

COVID-19: Having contact with my children when they are in care during the pandemic

FACTSHEET

This factsheet is part of a series from Legal Aid NSW that aims to help answer your questions about COVID-19 and family law.

You may be worried or confused about how COVID-19 will affect you and your family. Sometimes a crisis can make legal problems worse or new problems might develop. Legal Aid NSW understands that there will be a lot of questions about family law issues, parenting and staying safe. This series of fact sheets will give you helpful information and contacts to support you and your family to manage all the changes that are happening in our community.

This factsheet will help you understand what to do if you have children in care or you have a case with the NSW Department of Communities and Justice (DCJ).

If you share care of your children with an ex-partner or other carer, you can view our factsheet about [how COVID-19 may affect your existing family law court orders](#), parenting plan or other care arrangements.

Contact during the COVID-19 pandemic

There are some new rules about having contact with your children during the pandemic. These rules will be in place until it is safe for face-to-face contact to start again.

- If there is a plan for your children to be restored to you, DCJ will do their best to find ways for you to keep having face-to-face contact.
- If there is no plan for your children to be restored to you, DCJ will look at ways that you can have contact. Contact might happen through telephone calls, video calls, text messages, emails or letters.

My caseworker says my face-to-face contact has to be cancelled or changed because of the pandemic. What can I do?

The first thing to do is for you or your lawyer to speak to your caseworker about why the arrangements for your contact have changed.

There might be a good reason that your contact has changed. It might be because:

- the organisation that supervises your contact has closed during the pandemic
- your caseworker or other workers from DJC have become ill or have been exposed to COVID-19 and can't come to work
- your children, or your children's carers, have been exposed to or are at risk of contracting COVID-19 and need to isolate at home
- there are concerns that you might have COVID-19, or
- there are concerns that your child might get sick if they have contact.

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What can I do if I'm not having any contact?

If don't agree with the changes to your contact, there are things you can do. If you have a lawyer, talk to them about your options. You could try:

- talking to DCJ and trying to reach an agreement
- organising a mediation to talk about your contact, or
- applying to the Children's Court of NSW and asking for an order about contact.

Trying to reach an agreement with DCJ

You or your lawyer should find out the reason why your contact has stopped and ask when DCJ wants contact to start again.

If your children are at risk of COVID-19 because they are having contact with you, DCJ will probably not let the children have contact with you. They will probably wait until the risk is gone before contact can start again.

If DCJ says you can't have face-to-face contact, you or your lawyer should talk to DCJ about other types of contact, like telephone calls, video calls, text messages, emails or letters.

Mediation

Legal Aid NSW can arrange a mediation if you and DCJ can't agree on what the contact arrangements for your children should be. The mediations will happen by telephone. The mediation can help everyone reach an agreement about contact.

Sometimes it can take a long time to organise a mediation. If you can't have contact for a short amount of time, a mediation might not be very helpful in your situation. For example, if your children need to isolate for 14 days and you can't see them, by the time the mediation is organised the isolation will be finished.

You should get advice from a lawyer about what to do in your situation.

Going to court

You can go to court to get an order about contact with your children. There are a few things you should consider before you go to court.

Going to court during COVID-19 might be hard because things are changing quickly and the court might close, or only deal with really urgent matters.

When the court decides to make an order about contact, it focuses on the safety, welfare and wellbeing of the children. The court would have to be sure that contact is in your children's best interests.

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The court also looks at things like:

- the reason for having contact, for example if the children are going to be restored to you
- if having contact helps children maintain a sense of identity
- the age of the children
- the wishes of the children
- how the children react to contact
- how you manage contact
- whether you have been coming to contact
- whether there is a good attachment between the children and you
- the distance the children have to travel
- if it is safe for the children to travel during the COVID-19 pandemic
- the best type of contact (face-to-face contact, telephone calls, video calls, text messages, emails or letters), and
- the risks to the safety, welfare and wellbeing of the child

The court will probably not make an order for the children to have contact with you if there is COVID-19 risk. There might be a COVID-19 risk if:

- you have been diagnosed with COVID-19
- you have recently returned from overseas or interstate travel
- you have come into contact with someone who has COVID-19
- you or another member of your household feels unwell
- you or another member of your household has been told to self-isolate, or
- you or another member of your household are [at greater risk of serious COVID-19 infection, or are at greater risk of being exposed to an outbreak of COVID-19](#).

You should talk to a lawyer to find out if going to court is a good option for you.

How can I get help?

You can find [information about what DCJ is doing](#) on its website.

For more information, or to get legal advice about your specific situation, contact LawAccess NSW on 1300 888 529 or [call your local Legal Aid NSW office](#).

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There is also a series of [factsheets about COVID-19 and the law](#) available on the Legal Aid NSW website to assist you to manage all the changes that are happening in our community.

If you need an interpreter, call the Translating and Interpreting Service on 131 450 and ask for LawAccess NSW. If you find it hard to hear or speak, call the National Relay Service on 133 677 and ask for LawAccess NSW or visit www.relayservice.gov.au.

This factsheet is intended as a general guide to the law. Do not rely on this information as legal advice. We recommend you talk to a lawyer about your situation. This information is correct at the time of writing, however, it may change.

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