

Talking to Children about Legal Processes

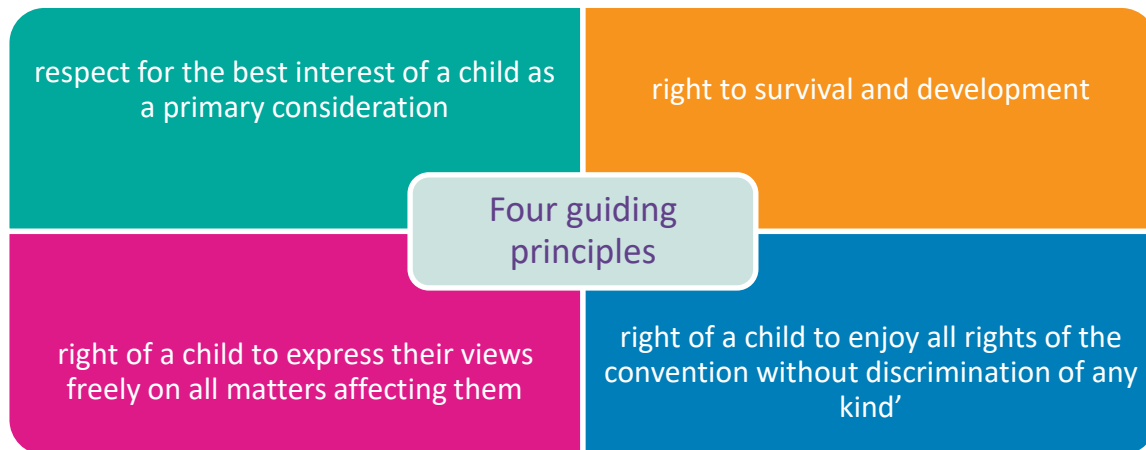
Talking to children and young people (child) about legal processes is an important part of your role. From a child's perspective they may be unexpectedly taken from school, home or somewhere else and placed with people they do not know. They may understand that the situation at home was unsafe or they felt uncared for, but they may not have expected to be separated from their family.

A child in the Permanency Support Program (PSP) has the right to receive information about their removal and the court processes. A child is unlikely to know what is going on and what is going to happen. Adults sometimes assume it is best not to speak with a child about the process. They feel they are protecting the child, or they want to prevent further trauma.

However, not knowing what is happening in their life can make a child feel more scared, anxious, and alone. Information empowers a child to understand their current situation. Children have a right to participate in the decision making of their life, including in the legal process. Understanding what is going to happen and how their views will be heard helps a child feel connected to the process. It increases their self-esteem and gives them a sense of mastery and control.

Rights Of The Child

The Children and Young Persons (Care and Protection) Act 1988 and the United Nations Convention of the Rights of the Child assert the right for a child to participate in decisions that affect their life based on their age and developmental capacity. The following are the four guiding principles that underpin the UN Convention on the Rights of the Child, these are:



Source: United Nations Human Rights (1996-2020)

This means that a child needs to be given information by their caseworker about legal processes, including an explanation about decisions made. In a manner, language and format that they understand.

It is crucial that the child can express their views which are documented accurately and provided to their independent solicitor, arranged by Legal Aid NSW, who will represent them in court. To ensure the child is provided a voice they are entitled to a support person who can help them articulate their views and feelings if they are unable to do so.

Importance of Talking to a Child about the Legal Process

By you taking the time to explain the legal process and court proceeding and listening to and answering their question honestly, it helps a child to:

- feel supported by someone who cares and who they can trust will tell them the truth
- know how big the issue they are facing is
- know who they can talk to
- reduce fear of betraying loved ones
- reduce feelings of shame or embarrassment
- come to terms with bad past experiences
- not feel personal responsibility for the abuse or neglect they experienced
- know they are respected, and their opinions are valued
- feel more confident that their concerns and views are being listened too
- increases their sense of self-worth because you are asking for their views and providing them with a chance to participate in decisions about them
- feel more in control and empowered because they understand the process and they're feeling heard
- increase confidence that adults can help and that you are helping them.

The impact of not talking to a child about the legal process can be huge. It may impact upon:

- their ability to participate in society
- their academic results at school
- distrust about the legal process and court proceedings
- feelings of helplessness
- their sense of not being heard and therefore feel ignored
- their behaviour, as in acting out in destructive ways because they cannot make sense of what is happening to them.

Legal Representation for Children

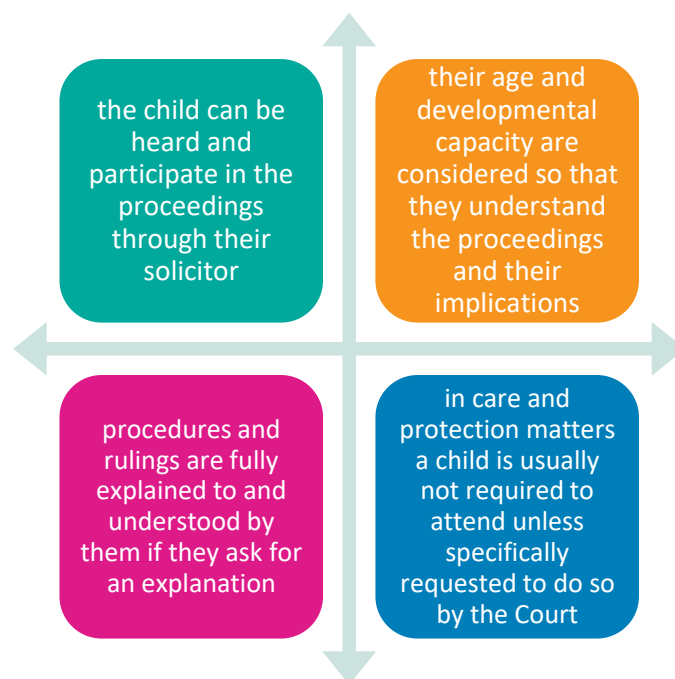
If a child is under the age of 12, they will be represented by an Independent Legal Representative who will tell the court what they feel is in the child's best interest. The legal representative should, through questions and play (such as drawings), assess whether a child fully understands the meaning and implications of their wishes and will act in the child's best interests during the court proceedings.

A child aged 12 or over gives direct instructions to their solicitor about their wishes. The solicitor, known as a Direct Legal Representative, acts on the child's instructions and tells the Court what a child wants. However, if their legal representative is concerned that the child does not have capacity, they can apply to the Court to act in the child's best interests as an Independent Legal Representative rather than as the child's Direct Legal Representative.

In care and protection matters DCJ is required to assist a child in meetings with their solicitor before Court. A child has the proceedings explained to them and they can express their views and where appropriate, be given instructions.

Court Responsibility

Participation of a child in care proceedings is a key principle of the Children's Court. The Court has the responsibility to ensure:



Source: Legal Aid NSW (2016)

How to Help a Child in The Legal Process

You can help a child in the legal process by:

- challenging assumptions that disempower children – do not be scared to speak with a child about their abuse or neglect experiences. When we talk to children about their experiences of abuse or neglect, we have the opportunity to reassure them that what happened to them was wrong and it was not their fault. This helps reduce feelings of shame and personal responsibility. By supporting a child to talk about their experiences, we can break down the culture of secrecy that is often used by perpetrators to isolate and exploit them. This can empower the child and contribute to their healing and reduces or stop them from internalising their feelings.
- building partnerships with a child – it develops trust, and a child sees you as a safe person
- using appropriate methods and settings – when interacting with a child, use a space that a child is familiar with (not school, because it may draw too much attention to a

child's circumstances), that provides privacy and is comfortable. Allow the child to bring another trusted adult if they do not want to speak to you alone

- using common language and avoid jargon – speak in a language that a child understands and is developmentally appropriate. A child's cognitive and physical development and capacity to participate in the legal process changes depending on their age and maturity. A child as young as six can provide valuable information and evidence for their own court proceedings
- trustworthy documentation – ensure that you meaningfully interpret and document a child's view and ask them if you interpreted their views correctly. Give them a copy of the documents that details important decisions on their case and care plans and explain the content to them
- keeping the child in the loop – speak to the child about the processes, checking in regularly to update them, learn how their feeling and gain their feedback. It is important that you discuss with the child how their input has been used and the value and power of their voice. Explain to them the outcome of the court process and what that means to them.

References:

Australian Human Rights Commission, (n.d). *About Children's Rights*.

<<https://humanrights.gov.au/our-work/childrens-rights/about-childrens-rights>>

Legal Aid NSW. (n.d). Kids in Care.

<<https://www.legalaid.nsw.gov.au/publications/factsheets-and-resources/kids-in-care/2.-going-to-the-childrens-court>>