly heard in court, the interim orders continue to reflect this strong reluctance to deny contact.

If a parent believes the welfare of their child will be at risk through contact with the other parent, as per a Contact Order issued under S64H of the Family Law Reform Act 1995, then they may well be prepared to breach a Contact Order, should other avenues fail them, such as timely investigation by Family Services etc.

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It is noted It is noted that, at the same time in which very serious, genuine allegations of domestic violence or child abuse are made in the Family Court, when Justices are deciding whether to issue or amend a Child Contact Order, they are faced with a large number of false allegations being made by one or both parties to the case.

Further complicating the matter of reducing the number of Contact Order breaches, is the cost to report the breach and have legal representation at the hearing. Summary hearings by the Judicial Registrar as opposed to the a Judge have been suggested as a means to address the impact of breaches early, close to the time of the breach and well before there is an increase in the frequency and seriousness of further breaches.

The ability for complainants to complete a form similar to form 49 under the Family Law Rules - 'Application for Contravention of child order', by which a breach can be reported without proceeding to litigation under S112 of the Family Law Act, might assist in minimising further breaches through prompt reporting. Data from such reports might prove useful to researchers however there may be a greater tendency for malicious reports to be made at the same time that a greater volume of genuine reports would be received.

The adversarial system, the reliance on the affected party to pursue a wrong, the lack of in-depth explanation to the parents about their responsibilities in regard to court orders, abuse of litigation as a form of control or harassment, and the use of *ex parte* hearings, also add to the problem of reducing Child Contact Order breaches.

Often, when Police execute Child recovery orders they take an education role and inform people of the avenues they should consider when they are

experiencing problems with access to their child. Parents are then aware of other options they can take, when they become frustrated with their situation, instead of deciding to just not complying with the order.

Certainly this is preventative, however the Police need to be well trained in Family Court procedures and the legislation, which is not often the case when many Police become involved in Family Law issues on an infrequent basis. How far do Police give advice to such parents, puts Police in a difficult position as they must be careful not to be perceived as giving legal advice.

Research may reveal that some people will put their own agendas in front of that of the child and will be defiant against the court no matter what counselling courses or legal advice they may receive. Some people may have a disregard for the law, feel there is no deterrent to stop them from breaching, have false ideology about 'parental rights' or may have a domestic violence history for which their breaches may be part of their continued efforts to exert power over their former partner.

In respect to the later, domestic violence is suspected to be a major factor in a number of cases where there is a history of contravening Child Contact Orders. A Justice considers family violence among a number of considerations when making a Child Contact Order, however it relies on the parties to the application to truthfully inform the court of any such issues.

The ability of a victim of domestic violence to relay her story in court is not easy with the perpetrator present. It relies on the quality of her legal representation and whether the representative is able to show past violence as being relevant when the parties no longer live under the same roof.

Successful intervention strategies to minimise breaches of Child Contact Orders should result in a reduction of the number of Recovery Orders which the Family Court is compelled to issue. A reduction in the number of Recovery Orders issued would free police resources for other community work and would mean fewer children would be subjected to forcible removal by Police.

So where are strategies, to minimise the frequency of Child Contact Order breaches, going to come from? Certainly if breaches of Child

Contact Orders were criminal offences, police would be collecting intelligence about the offenders and analysing the statistics. Police would possibly identify common circumstances and determine indicators for the crime. Police would possibly make recommendations to the government about the frequency of the crime and about prevention strategies. If these breaches were criminal, Police would possibly assist community groups with awareness campaigns and be putting the knowledge they gain about dealing with such crime into their training packages. However the fact is that Police are expending resources, in respect to executing Child Recovery Orders, consequent to civil breaches of law and examination of non-criminal data to assist Policing has only recently been recognised by Police as a useful tool.

Efforts made by the Family Law Council to discuss such breaches in their publication 'Child Contact Orders: Enforcement and Penalties' in June 1998, and efforts by community groups particularly in the ACT, are going to give us some information, but not the comprehensive knowledge base we need to develop intervention strategies. As stipulated by Pamela

Kinnear from the Australian Institute of Criminology in her presentation at this conference, organisational data, for example litigation statistics and data from crime victim surveys or fathers rights lobby groups have a number of faults. She suggested that an Integrated Monitoring System would more accurately help us collect and analyse data about violence against women in the community. Such an information system would collect data from community groups about crime and associated activity which is not normally reported to Police.

I believe the proposed research may reveal that women who have recently separated and are experiencing problems with child access may well be experiencing other problems, for example substance abuse, poverty, depression as well as being victims of assault, stalking, threats and intimidation. That the health and life style of these women is severely diminished and consequently so is that of their dependants.

Often people with a history of domestic violence will have that violence accentuated at the time of and just after separation. I recommend that should this conference agree to a model by which violence against women is researched on a comprehensive and national level that the research include parallel analyses of persons experiencing breaches of Child Contact Orders.

Research in the area of child contact order breaches may help police to be more pro-active in regard to related offences. A pure response reaction by Police, as a result of a parent taking illegal access of their child, has been said by some Police officers to make them feel they are merely a 'child pick up and deliver service'. They feel frustrated by what they observe but can see little that is changing the situation of the people involved.

A research model for women's experience of violence which incorporates parallel issues of separation such as child contact order breaches, will built on the 'big picture'. This is so important because, no matter how skilfully and compassionately Police may execute each Child Recovery Order, it is of little consequence if nothing is being done to reduce the number of Recovery Orders they will be required to execute tomorrow and the next day after that.

I ask the council to write to the 'National Crime Prevention, toward a safer Australia' program within the Commonwealth's Attorney General Department and request research in the area of Child Contact Order breaches. This program already has a research and consultative agenda titled 'Pathways to Prevention' which includes, 'Development and Early Intervention Approaches to Crime' and 'Youth Crime and Families'.
by Denice BIRD written for the Australasian Women and Policing Conference