

Understanding the Role of the Court

Permanency Support Program (PSP) Service Providers intersect with the court system during decision making periods for a child or young person (child) who is potentially entering, is in care of may be exiting care because of a permanency plan. The Department of Communities and Justice (DCJ) oversees the court process, even in cases when the child is case managed by a PSP Service Provider. Under the PSP, service providers are more involved in court processes than before, when your work focused on out-of-home care.

The Role of the Court

As the legal decision-makers, the Children's Court of NSW (the Court) plays a key role in child protection and permanency work. **Only the Children's Court can revoke, re-allocate or restore parental responsibility for a child.**

In regional areas, child protection matters are usually held in local courts, who have the same decision-making powers as the Children's Court.

DCJ assesses whether a child needs care and protection and have the statutory authority to remove a child and place them in out-of-home care. However, they must lodge a care application with the Court within three business days of bringing a child into care. The Court then decides whether to accept DCJ's view that it is not in the best interests of the safety, welfare and well-being of the child to remain with their parents. The Court, after consideration of the facts, will usually make an interim order allocating Parental Responsibility to the Minister.

Similarly, the court must endorse a restoration before a child can legally return home. The Court is also the decision maker in guardianship matters, where they allocate all aspects of parental responsibility to a person other than the parent through a guardianship order. The Supreme Court of NSW is the decision-maker in adoption matters.

The Court's decision-making powers in care and protection matters are set out in the *Children and Young Persons (Care and Protection) Act 1998* (known as the [Care Act](#)).

Children's Court of New South Wales

The Children's Court of New South Wales is a specialist court responsible for care and protection matters and most other cases involving children. This includes criminal cases and applications for apprehended violence orders.

The role of the Court is to make decisions that will best promote the safety, welfare and wellbeing of the child concerned. DCJ advises the court, but the court is independent and has the decision-making authority in care and protection matters.

The Children's Court is child-centred so proceedings in its care jurisdiction:

- use fewer formal procedures and protocols
- require participants to take a more collaborative and less 'adversarial' approach
- adopt the civil standard of proof (on the 'balance of probabilities') that is less onerous than the standard of proof required in criminal matters ('beyond reasonable doubt').

The Children and Young Persons (Care and Protection) Act (NSW) 1998 is the key legislation which guides all child safety decision making and casework practice.

About the *Children and Young Persons (Care and Protection) Act 1998*

The *Children and Young Person's (Care and Protection) Act 1998* (the Act) underpins all child protection decision making in the NSW Children's Court. **The overriding principle of the Act is that the safety, welfare and wellbeing of children must be paramount in all decisions (section 9(1)). All agencies must work together to achieve this.**

Other principles include:

- Where possible, take into account the child's views about his or her safety, welfare and well-being, in line with their age and developmental capacity. Help the child participate in decisions (s9(2)(a)).

- Consider the culture, disability, language, religion, and sexuality of the child (s9(2)(b)).
- Use the least intrusive intervention for the child and his or her family that also protects the child from harm and promotes his or her development (s9(2)(c)).
- The state owes children separated from their family special protection. As far as possible the name, identity, language, culture and religion of a child separated from their family deprived of their family environment should be preserved (s9(2)(d)).
- Provide children in care with a safe, nurturing and stable environment. The younger the child, the greater the need for early decisions about a child's permanent home (s9(2)(e)).
- It is important to maintain children's relationships with significant people in their life unless it is not in their best interests. These decisions should consider the child's wishes (s9(2)(f)).
- Permanent placement principles guide all actions and decisions (s9(2)(g)).
- The child should have the opportunity to express their views freely, according to their abilities (s10(1)(b)).
- Give children information about decisions about them (s10(1)(e)).

Practice tip

As a caseworker, you support this child-centred approach by:

- providing the right information for the court to decide the best way to provide for the child's safety, welfare and wellbeing
- ensuring all the people who have an impact on the child's welfare have an opportunity to participate in that decision making
- ensuring procedural fairness ('natural justice') is provided to the key people in the child's life.

Aboriginal and Torres Strait Islander Principles

The Act makes special provisions relating to Aboriginal and Torres Strait Islander children and families (sections 11-14). The Aboriginal and Torres Strait Islander placement principles focus on self-determination and on participation in decision

making. This includes the opportunity for Aboriginal children, parents and family members to participate in significant decisions in child protection that are to be made about a child who is Aboriginal, including the decision to remove a child from the care of their parent or caregiver.

If Aboriginal or Torres Strait Islander children require out-of-home care placements, these placements must occur in the context of the principles.

Other Courts

District Court

The District Court of NSW hears appeals against decisions made in the local courts and the Children's Court.

The District Court also handles applications to amend a child's birth certificate (Births Deaths and Marriages Registration Act 1995, s 19).

The Supreme Court of New South Wales

The NSW Supreme Court is the highest court in NSW. In PSP casework, the Supreme Court is mainly involved in adoption orders and hearing appeals from the Children's Court or District Court. If an adoption plan is registered through the NSW Supreme Court, the Court has a role in enforcing how a child keeps connection to their birth family and culture.

Otherwise, the Supreme Court hears cases about the protection and welfare of children in these circumstances:

- adoption of a child
- appeals from the NSW Civil and Administrative Tribunal
- wills for children in out-of-home care
- family provision claims
- parentage declarations
- Parens Patriae applications, including:
 - medical treatment
 - injunctions
 - secure care
 - for children taken outside of Australia to return to Australia.

Family Law Courts

There are two federal courts which deal with matters under the Commonwealth *Family Law Act 1975* - the Family Court of Australia and the Federal Circuit Court of Australia. The Federal Circuit Court deals with the majority of family law matters.

Parties can choose which court they wish to use. However, where there are serious allegations of sexual or physical abuse concerning a child or the issues are of a particularly complex nature, proceedings should be filed in the Family Court. The Family Court needs DCJ's consent to deal with matters where a Children's Court order has been made.

Visit the Children's Court website for more information:

<http://www.childrenscourt.justice.nsw.gov.au/>