

# Separate Representative Practice Standards & Guidelines



# Contents

<b>1 Background</b>	<b>4</b>
1.1 About this document	4
1.2 Purpose, focus and goals	4
1.3 How to use the Separate Representative Practice Standards and Guidelines	4
<b>2 The role of the Separate Representative</b>	<b>5</b>
2.1 General information	5
2.2 Best interests definition	7
2.3 Best interests representation	7
2.4 Direct representation	8
<b>3 Information gathering</b>	<b>11</b>
3.1 Speaking with kinship and foster carers	11
3.2 Director of Public Prosecutions Child Safety Legal Group	12
3.3 Talking to the child's caseworker	12
3.4 The child's age and development	12
<b>4 Planning to work with the child</b>	<b>15</b>
4.1 The child's participation in proceedings	15
4.2 Guiding principles	15
4.3 A model of child participation	18
4.4 Child-aware approach	21
4.5 Trauma-informed practice	21
4.6 Confidentiality and disclosure	24
<b>5 Meeting with the child</b>	<b>26</b>
5.1 Meeting arrangements	26
5.2 Contacting the child	30
5.3 Case studies	30
5.4 Child meeting the Magistrate	31
5.5 Respecting the child's relationships	33
<b>6 The child - views and diversity</b>	<b>34</b>
6.1 Representing the child's views	34
6.2 Feedback on SRs from children	36
6.3 The child finding out about you and meeting you for the first time	37
6.4 Ways to get to know the child	37
6.5 PACE concept	38

6.6	Things to discuss with the child	39
6.7	Communicating with the child in meetings	39
6.8	Being aware of the child's verbal and non-verbal behaviours	40
6.9	Finding out about the child's views	40
6.10	Asking the child questions about their views	41
6.11	Documenting the child's views	41
6.12	Providing information to the child	41
6.13	A change in the child's views	42
6.14	Confirming the child's views	42
6.15	Diversity – general information	43
6.16	Culturally and linguistically diverse children	43
6.17	Aboriginal and Torres Strait Islander children	46
6.18	Children with disability or diverse needs	51
6.19	The child's sexuality, gender and sex	54
<b>7</b>	<b>Separate Representative practice</b>	<b>60</b>
7.1	Conduct and primary functions of the SR	60
7.2	Relationships with other counsel	61
7.3	Upon appointment as the SR	62
7.4	Risk	63
7.5	Family violence	65
7.6	Restraint order under s 23 and s 43 of the Children, Young Persons and Their Families Act	75
7.7	Understanding the statutory pathway for applications	75
7.8	Case planning	76
7.9	Evidence gathering	77
7.10	Rules of evidence	79
7.11	Expert assessments and reports	83
7.12	After release of the expert report	84
7.13	The CSS file – the SR's rights and responsibilities	86
7.14	Summons	87
7.15	Importance of the SR having views	89
7.16	Working with schools and school staff	89
7.17	Dealing with represented and self-represented parties	90
7.18	After a care and protection application is filed	91
7.19	Evidence (Children and Special Witnesses) Act	92
7.20	Limited adjournments	92
7.21	General advocacy	92
7.22	Interim orders	93
7.23	Preparing for the first mention	94
7.24	Where parents do not oppose or are not participating	94
7.25	At the first mention	96
7.26	After the first mention	97
7.27	Negotiations and conferences	98

7.28 Family group conferences	99
7.29 Section 52 conferences	101
7.30 SR conferences	103
7.31 Negotiating and drafting orders	105
7.32 Before the final hearing	107
7.33 Making submissions that are different to the child's views	107
7.34 Child's attendance at Court	108
7.35 Child giving evidence	109
7.36 Carer/s giving evidence	109
7.37 Preparing a case outline	110
7.38 At the final hearing	113
7.39 Extension of the SR's appointment	114
7.40 After the final hearing	115
7.41 Advocating for services and support for the child	117
7.42 Conclusion of proceedings	117
7.43 Appeal or review of decisions	117
7.44 Potential Conflicts	119
7.45 Criticism of the SR	121
7.46 Child-SR relationship – contact, complaints, termination	122
7.47 Your safety	123
7.48 Commissioner for Children and Young People - Tasmania	123
7.49 Child Advocate – Tasmania	124
7.50 Grants of aid	125
7.51 Reporting and record-keeping requirements	125
<b>8 Acknowledgements &amp; appendices</b>	<b>127</b>
8.1 Acknowledgements	127
Appendix 1: Example letter to child, including biography and information about SR's role	128
Appendix 2: Separate Representative's (SR) questionnaire about the child	129
Appendix 3: Separate Representative's (SR) questionnaire about the child	135
Appendix 4: Separate Representative's (SR) questionnaire for the child's caseworker	138
Appendix 5: SR Checklist	142
Appendix 6: Hopes, worries and good things resource	145
Appendix 7: Hearing directions	146
Appendix 8: List of Separate Representative (SR) practice standards	147

# 1 Background

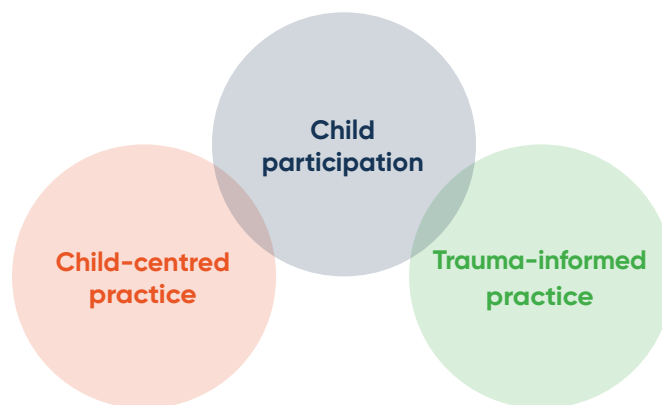
## 1.1 About this document

The *Separate Representative Practice Standards and Guidelines* is a resource for legal practitioners who act as Separate Representative (SR) for children involved in proceedings under the *Children, Young Persons and Their Families Act 1997*<sup>1</sup>.

## 1.2 Purpose, focus and goals

The *Separate Representative Practice Standards and Guidelines* recognise that SRs have responsibilities beyond the provision of general legal services.

The purpose is to support SRs to place the child and the child's best interests at the centre of their practice and to deliver best-practice, trauma-informed and child-centric services.



## 1.3 How to use the Separate Representative Practice Standards and Guidelines

The resource sets out guidelines and related standards of practice prescribed by Tasmania Legal Aid for SRs who are employed or funded by Tasmania Legal Aid.

A number of appendices provide additional resources, including a standalone set of the Separate Representative Practice Standards.

<sup>1</sup> Refer to the Children, Young Persons and Their Families Act 1997 at <https://www.legislation.tas.gov.au/view/html/inforce/current/act-1997-028>

# 2 The role of the Separate Representative

## 2.1 General information

The SR is appointed under s 59 of the Children, Young Persons and Their Families Act as follows.

“(1) The Court must not proceed to hear an application under this Act unless –

- (a) the child is represented in the proceedings by an Australian legal practitioner; or
- (b) the Court is satisfied that the child has made an informed and independent decision not to be so represented.

(2) Subsection (1) does not apply if the Court is of the opinion that it is in the best interests of the child to proceed with the hearing in the absence of the child’s representative.”

While subsection (2) provides that the Court may proceed without a SR, the absence of a SR should be considered an exception rather than the rule, and should only be a determination made by a Magistrate on properly admissible evidence.<sup>2</sup>

The philosophy of the SR and the paramount best interests consideration lies in three main principles:

- firstly, the principle that the SR acts as a ‘contradictor’ to the Court, approaching the evidence from the perspective of the child’s best interests
- secondly, the principle that the child’s best interests may not align with the interests of the parent/s, who may have interests of their own ahead of the child’s interests
- thirdly, Article 12 of the United Nations (UN) Convention on the Rights of the Child outlines that a child has the right to express their views freely and that the child shall be provided the opportunity to be heard in any judicial proceedings affecting them<sup>3</sup>.

The role of the SR in child safety proceedings is to ensure that the best interests of the child are given proper consideration and that the child’s views are conveyed to the Court.

The SR ensures that if the child expresses a view, it is fully presented to the Court. The SR makes informed decisions about the best interests of the child, based on all available evidence. The views expressed by the child may differ to what is considered by the SR to be in the best interests of the child.

The SR acts as a bridge between the child and the Court. Usually, the SR doesn’t act on the direct instructions of the child; rather, they ensure the child is respected and kept up-to-date with what is happening in their case. In some cases, the SR will act as a direct representative, as described below.

The SR makes sure that the Court has the information it needs to consider the child’s best interests. The SR performs this role by:

- developing and following a case plan
- gathering relevant and independent evidence to guide the Court’s decision-making
- guiding the facilitation of expert evidence.

<sup>2</sup> Mason, Paul. *Parens Patriae – Who Will Take Responsibility? Final Report to the Minister “Inquiry into the circumstances of certain children living in disability respite facilities”*, February 2009.

<sup>3</sup> The UN Convention on the Rights of the Child is available at [www.ohchr.org/en/professionalinterest/pages/crc.aspx](http://www.ohchr.org/en/professionalinterest/pages/crc.aspx).

While the SR is an impartial and independent presence in proceedings, it is critical that there is a safe and professional relationship between the SR and the child. Building this relationship involves the SR:

- engaging in a meaningful way with the child
- taking into account the child's age, capacity, cognition, emotions and developmental levels
- not making promises that they cannot keep
- supporting the child so that they experience as little trauma as possible from proceedings
- continually assessing any risk of harm to the child
- explaining what the role of the SR is
- helping the child understand that the relationship is temporary but important.

It is important that the SR avoids overstepping their professional role with the child. It is not the SR's role to conduct disclosure interviews, become a witness in proceedings, or to counsel the child.

The SR should be cautious and alert to the child becoming overly dependent on them and should refer the child to appropriate services and supports if necessary.


SRs should be aware of, and practice consistently with, the UN Convention on the Rights of the Child.

The general principles of the best interests of the child and the child's right to have a say are complementary. Article 3 of the UN Convention on the Rights of the Child establishes the objective of achieving the best interests of the child. Article 12 provides the methodology for hearing the child.



**Article 3**  
All organisations concerned with children should work towards what is best for each child.

**Article 12**  
Children have the right to say what they think should happen when adults are making decisions that affect them and to have their opinions taken into account.<sup>4</sup>



There can be no correct application of article 3 if the components of article 12 are not respected. Likewise, article 3 reinforces the functionality of article 12, facilitating the essential role of children in all decisions affecting their lives.<sup>5</sup>

<sup>4</sup> Refer to a simplified version of the UN Convention on the Rights of the Child at [www.unicef.org.au/upload/unicef/media/unicef-simplified-convention-child-rights.pdf](http://www.unicef.org.au/upload/unicef/media/unicef-simplified-convention-child-rights.pdf)

<sup>5</sup> General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art.3, para.1), refer to <https://www.refworld.org/docid/51a84b5e4.html>

## 2.2 Best interests definition

Section 10E of the Children, Young Persons and Their Families Act clearly defines the SR's focus for the child's best interests.

"(1) In performing functions or exercising powers under this Act, the best interests of the child must be the paramount consideration.

(2) Without limiting the matters that may be taken into account in determining the best interests of a child, the following matters are to be taken into account for that purpose:

- (a) the need to protect the child from physical, psychological and other harm and from exploitation
- (b) the views of the child, having regard to the maturity and understanding of the child
- (c) the capacity and willingness of the child's parents or other family members to care for the child
- (d) the nature of the child's relationships with his or her parents, other family members and other persons who are significant in the child's life, including siblings
- (e) the child's need for stable and nurturing relationships with his or her parents, other family members, other persons who are significant in the child's life and the community
- (f) the child's need for stability in living arrangements
- (g) the child's physical, emotional, intellectual, spiritual, developmental and educational needs
- (h) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's guardians
- (i) the need to provide opportunities for the child to achieve his or her full potential
- (j) the child's age, maturity, sex, sexuality and cultural, ethnic and religious backgrounds
- (k) any other special characteristics of the child
- (l) the likely effect on the child of any changes in the child's circumstances
- (m) the least intrusive intervention possible in all the circumstances
- (n) the opportunities available for assisting the child to recover from any trauma experienced –
  - (i) in relation to being separated from his or her parents, family and community; or
  - (ii) as a result of abuse or neglect
- (o) any persuasive reports of the child being harmed or at risk of harm and the cumulative effects of such harm or risk."

## 2.3 Best interests representation

As the SR, you should gather evidence and views relevant to the definition of the best interests of the child. Your enquiries and negotiations must prioritise the best interests factor. When meeting a child, you should explain, in an age-appropriate manner, what best interests includes and how the Court will use this to make a decision.

It is important to explain to the child that you will not be taking their instructions. As a child may not understand what 'instructions' mean, you can explain that you are not like the lawyers the child might have seen on TV, who do what the clients tell them to do. You should:

- ask the child for their views and explain that it is your job to tell the Court about the child's views



- tell the child about your views, how you got to those views (evidence) and how you will tell the Court.

Sometimes, your views of best interests will be different from the child's views, and you need to discuss this with child this before the hearing.

You should explain to the child that your role is to:

- listen to and think about their views
- find out other information about them (from Child Safety Services (CSS), doctors, school/teachers, psychologists, carer/s)
- after listening to them and other people who know about them, think about what is in their best interests
- tell the Court about their views and your views
- tell them and the Court if your views are different from theirs and why.

It is important for you to explain your role to the child using child-friendly and developmentally appropriate language or resources.

### **1 Practice Standard: Role of the SR**

1.1 The SR should gather evidence and views that are relevant to the definition of the best interests of the child under the *Children, Young Persons and Their Families Act 1997*.

1.2 The SR should explain to the child that their role is to:

- listen to and think about the child's views
- find out other information about the child (from CSS, doctors, teachers, psychologists and carer/s)
- after listening to the child and other people who know about the child, think about what is in the child's best interests
- tell the Court about the child's views and their (the SR's) views
- tell the Court and the child if their (the SR's) views are different from the child's and why.

## **2.4 Direct representation**

In rare cases, the Court may appoint a direct representative.

A direct representation model is usually used with older and more mature children who have strong views about the case and their participation.

Direct representation is rare because the best interests model suits most children. The best interests model accommodates changes in the child's views, and differences in your and the child's views.

You can only act as a direct representative for a child where you are satisfied that the child is able to provide competent instructions.<sup>6</sup>

To assess if a child can provide competent instructions, you need to establish that the child is able to:

- demonstrate an understanding of the role of CSS, the SR and the Court
- understand the potential outcomes of the Court proceedings
- communicate their views to you about the potential outcomes (noting the child may choose not to express a view).

<sup>6</sup> Rule 8, Australian Solicitors' Conduct Rules.

Where you and a child decide that the child should have a direct representative, you should:

- consider the impact of using this model for the child and their siblings
- raise this with the Court
- raise it with other parties
- set out the reasons why this model is the most appropriate for this child
- make submissions about whether, in addition to a direct representative, the child should also have a SR. If so, consider whether you should continue as the SR and have another person appointed as the direct representative, or whether your role should change to that of direct representative and another person be appointed as the SR.
- make submissions about what's appropriate for the representation of the child's siblings
- ask the Court to make a note on the Court file that a direct representation model will be used
- if needed, ask for orders which will support this model and the appointment of other SRs, if appropriate
- contact the Child Advocate<sup>7</sup> who can support the child.

Once appointed as a direct representative, the relationship between you and the child becomes one of lawyer and client. You will take instructions from the child.

As a direct representative, you should:

- provide information and advice to help the child understand their rights of participation, your role, protective concerns and the Court process
- give developmentally appropriate advice about issues and evidence in the case
- explore available options for the child and the Court
- take instructions on the child's views on all relevant matters
- facilitate views of the child for direct involvement in the proceedings
- with consent and instructions, gather information from external sources to understand the child's needs and circumstances and evidence that supports their views
- provide advice about possible outcomes of proceedings
- advocate for the child's views and desired outcome in Court
- negotiate with other parties (or their legal representatives) to obtain information and advocate for services for the child that will help achieve the desired outcome.

As a direct representative, you should support the child to express their views by:

- using a conversational approach, inviting an exchange of information rather than 'talking at' the child
- explaining the Court process and the roles of all the parties in developmentally appropriate plain English, and avoid using jargon and technical terms
- using non-leading questions to help ensure the child is sharing their own view and not just agreeing with what you have said
- checking the child's understanding of key concepts and providing opportunities to ask questions
- adjusting your language and communication style based on the child's developmental and language needs.<sup>8</sup>

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<sup>7</sup> The child advocate in Tasmania is Sonya Pringle-Jones; information about her role and how to contact her can be found at <https://www.decyp.tas.gov.au/children/out-of-home-care-in-tasmania/child-advocate/> - also see topic 'Child Advocate - Tasmania' in these guidelines.

<sup>8</sup> For example, culturally and linguistically diverse children may need an interpreter to give instruction

## Examples of direct representation

A teenage girl had a SR.

She was very angry with her parents and had very firm views about how she wanted her case run.

She wanted to give evidence and she wanted a say in how her parents were cross-examined.

In her case, a direct representative was appointed in addition to the SR.

The direct representative facilitated her participation in all aspects of the proceedings, facilitated her giving evidence and took her instructions about the cross-examination of her parents.

A teenage boy had met his SR, who explained to him the best interests role and responsibility of putting his views to the Court.

One of the boy's parents was unrepresented. There was evidence that this parent was strongly influencing his views and demanding that he state those views. The parent also urged the boy to ask for a direct representative.

The boy told the SR that he wanted a direct representative. The SR told the Court that the boy wanted a direct representative and that the SR supported this.

The SR believed that this would serve the boy's best interests and could reduce emotional distress to the child.

The Court appointed a direct representative. The SR continued with the best interests model. The SR conveyed the boy's views to the Court (wanting to live with his parent). The SR expressed a view that a care and protection order be made and that the boy not live with the parent.

The direct representative also conveyed the boy's view to the Court and presented and tested evidence in support of that view.

## 2 Practice Standard: Direct representation

2.1 As a direct representative, the SR must:

- provide the child the same loyalty, confidentiality and competent representation as they would provide an adult client
- represent the child in a competent and professional way in accordance with the Australian Solicitors' Conduct Rules and general legal obligations
- never substitute their own views for those of the child
- only act on the instructions given by the child regarding their (the child's) views
- reality-test instructions of the child in a developmentally appropriate way.

# 3 Information gathering

## 3.1 Speaking with kinship and foster carers

Kinship and foster carers can give you valuable insight into a child's experience and needs. There is a questionnaire for carers at Appendix 3. You should reassure the carer/s that they are under no obligation to fill it out, but it will be very helpful if they can. You should provide the carer/s with various options to give you information (for example, a meeting in person, video, phone or by filling out the questionnaire). It is important to tell the carer/s how you may use any information they give you and who it may be shared with.

While kinship and foster carers may not be independent witnesses, they offer a unique insight into the child's day-to-day life and any challenges that the child faces. For example, a carer may tell you about:

- the child's interests
- the child's living arrangements and household
- suggestions on how and where the child might like to meet you
- how the carer/s support access with a parent/s
- how the child presents before and after access with a parent
- how the child is going at school
- the child's social interactions
- the child's general behaviour and demeanour and any changes to this
- the child's health and wellbeing needs and any treating professionals
- sibling interactions
- worries or fears that the child has.

Often it is the carer/s who will transport the child to access with their parent/s, meetings with you, the Court, and to medical and therapeutic appointments.

### **3 Practice Standard: Talking to the child's kinship or foster carer/s**

- 3.1 The SR should contact the kinship or foster carer/s through the Child Safety Lawyer to arrange a meeting.
- 3.2 The SR must provide any questions for the kinship or foster carer/s before the meeting and ask them to complete the questionnaire at Appendix 3 of these *Separate Representative Practice Standards & Guidelines*.

## 3.2 Director of Public Prosecutions Child Safety Legal Group

CSS are represented by the Director of Public Prosecutions Child Safety Legal Group (Child Safety lawyers) and therefore you must communicate with CSS through the Child Safety lawyers.

## 3.3 Talking to the child's caseworker

The caseworker has important and direct information about the child and talking to the caseworker will be valuable to you.

Shortly after your appointment, you should contact the Child Safety lawyers and ask for a meeting with the caseworker in their presence. When arranging the meeting, you should provide the caseworker questionnaire (Appendix 4), as well as any other questions you want to ask the caseworker. You must be aware that caseworkers have high caseloads and may be pressed for time. You need to be flexible about how and when you talk to caseworkers. There are a number of ways to do this:

- arrange a short meeting with the caseworker before or after Court/conference.
- conduct a short meeting by phone/video.
- ask them to complete the questionnaire for caseworkers (Appendix 4).

After that meeting, if you have more questions for the caseworker, you can email those questions to the Child Safety lawyers.

### 4 Practice Standard: Talking to the child's caseworker

- 4.1 The SR must contact the caseworker through the Child Safety lawyers to arrange a meeting.
- 4.2 The SR must provide any questions for the caseworker before the meeting and ask them to complete the questionnaire at Appendix 4 of these *Separate Representative Practice Standards and Guidelines*.

## 3.4 The child's age and development

### a) Infants and attachment

Attachment is the bond that develops between an infant and their primary caregiver. The importance of a secure attachment bond to a child's physical, intellectual, emotional and social development is widely recognised. Secure attachment bonds ensure that a child feels safe, secure and calm enough for optimal brain development. The breaking of a positive and secure attachment during the early years of the child's life can have a seriously detrimental effect on the child's social and emotional development.<sup>9</sup> Early intervention programs are available to families at the early stages of CSS involvement, including the Bringing Baby Home program<sup>10</sup>, the Integrated Family Support Service (IFSS)<sup>11</sup> and the Intensive Family Engagement Service (IFES).<sup>12</sup>

<sup>9</sup> Refer to the Children's Court of NSW *Resource Handbook – Care and protection matters*, available at [www.judcom.nsw.gov.au/publications/benchbks/children/cpm\\_allerton\\_attachment.html](http://www.judcom.nsw.gov.au/publications/benchbks/children/cpm_allerton_attachment.html)

<sup>10</sup> The aim of the Bringing Baby Home program is to provide residential support to meet the needs of parents who have been assessed by CSS as requiring intensive support to provide a safe environment to care for their baby. Families are provided with practical support, education and advice as well as access to relevant services in a safe, stable and supportive environment for up to 12 weeks.

<sup>11</sup> IFSS is a service that works with families where there are risk factors present for children and their families, and aims to minimise the involvement of CSS.

<sup>12</sup> IFES is a more intensive and specialised service capable of addressing higherlevel, more complex issues than IFSS, with a primary focus on improving family functioning and skills.

## b) Breastfeeding

The World Health Organisation (WHO) recommends exclusive breastfeeding (i.e. no other fluids or solids) for six months and then continued breastfeeding combined with solid foods for two years or as long as the mother and baby desire, provided this is safe for the baby.<sup>13</sup> For a newborn removed from its mother, consideration needs to be given to whether the breastfeeding relationship can continue in some form even when the baby is in care. A mother may still be able to express her milk to be fed to the baby, and in some cases a baby and mother may be able to stay together with a carer who provides 24-hour supervision of the mother.

As the SR, you need to be aware of the benefits of breastmilk to a baby, which includes providing resistance to disease via antibodies and other components which fight infection. A baby has the right to be breastfed and will need frequent access with the mother in order for this to occur. The risks that might be present, however, need to be considered as well. This is to ensure that the milk is safe to be fed to the baby, for example, if the mother has been taking illegal drugs which may pass into the milk. The mother will also need support with expressing milk to maintain her milk supply for the times when she is away from her baby.

Breastmilk, when safe, provides important antibodies to the baby and you should consider the effect on the mother of not being able to breastfeed her baby for as long as she has planned, or at all. You also should consider the right of the baby to be given the opportunity to be breastfed when the evidence is that it is safe to do so. In some cases, it may be appropriate for the mother to be able to breastfeed the baby at access, and otherwise for her to provide expressed milk to be fed to the baby by a carer. A baby can be fed a combination of expressed breastmilk and formula; this is known as 'mixed feeding'.<sup>14</sup>

## c) Developmental wellbeing

Children and young people's wellbeing is heavily shaped by their relationships with their family and the wider community. These relationships are critical to the development of wellbeing and secure, predictable and loving attachments. Wellbeing influences the way that children interact with others and their environment)

## d) Tasmanian Child and Youth Wellbeing Framework

The following table contains the Tasmanian Child and Youth Wellbeing Framework, which provides guidance as to what wellbeing encompasses at each stage of a child's development.<sup>15</sup>

	4 years and under	5 to 12 years	13 years and over
Being loved and safe	The child feels safe in their home and community environment. Their caregiver provides a safe, stable and nurturing environment. They are provided opportunities to raise concerns and have their concerns addressed.		
	The child demonstrates an attachment to their primary caregiver and their caregiver regularly initiates and participates in positive interactions with the child.	The child demonstrates strong positive relationships with certain individuals, particularly their primary caregiver.	The young person has a growing level of independence from their caregiver and is able to identify at least one person who they can rely on for support and assistance.

<sup>13</sup> Breastfeeding a newborn provides anti-infective factors through colostrum, helps to get the baby's digestive system working and helps a mother's body recover from birth. Where it is safe to do so, it is a child's basic human right to live with a parent.

<sup>14</sup> For information on the importance of breastfeeding, and resources that are readily accessible, visit [www.breastfeeding.asn.au](http://www.breastfeeding.asn.au) or call the Breastfeeding Helpline on 1800 686 268 to speak with a qualified Breastfeeding Counsellor with the Australian Breastfeeding Association.

<sup>15</sup> The framework can be found at [https://strongfamiliafsafekids.tas.gov.au/\\_\\_data/assets/pdf\\_file/0023/5549/1-Tasmanian-Child-and-Youth-Wellbeing-Framework-Web.pdf](https://strongfamiliafsafekids.tas.gov.au/__data/assets/pdf_file/0023/5549/1-Tasmanian-Child-and-Youth-Wellbeing-Framework-Web.pdf)

Having material basics	The child is provided access to adequate clothing and footwear, appropriate housing, clean water and adequate heating and cooling.		
	The child has access to healthy food in sufficient quantities.		
	The child's caregiver provides access to mental stimulation.	The child has access to educational materials.	The young person has access to education and training materials.
Being healthy	The child is fully immunised; a healthy weight for their age and height; and is emotionally and mentally well, happy and supported.		
	The child's caregiver encourages and provides opportunities for unstructured physical exercise and play, including in the natural environment.	The child is supported and encouraged to engage in structured or unstructured exercise and play, including in the natural environment.	The young person is physically active and socially engaged. They are supported and encouraged to engage in structured or unstructured sport and recreation activities.
	The child's caregiver engages with health services as needed, including the Child Health and Parenting Service.	The child's caregiver engages with health services as needed.	The young person has access to health services as needed.
			The young person avoids smoking and engaging in risky alcohol and drug use, or is supported to give up smoking and risky alcohol and drug use.
Learning	The child is accessing early language and developing age-appropriate language, literacy and social skills.	The child is participating in compulsory education, developing lifelong learning skills, and is developing age-appropriate language, literacy and social skills	The young person is participating in compulsory education and developing age-appropriate language, literacy and social skills.
	The child's caregiver is engaged in the child's early learning and provides a stimulating play environment appropriate to the child's age.		The young person is developing skills to be independent, resilient and transition successfully from school.
Participating	The child or young person is provided with opportunities to meaningfully participate in decisions and have a voice about issues that affect them.		
	The child's caregiver encourages and facilitates participation in social activities, whether structured, e.g. playgroup or unstructured, e.g. visits to a park or library.	The child or young person is engaged in organised activities, including sport. They are able to form positive relationships with peers and are encouraged to engage with their community.	The young person is participating within their community, is able to satisfy emotional or social needs outside of their family group, and has a strong support network.
Having a positive sense of culture and identity	The child's environment, including their learning environment, is culturally respectful, appropriate and free from bullying or victimisation.		
	The child is forming relationships with family members as appropriate and their emerging sense of personal identity is supported and encouraged.	The child is supported to understand their family history and satisfy any interest in their identity or culture. Their sense of personal identity is supported and encouraged.	

# 4 Planning to work with the child

## 4.1 The child's participation in proceedings

As the SR, it is important that you support the child to participate in proceedings in a meaningful way, as set out in s 10F of the Children, Young Persons and Their Families Act as follows.

"If a decision is, or is to be, made under this Act in relation to a child –

(a) the child –

- (i) should be provided with adequate information and explanation about the decision in a manner that the child can understand; and
- (ii) if appropriate having regard to the child's maturity and understanding, should be provided with the opportunity to respond to the proposed decision; and
- (iii) if appropriate having regard to the child's maturity and understanding, should be provided with the opportunity to express his or her views freely; and
- (iv) should be provided with assistance in expressing those views; and

(b) the views of the child should be taken into account, having regard to the child's maturity and understanding."

## 4.2 Guiding principles

The following principles are adapted from requirements identified by the UN Committee on the Rights of the Child and should guide how you work with children.<sup>16</sup>

### a) Voluntary participation

Encourage and support the child to participate; never coerce the child to express views against their wishes. Let the child know that they can change their views or withdraw their involvement at any stage.

### b) Transparent and informative practice

Provide the child with complete, accessible, age- and culturally appropriate information about the role of a SR, the child's right to express their views, and how those views will be considered in the decision-making process.

Avoid using jargon and legal terminology so the child can make a well-informed decision about their views.

<sup>16</sup> Refer to the UN Committee on the Rights of the Child, General Comment No. 12 (2009) – the right of the child to be heard, available at [www2.ohchr.org/english/bodies/crc/docs/advanceversions/crc-c-gc-12.pdf](http://www2.ohchr.org/english/bodies/crc/docs/advanceversions/crc-c-gc-12.pdf)



### **c) Relevant information**

Help the child to understand the real-life implications of proposals and decisions. To do this, you will need a good understanding of the child's life and the things that are important to them. As well as asking questions of the child, provide opportunities for the child to raise things.

It is important to many children to know how the practical aspects of their lives work; they may feel that this is not recognised by adults, including their parent/s, carer/s, family and caseworkers. As the SR, you can make sure that practical aspects are considered in negotiations and decision-making. These may include:

- the timing of situations (e.g. access with parents) interfering with school or extracurricular activities
- having what they need, such as clothes and toys
- having contact with specific people who are important to them, e.g. extended family or friends
- wanting to do things independently, e.g. catching a bus to school
- which school they attend
- spending time with friends and going to birthday parties and other events.

### **d) Child-friendly interactions**

Allocate adequate time and attention to make sure the child is best prepared and has the confidence and opportunity to contribute their views. Adapt your language, communication style and meeting locations (where possible) to reflect the child's capacities and preferences.

### **e) Respectful relationships**

Treat the child's views with respect, even where these differ from your personal or professional view or those of other professionals, or when these views do not seem to serve the child's interests. Recognise that children of even a very young age are able to form views and have a unique perspective on their own lives

### **f) Inclusive engagement**

Some children face barriers to their participation in proceedings, e.g. children with disability or health issues, children from diverse cultural/religious/language groups, and children who have experienced marginalisation on the basis of their gender, sexuality or other attribute.

Children who have experienced trauma may find it difficult to engage in a meaningful way with unfamiliar people. They may also experience fear about talking about their experience or getting themselves or a parent/caregiver into 'trouble'.

Children who have experienced trauma will often miss signs of safety in their environment because of hyper-focus to threat, or safety blindness. Some children may also be overly familiar or want to please adults. These children are experts at blending in, constantly assessing the mood around them, and will adapt to their behaviour to this mood and the needs of the adults. This increases the risk of the child saying what they believe you want to hear.

It is critical to understand that not all children will know their history of trauma and why they are in the care of CSS, particularly if they were an infant or young child when they entered into care. If a child asks about their history, consider referring the child back to their caseworker.

Be alert to these barriers. Take particular care to encourage and enable the participation of children in these situations, drawing on the assistance and expertise of others where appropriate

### **g) Safe and risk-sensitive practice**

Take steps to minimise any risk to the child associated with their participation in proceedings and discuss with the child the real or potential risks of any arrangement the child wants.

Where you are concerned about the risk of harm to the child, address this in line with professional standards and obligations and, where possible, let the child know what steps you are taking and why.

### **h) Accountable practice**

Commit to follow up with the child in your practice as the SR.

Clearly communicate how you will represent the child's views in proceedings and let them know what happens, including how their views influenced (or did not influence) outcomes.

If you are no longer the child's SR, communicate this with the child (if age appropriate), their carer/s and their caseworker.

Give the child opportunities to give feedback about working with you, including what worked well and what could be improved.

### **i) Continuous improvement**

Maintain and improve your skills and knowledge in areas of practice including specialised communication, child development and trauma.

## 4.3 A model of child participation

### General information

The approach that adults take to engage a child in decision-making processes can have a significant bearing on how that child feels understood, valued and believed.

It can be helpful to use a model of child participation to help you focus on the child's right to participate in their child safety matter.

The Lundy Model of Child Participation offers guidance and points of reflection which can support you before, during and after any engagement with the child.<sup>17</sup> Guidance about the model is given below.



<sup>17</sup> The Lundy Model of Child Participation was developed to help educators to meaningfully implement a child's right to participate by focusing them on the distinct but interrelated elements of the right as embodied in article 12 of the United Nations Convention on the Rights of the Child. This model is also relevant and helpful in regard to the work undertaken by SRs.

## Space

Space can include both physical space and relational space.

Here are some questions to consider as you plan your interactions with the child:

- Where is a suitable place to meet with the child?
- What choice can the child have in where you meet?
- Would the child prefer to meet on a video call first?
- How might the child experience you?
- Are you willing to go at the child's pace?
- Are you willing/able to answer the child's questions about yourself and what you're doing?
- What are the core messages that will be communicated to the child before the meeting?
- Do you need to engage with the child more than once before they are comfortable to share their views?  
If so, are you able to do this?



## Voice

Here are some things to consider as you provide information to the child and support their voice:

- How will you provide information to the child that is appropriate and sensitive to their age and stage of development?
- What additional support is needed to identify the child's needs, based on verbal and/or non-verbal signs?
- How will you get to know the child and their interests first?  
Can you have a general chat before you talk about the big issues?
- What is the best way to ask questions?
- Are there resources that will help you engage with the child?  
Are these resources appropriate to the child's stage of development and culture?



## Audience

Explore with the child the issue of sharing of their views. Find out:

- what information the child feels comfortable sharing
- who the child is comfortable sharing information with
- whether there is anyone the child does not want their views shared with.

Make sure you understand and are clear about the sharing and information preferences of the child. Ways to do this include:

- writing down the child's views and reading over them with the child
- repeating the child's views back to them so that the child is confident that their view has been accurately captured
- asking what information the child wants next from you
- letting the child know they can provide information in their own writing, or in a drawing.



## Influence

As you assess how the child's views can be taken seriously and acted on if appropriate, consider the following questions:

- What weight can the child's views have in the decision-making process?
- How will the child be informed if the child's views are not factored into decisions?
- Will the child understand the reason for the decision?
- Does the child have a right to complain about or appeal any decisions?



## 4.4 Child-aware approach

A child-aware approach puts the needs, views and aspirations of children and young people at the heart of actions to improve child and family wellbeing and safety.

A helpful resource for planning your approach is *The good practice guide to child-aware approaches – keeping children safe and well*.<sup>18</sup>

The resource covers the following child-aware approaches and accompanying principles.

Approach	Principles
Family-sensitive	<p>Principle 1. Identify and respond to the needs of the family.</p> <p>Principle 2. Acknowledge and build on family strengths while responding to family stressors and risk factors for child abuse and neglect.</p>
Child-inclusive	<p>Principle 3. Understand and apply knowledge of children's needs at each stage of their physical, cognitive, emotional and social development.</p> <p>Principle 4. Recognise and be sensitive to each child's unique perspective and experience.</p> <p>Principle 5. Include children as active participants in decisions that affect them.</p> <p>Principle 6. Promote child-safe environments.</p>
Strengths-based	<p>Principle 7. Enable parents by promoting their parenting role as a motivator for positive change.</p> <p>Principle 8. Build children's resilience by addressing their vulnerabilities and promoting effective, consistent caregiving.</p>
Collaborative	<p>Principle 9. Develop and maintain connections between child-focused and family-focused services.</p>
Culturally competent	<p>Principle 10. Understand cultural influences on family and parenting practices and respond in a culturally sensitive way.</p>

## 4.5 Trauma-informed practice

As a SR, you are likely to work with children who have been impacted by trauma. As a result of their experiences, the child you are representing may process things very differently from other children you have interacted with on a professional or personal level.

You should be aware of the effects of trauma in all aspects of your practice:

- the effects of further trauma to the child<sup>19</sup>
- the risk of vicarious trauma to you, as a result of the content and nature of your work.

Childhood experiences that can cause trauma include:

- physical abuse
- sexual abuse
- emotional abuse

<sup>18</sup> This resource was written by Cathryn Hunter and Rhys Price-Robertson for the Australian Institute of Family Studies (CFCA Paper No. 21, 2014) and is available at [aifs.gov.au/resources/policy-and-practice-papers/good-practice-guide-child-aware-approaches-keeping-children](https://aifs.gov.au/resources/policy-and-practice-papers/good-practice-guide-child-aware-approaches-keeping-children)

<sup>19</sup> The child may already be traumatised from the events they have experienced so far, from issues such as abuse, neglect, family violence, family separation, and being placed in care.

- family violence<sup>20</sup>
- neglect (emotional and physical)
- substance abuse by caregivers
- a caregiver's mental illness
- parental separation or divorce
- a caregiver who is incarcerated.

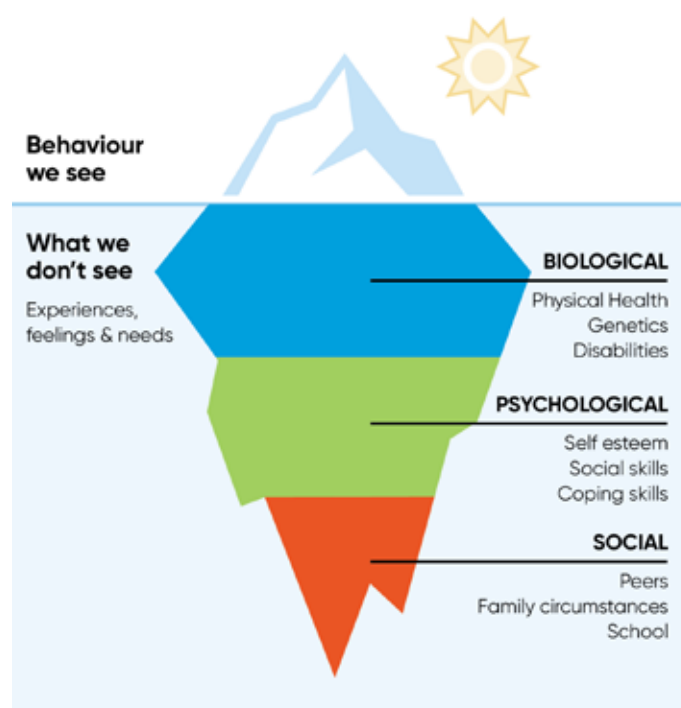
The impacts of trauma can have developmental effects on a child. The trauma the child has experienced could be from events that occurred before or after you met them.

In your role as the SR, there is opportunity to help a child's recovery from trauma. The experience of abuse often means having no voice, no control or power. Be mindful to not replicate these dynamics in engaging with the child, and reinforce they have a voice and that it matters when decisions are made about them.<sup>21</sup>

Using a trauma-informed approach<sup>22</sup> is essential at every stage of your engagement with the child, including when:

- organising meetings and contacting the child or their carer/s
- building a relationship and interacting with the child
- communicating with the child during and after meetings.

A core principle that influences the way we engage in a trauma-sensitive manner is to recognise that behaviour has meaning. It is fundamental to how a child expresses themselves. A child's behaviour is merely the symptom of how their developing bio-psycho-social systems have been shaped by their experiences. These behaviours have developed in response to, and indeed to cope with, their cumulative experiences of adversity.



In Tasmania, a number of families have experienced intergenerational trauma and abuse – children may believe that if they disclose abuse, CSS will take them from their parents.

<sup>20</sup> See topic 'Family Violence' in these guidelines.

<sup>21</sup> Refer to the Survivors Voices website at [survivorsvoices.org/safe-seen-supported/](https://survivorsvoices.org/safe-seen-supported/)

<sup>22</sup> Refer to a resource written by Liz Wall, Daryl Higgins and Cathryn Hunter for the Australian Institute of Family Studies (CFA Paper No. 37, 2016) that is available at [aifs.gov.au/resources/policy-and-practice-papers/trauma-informed-care-childfamily-welfare-services](https://aifs.gov.au/resources/policy-and-practice-papers/trauma-informed-care-childfamily-welfare-services)

A trauma-informed approach upholds the safety, dignity and wellbeing both of people using services and people delivering services. It is supported through:

- policies, principles and practices at practitioner, service and system levels
- responses that centre on empathy and reflection
- seeking to understand, rather than pathologise
- recognising people as experts in their own lives.

This approach has long been considered good practice. An unsafe response can escalate and compound trauma, resulting in additional harm. This can trigger distress, create barriers to recovery and prevent future engagement with support services.

Working with, rather than working for, is the key to a trauma-informed approach, as the table below describes.

Traditional	Trauma informed
Doing for people	Doing with people
What's wrong with you?	What's happened to you?
Service as expert	Person as expert on own life
Symptoms and pathologies	Coping mechanisms
Treatment and cure	Healing and recovery
Non-compliant/disengaged	How can we better support you?
These are the service options	What might you need to live well?

Keep up-to-date with research about the effects of trauma and seek out training and knowledge about how to best interact with a child affected by trauma.<sup>23</sup>

## 5 Practice Standard: Trauma-informed practice

### 5.1 The SR must:

- complete foundation training in trauma and trauma-informed practice as soon as possible, and update this training every 2-3 years
- keep up-to-date with research and practice about the effects of trauma; in particular –
  - the effects of trauma on children and approaches that help to respond
  - the risk of vicarious trauma to SRs as a result of the content and nature of their work
- take steps to manage their own mental and physical wellbeing.

<sup>23</sup> The Australian Childhood Foundation runs a course called 'Understanding the neurobiology of complex trauma on children'. For more information, refer to [profession-als.childhood.org.au/course/understanding-the-neurobiology-of-complex-trauma/](https://profession-als.childhood.org.au/course/understanding-the-neurobiology-of-complex-trauma/)



## 4.6 Confidentiality and disclosure

As the SR representing the child's best interests, you cannot offer the child a confidential relationship in the traditional lawyer-client sense.

Your relationship with the child is not protected by legal privilege and you cannot guarantee confidentiality to the child. You should generally maintain confidentiality, except where this is not in the best interests of the child.<sup>24</sup>

When meeting the child for the first time, you should explain, in child-friendly language and terms:

- that you cannot promise to keep anything the child says confidential (a secret/to yourself)
- that if you are going to tell someone else something the child has told you, you will let the child know first
- that the child does not have to talk to you or answer questions if they do not want to
- that you will ask about things the child would like you to share.

If a child makes a disclosure to you, ensure to safeguard the child by doing the following:

- be aware that the child may have been coerced not to tell and may be fearful of the consequences of speaking out.
- remain calm and empathetic.
- do not push for information, ask intrusive questions, or ask too many questions.
- do not make suggestions, statements, or ask questions that may define or distort the child's experiences.
- be clear that even though they may feel they have broken a rule about 'telling', they are not to blame.
- reassure the child that they were right to tell you and show acceptance e.g. 'Thank you for telling me that'.

If you decide to disclose information or report protective concerns in the best interests of the child, you should consider the impact of this disclosure upon the child's relationships with parent/s, carer/s, extended family, and with professionals such as psychologists, counsellors and teachers. Tell the child what you intend to tell others, and if the child does not want this, discuss the child's concerns with them

### Disclosures from the child to you as the SR and to other parties

Some people are obliged to report child abuse or neglect and these are called 'mandatory reporters' or 'prescribed persons'.<sup>25</sup> As a SR, you are not a mandatory reporter; however, the Children, Young Persons and Their Families Act permits any person to report protective concerns, and provides protection for the identity of the notifier.<sup>26</sup>

As a best interests representative, you should make enquiries and notify CSS of any new risk that comes to your attention. If you are unsure about your obligations around reporting, you should speak to a senior colleague or manager.

If you believe that the child wants to disclose information they haven't already shared with another person, you can ask the child if they would like a support person there. The support person can be someone neutral like a counsellor or teacher, or the child's caseworker. Having a support person when you are meeting with the child may not protect you from becoming a witness and having to give evidence. In some cases, both you and the support person could be called to give evidence.

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<sup>24</sup> For example, if a child makes a disclosure which suggests they are at risk.

<sup>25</sup> s 14 of the Children, Young Persons and Their Families Act.

<sup>26</sup> s 16 of the Children, Young Persons and Their Families Act.

If the child spontaneously makes a new disclosure to you, you can consider asking a third party to speak to the child about that disclosure – so the evidence could come from that party.<sup>27</sup> You should not involve a third party if discussing the issue again may cause trauma to the child. You should also give careful consideration to who the third party is, for example, the CSS advice and referral line or Tasmania Police.

Where the child does not want a support person, or would be traumatised by discussing the disclosure again, you must be prepared to give evidence. You should raise this with the Court and all parties, so that a decision can be made about whether another SR should be appointed.

If you decide to disclose information, you should tell the child first, so that the child knows what you're going to say, and who you're going to tell. The child should be given an opportunity to inform this process, such as by asking them what words they would prefer you to use. You must also consider any health or safety risks to the child and make a plan with the child's caseworker to manage any risks.

## **6 Practice Standard: Confidentiality and disclosure**

6.1 At the first meeting, the SR must explain, in child-friendly language:

- that during meetings with the SR, the child does not have to talk or answer questions if they do not want to
- that the child's parents and the Magistrate cannot make the SR tell them what the child has talked about during meetings
- that the only time the SR will tell anyone what the child has talked about during meetings is if the child says something that makes the SR worry that the child is not safe.

6.2 The SR must talk to the child about what things the child would like the SR to share and what the child would like the Court to know.

6.3 In disclosing information in the best interests of the child, the SR must:

- inform the child about what they intend to disclose and, if the child objects to the disclosure, discuss the child's concerns with them
- develop a disclosure plan that addresses the child's concerns and the risks and possible impact of disclosure on the child
- consider the impact of the disclosure on the child and the child's relationships with parents, carers, significant others and with professionals such as psychologists, counsellors and teachers.

<sup>27</sup> For example, a SR met a child with the school social worker and asked the child about time with extended family and the child replied 'My aunt came over last night, she hit me on the arm. Look!' and pulled up her sleeve and showed the SR a bruise. After the meeting, the SR asked the school social worker to make the notification to CSS.

# 5 Meeting with the child

## 5.1 Meeting arrangements

When you are meeting with the child, consider the situation from their perspective.

Depending on the child's age, stage of development and cultural/diversity factors, they may find some or all aspects of a meeting overwhelming, confronting, intimidating and strange. It may be an uncomfortable and emotional experience for the child to meet with a new adult (you) one-on-one.

It can be helpful to send the child a letter or an email prior to the meeting which explains who you are, the role of the SR, a photograph of you, what you like to talk about, the limitations of confidentiality and who they should talk to if they have any worries. This can help support a child who may be feeling nervous or unsure about the process. An example letter to a child is at Appendix 1.

It is essential that you negotiate with the child about where the meeting should be held and at what time. Some children will have a strong preference to meet away from their school. If a meeting is to be held at the school, it is essential that this is agreed to with the child beforehand.

It can be helpful to the child to remind them about an upcoming meeting, particularly if it will impact on their school day or after-school activities. They may feel anxious if they have forgotten about the meeting and are suddenly asked to meet with you. Even if the child does know about the meeting, they may need extra support from their caseworker, carer/s, or other support people, to manage their emotions in the lead-up to the meeting.

It can be useful to talk with the child's carer/s, caseworker, teachers, therapist, doctor and allied health workers (e.g. speech therapist, occupational therapist) before meeting with the child. Ask them about the child's needs and whether they might be able to support the child during meetings.

### Organising the meetings

You must meet with the child, ideally giving the child a chance to have a say in arrangements for the meeting. This gives the child autonomy and voice to decide on the space (how and where) and the audience (who) for their meetings with you.

If a child is pre-verbal or pre-school age, you must try to meet with and observe the child, for example, by observing the child at childcare/kindergarten, or in the context of the primary caregiving relationship.

You must contact CSS to arrange a meeting with the child, regardless of where you intend to meet the child. Usually, CSS will arrange the child's transport to and from the meeting. You must speak with CSS about this.

### Timing and number of meetings

Meetings must be held soon after your appointment, before the final hearing, and when the case concludes. Other meeting opportunities include before a family group conference or s 52 conference.

## How and where to meet

You can ask the child's caseworker, carer/s and parent/s for suggestions on where the child might like to meet you. You can ask the child directly (including via video/phone), but it can be useful to have some suggestions for the child to consider.

You should consult with the caseworker to work out who should tell the child *about* you.

When you are considering the child's location preferences, be aware of factors such as influence and privacy/confidentiality, which may have an impact on the meeting.

There are a number of locations and approaches that may be suitable for meetings with the child.

## Meeting remotely/virtually

You can use virtual means to meet with a child who lives in a remote area, for example, King Island or Flinders Island.

Virtual meetings may also be the child's preferred method for communication.

A useful resource that may help you communicate with the child in this way is *COVID-19: Good practice guide for lawyers-meeting with children via technology*.<sup>28</sup>

## Meeting at the child's school

Be mindful that the child may feel uncomfortable and self-conscious meeting you at their school. You should not automatically assume that the child would prefer to meet at school and it should be avoided unless you know the child is comfortable with meeting there.

It is essential that if a meeting is to be held at the child's school, the child has agreed to this and understands that they can meet you elsewhere if they prefer.

To meet at the child's school or at an after-school activity on school property, you will also need permission from the school's principal.

The child may nominate a teacher or school counsellor as their support person when they meet with you. It is important to consider the availability and willingness of school staff to assist with these conversations. This may involve being flexible with times that suit school timetables and availability of space at the school if the meeting is to take place there. It is also important that school staff are aware they are there in a support role and not required to participate or have input.

## Meeting at your office

If the child is comfortable going to your office for a meeting, it is likely that the child will be brought to and collected from the office by their carer/s. The carer/s may be asked by CSS to bring the child to meet you.

It is important to familiarise the child with their surroundings and help them feel comfortable, for example, by letting them know where exits and bathrooms are and offering them a glass of water.

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<sup>28</sup> This resource is available at [icl.gov.au/wp-content/uploads/2020/04/Factsheet-Meeting\\_with\\_children-002.pdf](https://www.icl.gov.au/wp-content/uploads/2020/04/Factsheet-Meeting_with_children-002.pdf)

## Meeting at the carer/s' home

You may consider meeting the child at their carer/s' home if:

- the child is pre-verbal
- the child is too young to understand what is happening but can tell you what they want or do not want
- this is the child's preference, and you believe it appropriate.

This gives you an opportunity to see the child's living environment and to observe the child and their relationship with their carer/s. If the child is not expressing views because they're pre-verbal or don't understand what you're asking, it is less likely that the carer/s' presence will influence the meeting.

This may help you identify whether the carer/s' home is suitable for a long-term placement. For example, if there's no sign of the child at the carer/s' home (toys, artwork on display, things from home, photos), or if it is not suitable for the child.

It can also be useful to understand the carer/s' willingness or unwillingness to facilitate the parent/s' and extended family's involvement in the child's life.<sup>29</sup> This can include sending photos, providing information, or facilitating calls, video-calls and access.

## Meeting at another agreed location

The child may like to meet at a location of their own choosing. You can guide the child on safe places to meet, such as at a park or in a café.

Remind the child that if the meeting is not at their school or at your office, it is important that you meet at a place where the child feels comfortable, but where there are enough people around to ensure both the child's and your safety.

## Interactions with carer/s when meetings occur

You may have interactions with the child's carer/s when you are organising meetings or meeting with the child.

You should:

- only allow the carer/s into the meeting if the child has chosen the carer/s to be their support people. This should be a last option if other independent supports are not available or are inappropriate due to the needs of the child
- remind the carer/s not to discuss anything or ask questions about what the child has disclosed in the meeting with you
- be alert to any influence the carer/s have on the child and if you are concerned about this, arrange another meeting with an independent support person
- be aware that the carer/s can put their version of the meeting into evidence.

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<sup>29</sup> For example, a SR went to visit a child at the carer/s' home and found that the carer/s' home had no toys for the child and was not a warm and welcoming place for the child. This informed the SR's view about the appropriateness of the carer/s as a long-term placement.

## Meeting attendees

### *You and the child*

It is expected that you will meet one-on-one with the child if they can express their views. It may take more than one meeting for the child to feel comfortable to do this.

The only exceptions are if the child wants a support person, or if you are meeting a sibling group. If meeting a sibling group, check if the children are comfortable with an initial combined meeting for introductions, followed by separate meetings to ascertain their views.

Potential additional attendees at your meetings with the child include the following people.

### *Support person*

The child may choose to have another adult present at the meeting. This support person cannot be the child's parent/s, and preferably not their carer/s or caseworker.

The support person must be an independent third party, such as an advocate, therapist, counsellor, teacher or teacher's aide. Their role is support only, with no input to the content of the meeting. Set this boundary at the start of the meeting.

You may also consider whether it may be useful to see the child with a psychologist. You can discuss with the psychologist how the meeting should be structured, and whether it may be of assistance to have the psychologist speak to the child alone for the first part of the meeting. The psychologist can tell you what the child feels comfortable discussing and can assist in stimulating conversation. Consider whether you will need a disbursement or whether this may be covered under the child's mental health plan.

You should be cautious about having the child's carer/s or caseworker at the meeting as their support person. In some cases, following a meeting, caseworkers and carers have sworn affidavits giving information about the meeting.

### *Interpreter*

If an interpreter is needed, make sure the child is aware of this, as well as the reason for the interpreter's presence.

### *Witness*

Some SRs feel they need a witness present when they meet with the child. It is important to be aware of the difference between a support person for the child and a witness for you as the SR.

The child should be clear about what will happen in their meeting with you to promote a sense of safety and predictability. Consider the child's needs for emotional safety in the meeting ahead of your concern about the possibility of a disclosure being made. The presence of another person in the room may affect the quality of the information the child shares.

You will need to obtain consent from the child to have a witness present who is not the child's support person. Before you seek the child's consent, explain to them that the witness is there to help you, and that the witness may take notes for you – again, only with the child's permission.

## 5.2 Contacting the child

Depending on the age of the child, your contact with them may be by phone, text message or email, with the child directly, or with their carer/s or caseworker.

Limit your initial communication with the child to organising meetings. Remind the child that any questions or discussions about their case must be during meetings only. This ensures confidentiality and the child not feeling influenced by others. This may be an issue if the child speaks with you on the phone or by video and others hear, or if their written communication is read by a carer or caseworker. Be mindful of the potential consequences for children if others can listen to, or read, private details meant only for you.

## 5.3 Case studies

### Case study 1

A brother (Bobby) and sister (Jenna) were in out of home care. They had different fathers. Both fathers were in prison. Jenna's father had been communicating with her. Bobby's father had not been communicating with him. The SR got this information mixed up, and told Bobby that his father wanted to be a part of his life and really cared about him. The SR then realised their mistake and had to tell Bobby about this. Bobby was devastated by this, and believed that he was a bad child and unlovable. Bobby's trauma-based behaviours significantly increased, he was suspended from school for property damage. At home, Bobby's carer noted that Bobby's trauma-based behaviour escalated considerably and she identified the need for an immediate response to prevent the placement breaking down. If the SR had spoken to important adults in Bobby's life before meeting him, this mistake and its significant trauma impacts could have been avoided.

### Case study 2

The SR was representing a big sibling group. The SR had no communication with any of the children's important adults. The SR called the school and arranged to meet with the children after school. The SR unknowingly arranged this on the day of the children's after-school contact with their mother. The school called the children's mother and said, 'someone's going to speak to the children, so don't come to pick them up after school'.

The children were distressed and dysregulated with the change of plans, and angry with the SR because they missed time with their mother. The SR was not able to engage with the children in an effective way, which significantly impacted the quality of the meeting.

The SR saw the children one after another. Each child then reported back to the sibling group about what they had told the SR. The children still waiting became anxious and distressed, and their behaviour became dysregulated.

All of the children experienced significant distress and behavioural dysregulation for a week following the meeting. Their carer reported significant regression with their sleep and the children's trauma-based behaviours increased. One of the children was so distressed they refused to attend school and began to use self-harming behaviours which they had not used for months.

If the SR had spoken to the children's important people, the SR would have understood their individual needs and set up a more appropriate process for meeting with the children, including an appropriate support person being present. That support person may help the children to ask questions about what might happen.

It is critical that to mitigate the risks of further traumatising vulnerable children, SRs understand that children require predictability and emotional safety.

## **7 Practice Standard: Meeting arrangements**

- 7.1 The SR must have a plan for contact with the child and must meet with the child at a minimum soon after appointment as the SR, before the final hearing begins, and upon conclusion of the case:
- in person, unless –
    - the child is in an extremely remote location
    - the child would prefer to meet by virtual means
    - there is evidence that the child is refusing a meeting and would be traumatised if a meeting was to take place
    - the child is pre-verbal; in this case, the SR must observe rather than meet with the child
  - one-on-one, unless –
    - a support person or interpreter is needed
    - the child agrees to a witness for the SR being present at a neutral location.
- 7.2 The SR must obtain consent from the child for another person to be present during any meetings involving the child and the SR.
- 7.3 The SR must arrange a registered interpreter (not a family member) for meetings if English is not the child's first language, or if the child uses sign language or another non-verbal communication aid.

## **5.4 Child meeting the Magistrate**

### **General information**

The child has a right to give their own views personally to the Court about their ongoing care and protection, in such a manner and on such conditions as the Court considers just and most likely to result in the expression of the child's view that is honestly and freely held by the child.<sup>30</sup>

There is no age requirement for the child to meet with the Magistrate, but you must consider the child's maturity and understanding.<sup>31</sup> If the child has the maturity to understand your explanation about expressing views and about talking to the Magistrate, you should ask the child if they would like to meet with the Magistrate. For some children, this will demystify the process and make them feel more comfortable about their part in the proceedings. For others, it will provide the opportunity to tell the Magistrate directly what they would like to happen. Some children do not want to meet with the Magistrate at all.

When the child wants a meeting, most Magistrates will meet with the child in your presence. You should make a plan with the child about how you will ask for a meeting with the Magistrate, including any preferences the child has about the meeting. This can include having you there, about the time of day for the meeting, and sometimes about not telling the parties about the date and time for the meeting. You should communicate the child's wish to meet the Magistrate with the Court and all the parties.

<sup>30</sup> Rule 56, Magistrates Court (Children's Division) Rules 2012.

<sup>31</sup> s 10F of the Children, Young Persons and Their Families Act.



You should prepare the child for the meeting by:

- explaining the purpose of the meeting (the Magistrate wanting to know the child's views)
- telling the child when and where the meeting is<sup>32</sup>
- giving the child some information about the meeting location (if in chambers,<sup>33</sup> what that is and where in the Court it is)
- give the child information about what will happen when they arrive (e.g. go through a security check), what the meeting location looks like, and who they might talk to (e.g. a receptionist or security officer)
- telling the child how they will get to and from the meeting (usually the caseworker will arrange transport, but sometimes it will be with a carer/s – you should check this in advance with the caseworker)
- discussing what kind of questions the Magistrate might ask – e.g. 'get to know you questions' and what the child would like to happen
- exploring what the child would like to tell the Magistrate (you can help the child by prompting them with questions the Magistrate may ask)
- identifying what the child might be uncomfortable sharing with the Magistrate
- identifying how you can support the child during the meeting, including the child being able to give you a sign if they are feeling uncomfortable or overwhelmed and need a break
- explaining how the meeting will be recorded and why
- discussing what their parents and CSS will be told about the meeting
- discussing who else might be there (e.g. the Magistrate's clerk).

You may not have all the information explained above, but you should discuss each point with the child, so you can raise these questions with the Magistrate before the child is asked to express any views. Wherever possible, when informing the Court that the child would like to meet with the Magistrate, you should seek clarification about all aspects of the meeting, so you can properly prepare the child for the meeting.

## The actual meeting

You should be early for the meeting and have time for a brief chat with the child. This will give you time to answer any last-minute questions and talk to the child about any worries that they have about the meeting. You should encourage the child to let you know if they are feeling uncomfortable in the meeting, or if they need a break.

You should be aware of the child's body language and presentation during the meeting, so that you can respond to any signs of distress.

The Magistrate usually guides the meeting and should begin the meeting by informing the child of what their parents, carers and CSS will be told about the meeting. Your role is primarily to support the child. You can prompt the child to ask any questions or make any statements that they had prepared before the meeting.

After the meeting has ended, you should debrief with the child and discuss how they feel the meeting went.

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<sup>32</sup> You should canvas the child's views about how/where the meeting should be held, including by video; however, it is ultimately a decision for the Magistrate, and you should explain this to the child.

<sup>33</sup> You can ask the Court if a photo of chambers can be shown to the child.

## **8 Practice Standard: The child meeting the Magistrate**

- 8.1 If the child has the maturity to understand the SR's explanation about expressing views and about talking to the Magistrate, the SR must ask the child if they would like to meet the Magistrate.
- 8.2 If the child wants to meet with the Magistrate, the SR must:
- inform the Court and the parties that the child would like a meeting
  - make a plan for the child's meeting with the Magistrate
  - prepare the child for the meeting with the Magistrate
  - ensure the child understands what will happen with the information that they give the Magistrate.
- 8.3 When supporting the child in their meeting with the Magistrate, the SR must:
- be early for the meeting
  - prepare the child for the meeting
  - debrief with the child after the meeting.

## **5.5 Respecting the child's relationships**

Children involved in child safety proceedings will be reliant on parents, carers and sometimes caseworkers. You should not place unnecessary additional strain on these relationships.

Your discussions with the child about their family members, carer/s and caseworker should be approached with sensitivity and respect, to maintain the child's relationships with these parties. You should be tactful and diplomatic and avoid unnecessary adversarial interactions with the parties.

You should communicate with all parties in a transparent manner, and where possible, provide any information in advance to avoid surprises at conferences or hearings.

During interactions with parents and carers, be respectful and provide explanations without giving legal advice.

## **9 Practice Standard: Respecting the child's relationships**

- 9.1 The SR must:
- avoid being critical of the child's parent/s during meetings, respecting the long-term and ongoing nature of the child-parent relationship and avoiding the possibility of further trauma or detriment to the child
  - request that the child's carer/s and parent/s not ask the child questions about the child's meetings with the SR or ask what the child has disclosed during meetings
  - not provide advice to the child's carer/s and parent/s regarding anything of a legal nature or answer questions about how other parties' cases should be conducted
  - limit the information they provide the child's carer/s and parent/s to matters relating to Court or administrative processes. Parents who are represented must be referred back to their lawyer. Carers must be referred to the child's caseworker.

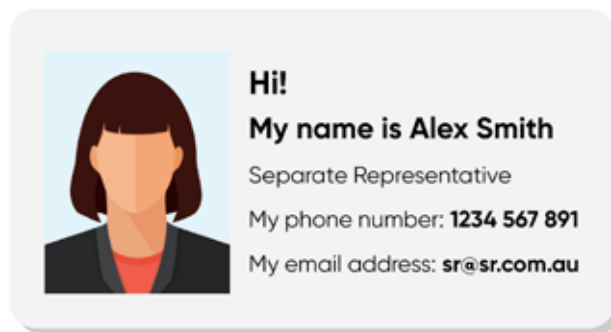
# 6 The child - views and diversity

## 6.1 Representing the child's views

There are many things you can do to build a relationship of trust with the child so that they feel comfortable and confident in exploring and sharing their views with you. Some of the ways you can build trust are described below.

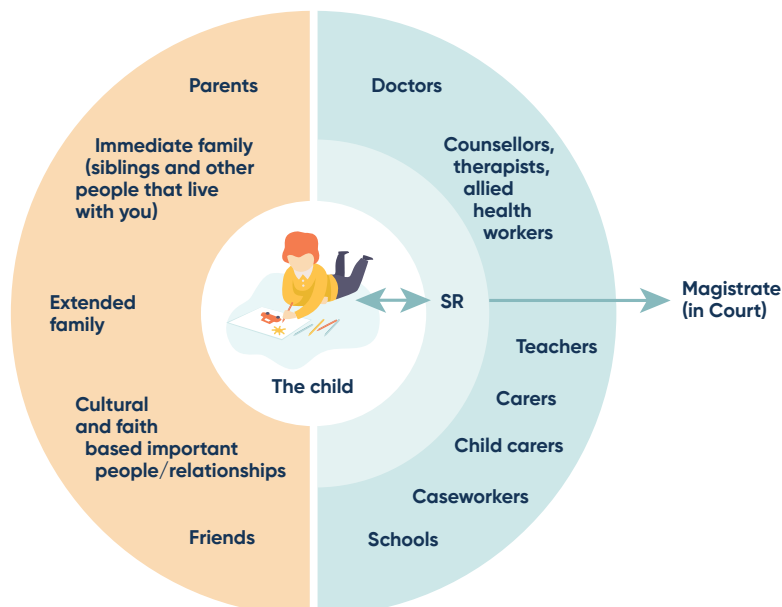
### Explain who you are

Introduce yourself and explain your role and its limits. Do this both verbally and visually. You could have your photo and details printed on a card to give the child.



### Use different ways to communicate information

Explain things by using pictures, shapes, and words to represent people - draw the child and then different people around them (e.g. you as the SR, parents, caseworker, carers, teachers, doctor, Magistrate). Draw lines between people, to show who you communicate with, and who is making the decision (the Magistrate in Court).



## Identify what safety means

Discuss with the child what safety means and what this might feel and look like. Talk about being in a safe place – drawing is a great way to discover this information.

Ask the child 'When/where do you feel safe?' Give the child examples of what safety might look and feel like:

- 'I have a roof over my head'
- 'Food in my tummy'
- 'No one yelling'
- 'No one physically hurting me'
- 'I feel comfortable when I am safe'
- 'I feel calm when I am safe'
- 'I feel scared when I am not safe'
- 'I feel like running away when I don't feel safe at home'
- 'I feel safe when my parents are happy'

## Help the child feel at ease

### *Dress less formally*

When meeting with the child, help the child feel comfortable by not dressing 'like a lawyer'. If possible, wear smart-casual clothing rather than corporate wear or a suit.



### *Consider sitting on the floor*

Ask the child where they would like to sit. Think about the space you're in and if there is a playmat to sit on, desk and chairs (including child-sized ones), beanbags etc. Consider sitting on the floor with the child when asking them questions.



### *Play games*

Playing games is a good icebreaker and can help the child feel comfortable in the space and with you as a new adult in their life. Card games can be a good icebreaker for older children.



### *Fidget and sensory toys*

Have on hand a few age-appropriate sensory or other toys for the child to hold as they get to know you, for example, a Rubik's Cube, fidget toys, soft toys and puppets.



## 6.2 Feedback on SRs from children

The following feedback information was supplied by Communities Tasmania.

*I would want my lawyer to be not as formal, more empathetic, more enthusiastic, basically less Mark Zuckerberg and more Elon Musk.*

*My lawyer should have asked me how I needed it. My lawyer needed to slow it down. They didn't tell me what I needed to know, when I needed to know it.*

*Lawyers need to ask for feedback, even like one of those emoji tablet type of surveys that you get when you walk out of the supermarket.*

*Does the lawyer actually like children? Not every personality can do the job. It's like, if you're going to be a paramedic, you need to be okay with blood. If you're going to be a lawyer representing children, you need to like children.*

*If I'm not sure what the lawyer means, I don't know how to go about finding out or how to ask them.*

*My lawyer was fun. They were not lawyer-like. They explained the legal jargon, heard me out, asked me what I wanted. They were energetic, enthusiastic, positive, and made it so it was not daunting. They were able to communicate really well.*

*My lawyer has information about me and acts as though they know me. Please don't pretend that you know me. I need to get to know you to keep this at an equal pace. Before meeting me, share some superficial details about yourself as an ice-breaker. Maybe explain to me what your job is. This is only your job, but it's my life.*

*Be more human. Don't wear a suit and provide food and drink breaks when you're talking with me.*

*My lawyer didn't understand the context, the emotion, the discomfort or the repercussions. Put me on the spot and treated me like an adult.*

*I genuinely wish I'd known that I had a lawyer. Our lawyers need to make themselves known and meet with us.*

*My lawyer spoke legal jargon at me, and I didn't know what it meant. They didn't tell me what was happening.*



### 6.3 The child finding out about you and meeting you for the first time

You should consult with the caseworker to identify who will tell the child about you, and how the child will be told. The child must not find out about you when hearing from you or meeting you for the first time. For example, the child could be told about you by their caseworker, carer/s or another important person to the child (therapist).

As the SR, you must consider the child's past experiences of trusting/mistrusting adults. Some children are uncomfortable speaking to unfamiliar adults about their experiences or opening up about their views, particularly if these experiences have been traumatic. Children may present as withdrawn, uncommunicative, easily distracted, hyperactive or overly affectionate. It is important to understand these presentations in the context of developmental trauma and take active steps to establish predictability and emotional safety within the SR-child professional relationship.

Children who have experienced developmental trauma may also have co-occurring symptoms that impact on their ability to engage and communicate. Be willing to spend time building a relationship, be predictable, use active listening skills and be kind and patient with the child. It is also important that you be fully present, fully engaged, connecting, and accepting.

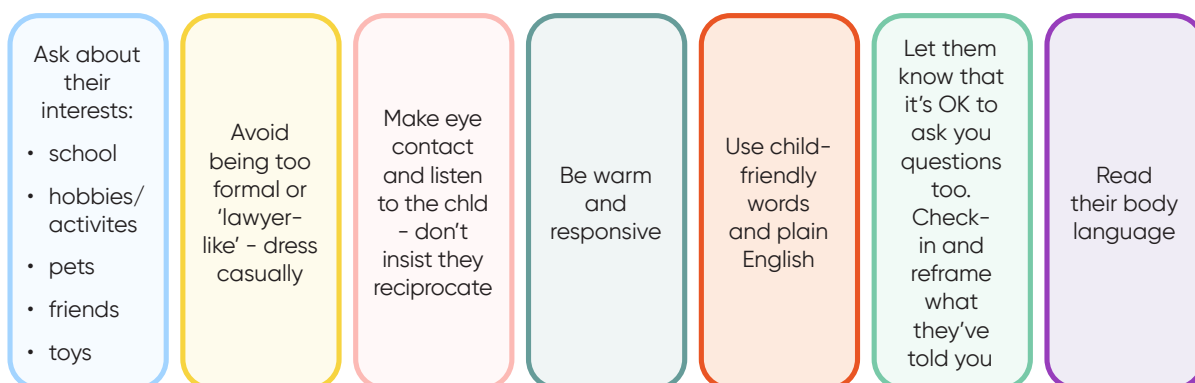
It is essential that the child understands your role in their life and the scope of your influence in the process. You can support a sense of predictability and safety by ensuring that the child understands how you work as a SR, that you do what you say you are going to do, and that the child feels that that you understand and care about their voice.

### 6.4 Ways to get to know the child

The graphic below describes some of the ways you can get to know the child during your early interactions with them.

#### Getting to know the child

You can also ask the child to draw a picture or write a story of themselves and their family. This is a good icebreaker that gets the child to use their hands as they are thinking. Not all children like drawing and may become anxious about the task, so check with them first. You can also offer to draw for the child as they talk.



For many children, this is a good first activity, before you move on to find out the child's views on their family situation. If you are concerned about anything the child writes or draws, seek guidance from a mental health professional.

Things to keep in mind as you get to know the child include the following:

- The child may have misconceptions about who makes the decisions. Many children think it is the SR who makes the decisions that will affect them.
- Understand that children don't necessarily use words to communicate; they often use behaviours.
- Try to alternate easy and hard questions. Try asking a 'getting to know you' question and then a trickier one.
- You can help build a connection and make the child feel less 'put on the spot' by making statements or asking questions such as:
  - 'I wonder if that's really hard for you?'
  - 'I wonder why you might feel worried at [that parent's] house?'
  - 'Can you tell me why [that parent] is on the edge of the picture you drew?'
- Words may not match a child's non-verbal cues; be aware of body language.
- Explain to the child that they are not to blame for being in out of home care and that the Court has been asked to help sort things out.

## 6.5 PACE concept

As the SR, you can use the PACE concept to show curiosity when asking the child questions<sup>34</sup>. This shows curiosity and empathy without making assumptions about how the child is feeling. The child may then be able to regulate enough to talk about things that are hard to discuss. The concept is illustrated as follows.



The focus of PACE includes the following elements.

### Whole child

Rather than focusing solely on a child's behaviour, PACE considers the whole child. Applying the concept may help the child feel more secure with you and help them to reflect on their response to what is happening for them during proceedings.

### Safety

If the child feels secure with you, they may feel more able to interact with you. They learn that they can rely on you and trust you to really get to know them. They also learn that you'll support them in a way that helps their voice be heard by the Court.

### Understanding

The child may feel that you – as a trusted adult – will genuinely try and help them. They will be able to experience that you are doing the best you can to understand them and help them make sense of and manage what they are feeling, thinking and doing in relation to their case.

By using PACE most of the time, you can mitigate the level of conflict, defensiveness and withdrawal that may be present in the child's life. Using PACE enables you to see strength and positive features when working with the child, including when the child is experiencing challenges. It is important to use discretion when using playfulness, as being playful when a child is angry or distressed may minimise their feelings, inflame their feelings or induce feelings of shame for the child.

<sup>34</sup> The PACE concept was developed by Dan Hughes and is described at [www.danielhughes.org/p.a.c.e.html](http://www.danielhughes.org/p.a.c.e.html)

## 6.6 Things to discuss with the child

Some topics to introduce and discuss with the child to help them understand the process they are involved in include the following:

- What your role is, how you will keep in touch with the child, and how the child can contact you.
- Why the child is meeting with you.
- The limits of confidentiality – that you can keep some things to yourself that the child tells you, but not everything.
- What the milestones are in the child's case.
- What a Magistrate is and the role the Magistrate will take in the child's case.
- How you, as the SR, helps the Magistrate.
- About the different types of conferences, particularly if the child is involved.
- About meeting the Magistrate, and whether the child would like to.
- That the child does not have to say anything to the Magistrate in Court – that it is your job to tell the Magistrate how the child is feeling or what the child is thinking.
- What 'best interests representation' means and that you will tell the Magistrate what you think is best for the child, even if that is not what the child wants.
- What, if anything, you are currently considering telling the Magistrate about the child's best interests.

## 6.7 Communicating with the child in meetings

There are many factors to consider when meeting with the child, as can be seen by the figure below.



The child may not be comfortable speaking with you in an open manner at the first meeting. Children sometimes need multiple engagements with an unfamiliar adult to feel safe enough to express their views. It is possible that a child will not feel comfortable in sharing their views at all throughout the proceedings.

The child may not want to speak to an unfamiliar adult, particularly about stressful matters and their views. Trauma can also impact on a child's ability to connect with an unfamiliar adult. Use age-appropriate strategies to help the child feel comfortable and to build a professional relationship with the child.



What the child talks about and how they express their views will depend on their developmental level, along with other factors. Be alert to signs of distress or discomfort exhibited by the child and respond appropriately.

## 6.8 Being aware of the child's verbal and non-verbal behaviours

SRs should avoid	Verbal signs from the child	Non-verbal signs from the child
<ul style="list-style-type: none"> <li>making assumptions about the child's understanding</li> <li>telling the child new information about their situation or history – never assume the child knows their trauma history</li> <li>taking things personally – a child who has been through trauma might reject or be overly familiar with you. This behaviour may reflect a child's discomfort with the new relationship</li> <li>assuming the child's chronological age matches their developmental/emotional age.</li> </ul>	<ul style="list-style-type: none"> <li>mumbling or quiet</li> <li>shouting</li> <li>crying</li> <li>stating that they don't want to talk or answer questions</li> <li>swearing</li> <li>asking for their parent/s or carer/s</li> <li>avoiding questions and talking about other things.</li> </ul>	<ul style="list-style-type: none"> <li>lack of eye contact</li> <li>wearing hoods and hats</li> <li>fidgeting and restless</li> <li>slouching</li> <li>looking around or at the door</li> <li>looking distracted</li> <li>unresponsive</li> <li>rapid movements</li> <li>throwing objects</li> <li>jumping on furniture</li> <li>overly familiar physical behaviour towards you, e.g. hugging, sitting on your lap.</li> </ul>

Some general tips about interacting successfully with the child include the following:

- Follow the child's lead with what they're discussing.
- Be calm and personable – be your natural self not your 'lawyer self'.
- Redirect or refocus the child in a calm and respectful way if they are not engaging in the conversation. Offer them a break, a new toy or a new activity.
- Use language and resources that are age-appropriate, without jargon, and which respect the abilities of the child.

## 6.9 Finding out about the child's views

Supporting the child to express their views is a fundamental part of your role. It is not a one-off task; rather, it is a process that you will follow throughout proceedings.

Inform the child who you will discuss their views with, as well as why and how you will do this. Consider any concerns that the child has about this, and only proceed if it is in the child's best interests to do so.

If the child agrees to their views being shared, or if it is in the child's best interests to share their views, you can tell the parties in a conference and/or summarise the child's views in correspondence. You can also tell the Court about the child's views in submissions.

Never pressure a child to express a view where they are unable or reluctant to do so. Where a child has expressed views only on certain matters before the Court, put their views as given and don't make any independent conclusions about the child's views on issues the child has not talked about.

You can explore child's views in a number of ways, including the following:

- Explain to the child the main issues that the Court has been asked to decide.
- Talk about confidentiality; what it means and what its limits are.
- Ask the child if they would like to tell you about what they would like to happen.
- If the child suggests some arrangements, explore with them how they would see that working. This may include exploring the reasons for the child's views, whether these new arrangements would be a big change and how they might feel about that. You may also need to explore logistics, e.g. travel arrangements for visits.

- If there is a sibling group, talk with the child about how their views would work or not work for their siblings.
- Explore whether the child's views are based on wanting to be back home or pleasing their parent/s and/or carers.

## 6.10 Asking the child questions about their views

If the child has drawn a picture during the above 'getting to know you' stage, use this as a prompt before asking questions like:

- 'Tell me about who you live with at the moment?'
- 'Who is in your family? Where do they live?'
- 'Where does the rabbit live?'
- 'Where does [that parent] live?'
- 'Where do you like to live?'
- 'Where do you feel most safe? (Don't ask the child where they would be happy).'
- 'When do you feel most safe?'

## 6.11 Documenting the child's views

Check with the child that they are comfortable with you taking notes during the meeting and explain why you want to do so, for example, so that:

- you remember what the child has told you
- you can confirm with the child what they have told you
- you will be able to tell the Magistrate what the child's views are, if the child agrees.

## 6.12 Providing information to the child

Let the child know that if they agree to you sharing their views, you can tell the Court, their parents and CSS what the child wants (and does not want). It's important to also let them know that if they do share their views with you, there is no guarantee that they will get what they want.

Other information it is important to provide to the child includes:

- whether you intend to recommend something to the Court that is different from the child's views and, if so, the reasons for this
- how you will tell the Magistrate their views –
  - you will tell the Court directly
  - you will ask for a meeting between the child and the Magistrate
  - the child's views are included in an affidavit from their caseworker
  - the child's views will be included in a report.
- what to do if they change their views or want to discuss their views with you again.

### 6.13 A change in the child's views

Sometimes children change their views, or only express views about some things and not about all the matters the Court must decide. The child may not want to express a view about a parent, about their safety or their current living arrangements. This may be because they feel conflicted, confused, guilty or disloyal to a parent or family member if they express a particular view, or because they don't understand certain complex aspects of the proceedings.

Where a child's views are confused or inconsistent:

- confirm that you have understood the child correctly to make sure this is not due to miscommunication or misunderstanding
- explore with the child why their views have changed, and explain that the Court will want to know the reasons for the change to help its decision-making
- put to the Court the child's views and their reasons for any inconsistency with previous views, taking care not to impose any reasoning that the child has not talked about
- if you notice that the child's views are changing, explore this by asking something like, 'A few weeks ago you said ----- . What has changed since then?'.

Avoid being judgemental; instead, stay curious and ask more questions as needed.

If the child has totally changed their language and presentation when expressing their views, consider whether the child might have been coached or told what to say. If this is the case, let it go and come back to it later to see if they have a different view.

Remind the child of your role as you ask questions, for example, by saying, 'Part of my job is to gather lots of information about you and how to keep you healthy and safe'.

### 6.14 Confirming the child's views

In concluding your conversation with the child, provide a recap of their views as you understand them to be.

If age and developmentally appropriate, give the child a chance to read your notes and ask them if anything should be changed, is inaccurate, or should be expressed differently.

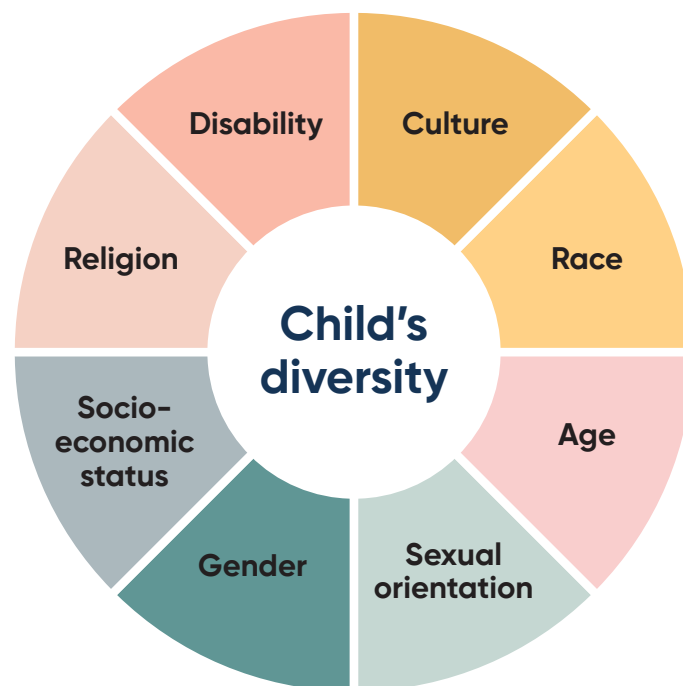
At this point, it is worthwhile to reiterate with the child who/what service is going to learn about their views and if there is anyone in the child's network that they do not want to have their views shared with.

## 6.15 Diversity – general information

As the SR, you need to be aware of the background, situation and circumstances of the child and their family. These factors will influence your approach and interactions with the child.

While you need to adapt your approach to suit each child you work with, some children may require significant adaptation in your approach to provide them with the best opportunity to participate in the proceedings. This includes considering:

- culturally and linguistically diverse children
- Aboriginal and Torres Strait Islander children
- children with disability or those with diverse needs
- the child's sexuality, gender and sex.



## 6.16 Culturally and linguistically diverse children

### Issues to consider

As the SR, it is important to be aware of and sensitive to the importance of culture, language and religion to the child and to their family. These factors may impact how the child sees and experiences the world, as well as their case.

If the child does not speak English as their preferred language, provide an interpreter at your meetings through the Australian Government's Translating and Interpreting Service (TIS)<sup>35</sup>. This is a phone-based translating and interpreting service. If the interpreter comes onsite, there may be an additional charge. It is not appropriate to use a family member or friend as an informal interpreter.

<sup>35</sup> Refer to the TIS website at [www.tisnational.gov.au/](http://www.tisnational.gov.au/)

For your meetings with the child, or for SR conferences, you will need to arrange the interpreter and apply for a disbursement grant for this.

You should also consider the need for an interpreter for Court events and other conferences and make the Court aware if this is likely. This will give the Court time to organise an interpreter. Let the Court know if you are aware of the child or parent/s' preferred interpreter (from an interpreting service).

Particular issues to consider when working with culturally and linguistically diverse children and their families include the following:

Be aware	Be mindful	Be proactive	Be understanding
<ul style="list-style-type: none"> <li>• of the child and family's level of English language skills</li> <li>• that the child may not be familiar with social and legal concepts in the case due to cultural differences</li> <li>• of the child and family's length of time in Australia</li> <li>• of the child and family's pre-arrival experiences</li> </ul>	<ul style="list-style-type: none"> <li>• that the child and family may be fearful of authority figures, such as the Court and the government</li> <li>• that the child may be fearful of expressing views in line with or contrary to religious and cultural norms and beliefs</li> <li>• that the child and their family may be on visas</li> </ul>	<ul style="list-style-type: none"> <li>• and identify and assist the child to access culturally appropriate services</li> <li>• and use a registered interpreter to communicate with the child in meetings</li> </ul>	<ul style="list-style-type: none"> <li>• that the child may be fearful of isolation from their community or the community becoming aware of the proceedings</li> <li>• that the child might need more time or different methods to express their views</li> </ul>

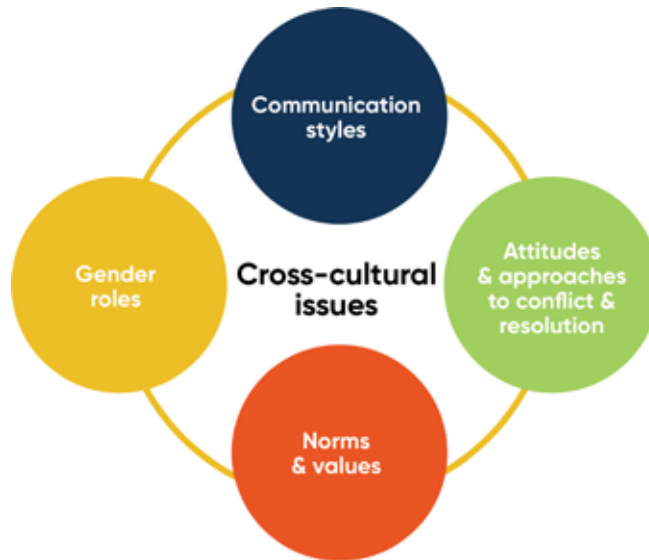
Be conscious of the following factors as you consider your approach:

- Don't make assumptions about the child based on their background or cultural stereotypes; rather, find out about the child's individual circumstances. Always consider and question your own conscious or unconscious bias.
- Be aware that the child may be suspicious of your role as the SR, particularly if they don't trust strangers or authority figures. Some children might try to avoid you and look to their carers to guide their responses in the proceedings.
- Establish trust and boundaries with the child and their parent/s and carers. If necessary, remind them that they must not tell the child what to say to you.
- Give the child, parent/s and carers information about your role and involvement in the child's case, and the process ahead. You can get assistance from organisations such as the Migrant Resource Centre and Refugee Legal Service to frame material in a way that is linguistically and culturally appropriate<sup>36</sup>.  
Be aware that some cultural groups may be particularly ashamed of family issues coming to the attention of authorities and try to keep their matters private. Reassure the child, parent/s and carer/s that you are there to help the child and that you have an independent role in their case.
- You may be able to make a warm referral to a service or agency. The Migrant Resource Centre can assist in identifying appropriate services and centres.

<sup>36</sup> Refer to the following websites for particular services - Statewide: Migrant Resource Centre Tasmania at [mrc tas.org.au/](http://mrc tas.org.au/), North and North-West Tasmania: Migrant Resource Centre North at [mrc tn.org.au/](http://mrc tn.org.au/), Statewide: Tasmania Refugee Legal Service at [www.trls.org.au/](http://www.trls.org.au/)

## Cross-cultural issues

If the child has come from a cross-cultural background, there might be a competing issue across the two cultural groups. Try to be well-informed regarding cross-cultural issues that may arise throughout the case, including their impact on the child.



## Cultural awareness training

Cultural awareness training is recommended as a professional development opportunity to help you work with culturally and linguistically diverse children and their families. The Migrant Resource Centre Tasmania and the Migrant Resource Centre North run courses that are useful for SRs.<sup>37</sup>

<sup>37</sup> For details about Migrant Resource Centre Tasmania training, refer to their website at [mrctas.org.au/training/](http://mrctas.org.au/training/) For details about Migrant Resource Centre North training, refer to their website at [mrcltn.org.au/mrc-services/cultural-awareness-%20training/](http://mrcltn.org.au/mrc-services/cultural-awareness-%20training/)

## 6.17 Aboriginal and Torres Strait Islander children

### General information

When working with Aboriginal and Torres Strait Islander children, SRs must reflect on the child's cultural rights when considering the child's best interests. These rights are enshrined in the UN Convention on the Rights of the Child.

The Convention recognises that young people who are capable of doing so, should be able to speak for themselves in matters that affect them.

The Convention also recognises that:

- children have the right to an identity
- Indigenous children shall not be denied the right, in community with other members of the group, to enjoy their own culture
- regard shall be had to the cultural background of children in out of home care.

A disconnect can be created between a child and their culture once entering out of home care, which can have long-lasting consequences for the child and community. It is important to identify whether a child is Aboriginal or Torres Strait Islander as early as possible to ensure that proper weight can be given to additional cultural factors.

#### *Definition*

Under s 3 of the Children, Young Persons and Their Families Act, an 'Aboriginal child' means a person who satisfies all of the following:<sup>38</sup>

- a) Aboriginal ancestry
- b) self-identification as an Aboriginal person
- c) communal recognition by members of the Aboriginal community.

The child's case worker will attempt to establish whether a child is Aboriginal or Torres Strait Islander by asking the parents if they identify as Aboriginal or Torres Strait Islander, or by asking the child if the child is age-appropriate.

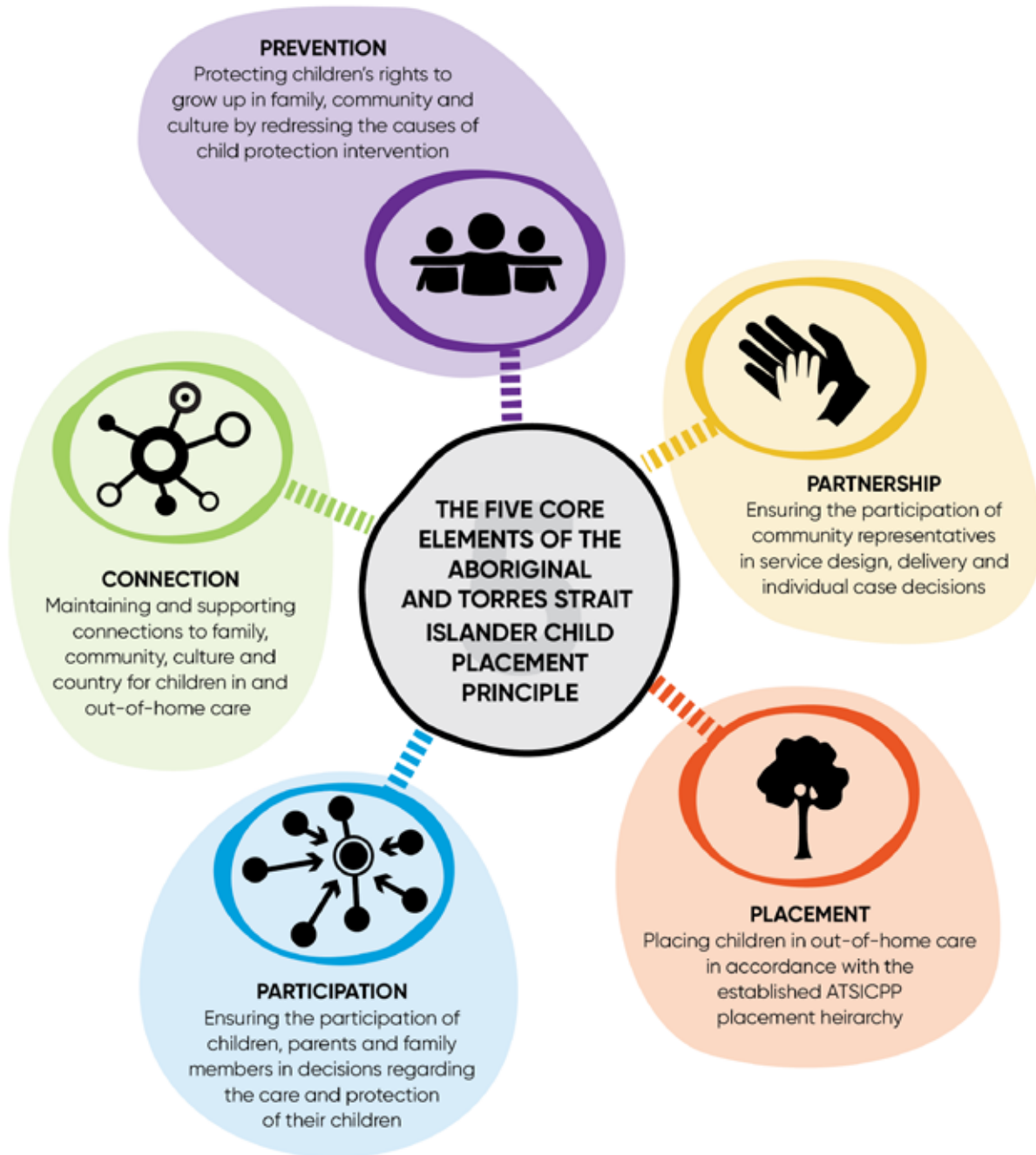
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<sup>38</sup> Section 3A of the *Aboriginal Lands Act 1995*

## The Aboriginal and Torres Strait Islander Child Placement Principle

The Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) was established to address the disproportionate rate of Aboriginal and Torres Strait Islander children in out of home care and to recognise the importance of maintaining connections to family, community and cultural identity.

The main elements of the Principle are prevention, partnership, placement, participation and connection.<sup>39</sup>



<sup>39</sup> SNAICC – National Voice for Our Children, Understanding and Applying the Aboriginal and Torres Strait Islander Child Placement Principle: A Resource for Legislation, Policy and Program Development (2017), p. 3, available at [www.snaicc.org.au/understanding-applying-aboriginal-torres-strait-islander-child-placement-principle/](http://www.snaicc.org.au/understanding-applying-aboriginal-torres-strait-islander-child-placement-principle/)



## Section 10G of the Children, Young Persons and Their Families Act

Elements of the ATSI CPP have been implemented in Tasmania through s 10G of the Children, Young Persons and Their Families Act.

Section 10G:

(1) Aboriginal families, kinship groups, Aboriginal communities and organisations representing the Aboriginal people have a major, self-determining role in promoting the wellbeing of Aboriginal children.

(2) A kinship group, Aboriginal community or organisation representing the Aboriginal people nominated by an Aboriginal child's family should be allowed to contribute to the making of a decision under this Act in relation to the child.

(3) An Aboriginal child, as far as is practicable, should be placed with a person in the following order of priority:

(a) a member of the child's family;

(b) an Aboriginal person in the child's community in accordance with local community practice;

(c) another Aboriginal person;

(d) a person who –

(i) is not an Aboriginal person; but

(ii) in the Secretary's opinion, is sensitive to the child's needs and capable of promoting the child's ongoing affiliation with the culture of the child's community and, if possible, the child's ongoing contact with his or her family.

(4) As far as is practicable, an Aboriginal child removed from his or her family and community, should be placed in close proximity to them."

### Applying s 10G in your practice

As the SR, you must insist that the principles in s 10G are followed.

When a case is considered by the Child Safety Court Application and Advisory Group (CAAG), if the child or family identify as Aboriginal or Torres Strait Islander, a cultural representative is requested to be nominated by the family. This may be an Aboriginal organisation or another kin/community member that the family nominate.

## Working with Aboriginal and Torres Strait Islander children

There are specific factors to consider if you are working with Aboriginal and Torres Strait Islander children. The concepts of the best interests of the Aboriginal and Torres Strait Islander child and their community are interrelated and interdependent: '... the 'best interests of the Aboriginal child's community' must inform the best interests of that child and any associated placement or custody decisions. Recognition must be afforded to the fact that 'the best interests of the child and the community are profoundly intertwined and inseparable'<sup>40</sup>.

As the SR, you must consider the broader community and extended family support available to the child and the important role they play in the raising of Aboriginal and Torres Strait Islander children. Keeping a child connected to their community can help to provide the child with a clear identity and sense of belonging.

When speaking with an Aboriginal or Torres Strait Islander child, be mindful that the child may be fearful or distrusting of you. This must be understood within the context of historical removals of children, as well as the continued overrepresentation of Aboriginal and Torres Strait Islander children in out of home care<sup>41</sup>. Be sensitive to this and ensure that the child understands why you are wanting to get to know them.

Instead of asking a child directly about their culture, try to elicit this information from any workers that the child has contact with. Asking this directly of a child who has been disconnected from their culture or family can elicit feelings of shame and be retraumatising for the child. The child also may feel more comfortable meeting you with a family member or support person from a cultural organisation.

Make sure you contact any cultural organisation or community members that the child's family has a connection with. These people can assist you in building trust with the child and provide valuable support to the child and family – as well as provide information to you about the child's needs. Where a child is not already connected to an organisation, it is important to consider whether you can refer the child to culturally appropriate services. Many Aboriginal people have had their connection to culture fractured, which can make it difficult to reconnect a child to their culture and identity.



<sup>40</sup> Lynch, Philip 2001, 'Keeping them home', Sydney Law Review, vol 23, no. 4, pp 501-542, citing Beamish C, 1993, 'Parenting disputes: Across cultural lines', Special Lecture, Law Society of Upper Canada.

<sup>41</sup> Human Rights and Equal Opportunity Commission. Bringing Them Home Report (1997).

## Conferences involving Aboriginal and Torres Strait Islander children

If the family agrees, a child's cultural organisation and/or support person should be invited to participate in conferences and other decision-making processes. You should always ask whether these invitations and opportunities have been provided. If the family does not agree, you can speak to the cultural organisation/support person and bring that information to the conference or negotiations.

For family group conferences, under s 32 of the Children, Young Persons and Their Families Act, the facilitator may invite a person nominated by a recognised Aboriginal organisation to attend the family group conference. The facilitator can also seek guidance from the organisation about who should attend.

## Cultural understanding

Cultural awareness training is recommended as a professional development opportunity to help you work with Aboriginal and Torres Strait Islander families in a culturally appropriate way.

Cultural understanding includes but is not limited to the following:

- Considering and recognising the support from extended family members in the raising of Aboriginal and Torres Strait Islander children – and the capacity of this extended family and community network to promote the best interests of the child.
- Facilitating consultations with the extended family and significant others from the child's broader family and cultural group. This can assist in obtaining family backgrounds, identifying services/ programs already in place, while keeping connections with their cultural group.
- Meeting with the child, people from their community and people from Aboriginal and Torres Strait Islander organisations in their preferred location<sup>42</sup>.
- Ensuring that any expert report writer is knowledgeable, trained and experienced in working with Aboriginal and Torres Strait Islander families and has the capacity to relate to Aboriginal and Torres Strait Islander families in a sensitive and appropriate manner.
- Communicating in plain English when talking to children and their families.
- Asking if an explanation would help with documents and processes.
- Not only asking what cultural activities and events the family has been 'doing' or 'attending' with the child. Aboriginal and Torres Strait Islander children learn about and are exposed to their culture in many different ways, day-to-day, beyond formal Aboriginal events and activities.
- Understanding the history of dispossession, discrimination and disadvantage experienced by Aboriginal and Torres Strait Islander people, and the intergenerational impacts of this history on the child and their family.

## Additional resources

Resources that may assist you in working with Aboriginal and Torres Strait Islander children and families include the following:

- *Working with Aboriginal children, families, and communities: Lessons from practice* (Source: the Australian Institute of Family Studies)<sup>43</sup>
- *Working with Aboriginal people and communities – a practice resource* (Source: New South Wales Department of Community Services)<sup>44</sup>
- *Working with Aboriginal and Torres Strait Islander families and children toolkit* (Source: Emerging Minds)<sup>45</sup>
- *Keeping our children with us* by Heather Sculthorpe (Source: Tasmanian Aboriginal Centre).<sup>46</sup>

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<sup>42</sup> Community elders and Indigenous support organisations can provide you with guidance about how to make a space culturally appropriate and inviting

<sup>43</sup> Refer to [aifs.gov.au/resources/practice-guides/working-indigenous-children-families-and-communities-lessons-practice](https://aifs.gov.au/resources/practice-guides/working-indigenous-children-families-and-communities-lessons-practice)

<sup>44</sup> Refer to [www.community.nsw.gov.au/\\_data/assets/pdf\\_file/0017/321308/working\\_with\\_aboriginal.pdf](https://www.community.nsw.gov.au/_data/assets/pdf_file/0017/321308/working_with_aboriginal.pdf)

<sup>45</sup> Refer to [emergingminds.com.au/resources/toolkits/working-with-aboriginal-and-torres-strait-islander-families-and-%20children/](https://emergingminds.com.au/resources/toolkits/working-with-aboriginal-and-torres-strait-islander-families-and-%20children/)

<sup>46</sup> Refer to [tacinc.com.au/wp-content/uploads/2018/02/luwutina-mana-mapali-krakani-waranta-2014.pdf](https://tacinc.com.au/wp-content/uploads/2018/02/luwutina-mana-mapali-krakani-waranta-2014.pdf)

## 6.18 Children with disability or diverse needs

### Issues to consider

One of the SR's duties is to make sure that the child can express their views in a way that best suits that child and their needs. To facilitate that outcome, you need to act with sensitivity and extra care when working with children with disability or diverse needs.

There are different types of disabilities or diverse needs that may affect the child's experience in their case. They can also influence how the child engages, participates, and expresses their views.

If a child is an NDIS participant, liaise with their case manager or coordinator to assist in identifying functional impairments (e.g. intellectual disability, acquired brain injury, major mental illness) and strategies to support participation. Consider whether there may be additional funding available under a child's NDIS plan and what additional supports can flow from this.

### Speaking to important people in the child's life

Make sure you talk to the child's therapist, doctors, allied health workers (speech therapists and occupational therapists), NDIS workers and teachers before meeting with the child. Any of these people may be known to the child as an important person.

The child's caseworker may already have information from the child's important people. You should ask them to share this information with you. You should consider who the best person is to tell the child about you. It could be a child's caseworker, their carer/s, or their important people.

Ask the important person about the child's developmental stage/needs – this will help you become informed about the child in a developmental sense, and to make a plan for communicating with the child in the most effective way.<sup>47</sup>

For a child with communication challenges, their NDIS workers might hold a lot of information about how the child communicates and expresses things. Children with disability may be able to engage with you using communication aids or interpreters.

Make sure you check that the important people are able to speak with you, or if you will need funding to cover the meeting.

Some questions to ask an important person include the following:

- Is the child ready to meet you?
- Is the child verbal or able to communicate using communication aids?
- Does the child need their therapist or support person to be there?
- Where would be a safe and accessible place to meet?
- Is there anything you can bring with you to make the child feel comfortable?
- Is there anything you need to be aware of that may overwhelm the child, e.g. colours, shapes, smells?
- What's a good time of day to meet the child? For some children, meeting early or late in the day is not ideal.
- Are there any topics or questions that might be challenging or upsetting for the child?

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<sup>47</sup> The therapist and the child may have worked on something that helps the child express who they are and about their family (an 'all about me' book).

## Support person

Ask the important person whether the child should have a support person with them for the meeting and who that might be. This person may be useful for the child to:

- talk about their experience meeting you
- discuss what happened at the meeting
- ask questions about information that was shared with them.

The support person may be also able to support the child to ask questions about what might happen for the child.

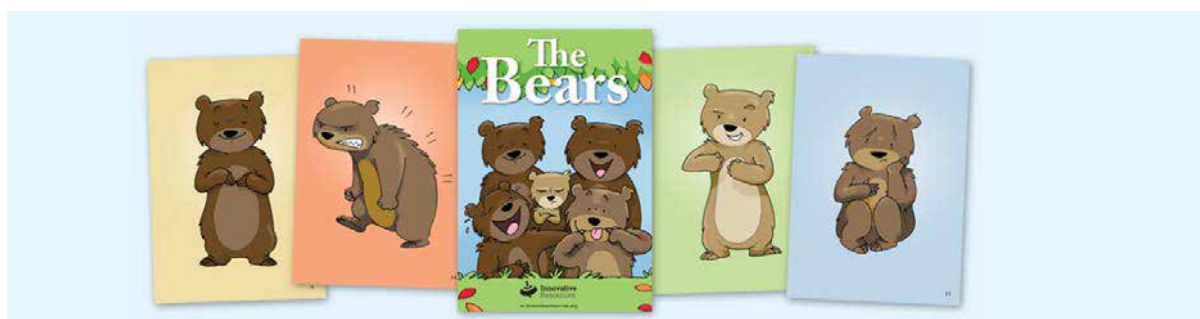
## Communicating with a child with disability or diverse needs

Children with communication and cognitive diversity may need resources such as language boards, sign language, and Braille to assist them in communicating with you.

Resources such as emotion cards, for example, Bear Cards, can be used for the child to point at as you talk to them.<sup>48</sup> These resources are picture dominant, and are meant to identify emotions the child is experiencing, rather than people in their lives. Questions you can ask using the Bear resource include:

- 'How did that make you feel?'
- 'Which one of the bears looks like how you felt when you were at home?'
- 'Which one of the bears looks like how you feel about where you live now?'
- Which one of the bears looks like how you would feel if you were at home with [insert parent/s name/s]?

## Bear Cards



<sup>48</sup> Refer to [www.innovativeresources.org/resources/card-sets/bears-cards/](http://www.innovativeresources.org/resources/card-sets/bears-cards/)

## Cognitive capacity and communication

Some children may have challenges with cognitive capacity and communication. When this is the case, talk first with the child's important people (therapists, doctors, allied health workers, caregivers).

The child has the right to have meaningful time with you. The child's important people can help you prepare for the meeting with the child and work out how the child – and you – can get the most out of the meeting.

Some children may:

- not make eye contact
- not respond to questions
- fall asleep
- use behaviours that impact on engagement.

In these cases, you can tell the Magistrate that, although the child's voice could not be heard during the meeting, their needs/wants can be observed from the therapist's report and other information.

Each child is different, and it is important to use an individualised approach when working and communicating with children with disability or diverse needs.

## Commonly used terms

*You don't need to use the word 'disability' to explain the child's needs. Ask the child what language they prefer, for example, Mabel has cerebral palsy. The child's support network can provide important information to you about the child, for example, that the child does not know about their disability yet.*

The table below provides some examples of terminology to use when appropriate.

<b>People with physical disability</b>	People/person/children with disability Zhang has a chronic health condition Vanessa has paraplegia/quadruplegia Aya uses a wheelchair or mobility device
<b>People with cognitive/intellectual disability</b>	Suresh has a cognitive disability/intellectual disability Sarah has Down syndrome Maria has dementia Will has acquired brain injury
<b>Neurodiverse people</b>	Karim has autism, or Karim is on the autism spectrum Sue is autistic/Autistic (if they identify that way) Li is neuroatypical/neurodiverse/neurodivergent Marcia has ADHD Florence has a learning disability
<b>People with psychosocial disability</b>	Lowana has psychosocial disability/a mental health condition Benjamin has schizophrenia Jolene has borderline personality disorder Van has depression
<b>People with sensory disability<sup>49</sup></b>	Martin is deaf/Deaf, hard of hearing (HoH) Mina is blind, has a vision impairment, Mina is a person with low vision Frances is non-verbal

<sup>49</sup> Refer to the Tasmanian Deaf Society ([www.expression.com.au/](http://www.expression.com.au/)) and VisAbility Tasmania ([www.visibilitytas.com.au/](http://www.visibilitytas.com.au/)) for information about services and supports available.

## 6.19 The child's sexuality, gender and sex

### General Information

Gender, sex and sexuality are all separate concepts. Gender, sex characteristics or sexuality are not preferences or choices, they all refer to how people are. A person's gender does not necessarily mean they have particular sex characteristics or a particular sexuality, or vice versa.

It is important to be sensitive to any challenges for the child regarding their gender or sexuality. Children and young people may or may not have come out to all/some of their family. Their family may or may not be supportive. The child may be worried about coming out to their family, particularly if they believe the family will not be supportive.

A child in out of home care may face additional challenges regarding their sexuality and gender. A child who is worried about their safety or the security of their relationships may not feel safe to explore their gender or sexuality. They may not feel comfortable sharing this with their carers, caseworker and others in the system.

You should use any relevant information from the questionnaires about the child completed by the parent/s, carer/s or caseworker (Appendices 2, 3, and 4) and check this with the child.

Some children will not be heterosexual, and may be exploring or unsure about their sexuality. Some children may find it hard to answer questions about their gender or sexuality or may identify differently down the track during the proceedings.

Some children will be gender diverse. You may wish to advise the child of your pronouns in your initial documentation to normalise the use of identifying pronouns, for example, 'My name is Alex Smith and my pronouns are she/her'. A child may identify as transgender or be exploring their gender identity. They may not use the pronouns you assume so ask them what pronouns they use, even if this was filled out on the SR questionnaire. They may also use an alternate name which they want you to use. This may not be their official name. Recognise that using the child's preferred name and pronouns shows that you respect the child and that you take them seriously.

If you use the incorrect pronoun or name, you should correct yourself and move on. Avoid apologising profusely as this can lead to a child feeling that they need to comfort or reassure an adult for the error. Commit to using a child's identified name or pronouns.

If the child tells you about their gender identity and/or if they identify as LGBTIQ+, you should ask them whether their family, carers or caseworkers are aware, and whether they want/don't want any of these people to know. You should also ask the child whether they want this information included in your reporting. If they want this information kept confidential, you should explore this with the child.

Gender and gender identity	Sex	Sexuality or sexual orientation
<p>Gender is part of how you understand who you are and how you interact with other people. Many people understand their gender as being female or male.</p> <p>Some people experience their gender as different to the sex they were assigned at birth, some as a combination of these or neither.</p> <p>Gender can be expressed in different ways, such as through behaviour, names, pronouns, or physical appearance.</p> <p>However, it is not always possible to 'guess' a person's gender based on these factors alone.</p>	<p>Sex refers to a person's biological sex characteristics.</p> <p>This has historically been understood as either female or male.</p> <p>However, we now know that some people are born with natural variations to sex characteristics.</p>	<p>Sexuality or sexual orientation describes a person's romantic and/or sexual attraction to others.</p>

## LGBTIQ+

LGBTIQ+ stands for lesbian, gay, bisexual, trans and gender diverse, intersex, queer and questioning.

- The LGB in LGBTIQ+ refers to a person's sexuality.
- The T in LGBTIQ refers to a person identifying as transgender, where their gender is something other than the gender they were assigned at birth.
- The I in LGBTIQ+, or intersex, is a person born with atypical natural variations to physical or innate sex characteristics such as variations in chromosomes, hormones or anatomy.<sup>50</sup>
- The Q in LGBTIQ+, or queer, is an umbrella term that can include any kind of diverse sexuality or gender.

### Working with LGBTIQ+ children and families

As the SR, it is important for you to be aware of and sensitive to LGBTIQ+ children and their families. These factors may impact how the child sees and experiences the world, as well as their case.

The child could:

- identify as being other than heterosexual
- identify as being trans or gender diverse
- be intersex.

A child's parent, grandparent or other significant person could identify as being other than heterosexual, could identify as being trans or gender diverse or could be intersex. Be conscious of the following factors as you consider your approach with the child:

- Don't make assumptions about the child's sexuality based on sexual or gender stereotypes (e.g. how they look); rather, find out about the child's individual circumstances. Always consider and question your own conscious or unconscious bias.
- be aware that the child may be suspicious of your role as the SR, particularly if they don't trust you to be understanding or sensitive to their age and LGBTIQ+ status.

<sup>50</sup> Refer to Intersex Human Rights Australia's website at [ihra.org.au/19853/welcome/](http://ihra.org.au/19853/welcome/)



Things to be mindful of regarding the child's sexuality and their family include the following:<sup>51</sup>

- Avoid using language such as 'wife' or 'husband' that assumes all relationships are heterosexual, as this excludes non-heterosexual people and devalues their relationships. Words and phrases such as 'partner', 'parents', 'relationship', 'in a relationship' are examples of LGBTIQ+ inclusive language.
- Avoid using gendered languages such as 'guys' to refer to more than one person. Try using genderneutral language such as 'folks' or 'everyone'.
- Establish trust and boundaries with the child. It is important for you to communicate to the child that they can discuss any issues with you regarding them being part of the LGBTIQ+ community. Let the child know that you won't discuss this information with anyone without the child's permission.
- Family members and carers may not be on the same page, or in the same stage of the child's journey. The child and their carers/family may find it very complex. Consider referring the child to an appropriate support service.
- Be an ally as you work with the child throughout the proceedings. For example, if heteronormative language is being used by a Magistrate, or incorrect pronouns are being used by a mediator, be prepared to correct it (while always ensuring you are informed by the child and are not making assumptions).

## Working It Out

Working It Out is Tasmania's sexuality, gender and intersex status support and education service.

Working It Out provides support and advocacy services for lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) Tasmanians and education and training programs to schools, workplaces, government, and non-government organisations.

Working It Out is a service that you can seek information from and refer children and their families to. It also provides education and training to support service providers to work effectively with LGBTIQ+ people.<sup>52</sup>

## Gender and gender identity

Gender is a spectrum – it isn't set in stone and some people have fluid or fluctuating gender identities.

People's anatomy doesn't determine their gender identity. People may identify and be recognised within the community as:

- a gender other than the sex they were assigned at birth or during infancy
- a gender which is not exclusively male or female.

The child's gender identity and gender expression may be different:

- gender identity is someone's personal and intimate sense of their own gender
- gender expression is how someone chooses to reflect their gender identity in their physical appearance.

Be conscious of the following factors as you consider your approach with the child:

- don't make assumptions about the child's gender based on gender stereotypes (e.g. how they look); rather, find out about the child's individual circumstances. Always consider and question your own conscious or unconscious bias.
- be aware that the child may be suspicious of your role as the SR, particularly if they don't trust you to be understanding or sensitive to their gender identity.

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<sup>51</sup> Refer to the resource *Gender identity for beginners*, available at [www.amnesty.org.uk/LGBTQ-equality/gender-identity-beginners-guide-trans-allies](http://www.amnesty.org.uk/LGBTQ-equality/gender-identity-beginners-guide-trans-allies)

<sup>52</sup> The Working It Out website is at [www.workingitout.org.au/](http://www.workingitout.org.au/) Phone: (03) 6231 1200.

## Gender expression

A person's appearance may not reflect their gender identity or the appearance usually associated with their gender identity. For example, a person may identify as female, but reflect their gender identity in a way society might typically identify with a male.

Gender expression is how a person outwardly shows their gender identity. It includes physical expressions such as a person's clothing, hairstyle, makeup, and social expressions such as name and pronoun choice.

## Gender identity and inclusive communication for SRs<sup>53</sup>

Elements of inclusive communication	Inclusive communication	Exclusive communication
Gender pronouns	'Hi Alex, before I introduce you, what are your pronouns?'	'This is Alex, she's here to meet me.'
Genderneutral language	'The person in the waiting room is about to come in to see me.'	'The girl in the waiting room is about to come in to see me.'
Accepting differences in families	'What does your parent/s or caregiver/s do?'	'What does your Mum and/or Dad do?'

## Respect the child's name and pronouns

Pronouns are one way people refer to each other and themselves.

- Most but not all men (including trans men) use the pronoun 'he'
- Most but not all women (including trans women) use the pronoun 'she'
- Some people use a gender-neutral pronoun such as 'they' (e.g. 'Pip drives their car to work. They don't like walking because it takes them too long').

If you're unsure what the child's pronoun is, you can ask them respectfully, and preferably privately. Use a question like 'Can I ask what pronoun you use?'. Do not ask 'What pronoun do you prefer?' A person's pronoun and identity are not a preference.

Some children's pronouns may be context-specific. A child may not use their pronoun in a particular environment or around particular people because they do not feel safe or comfortable to do so, for example, around family and teachers.

<sup>53</sup> Adapted from the *Inclusive communication with LGBTIQ+ clients - CFCA Evidence to Practice Guide*, available at [aifs.gov.au/resources/practice-guides/inclusive-communication-lgbtqi-clients](https://aifs.gov.au/resources/practice-guides/inclusive-communication-lgbtqi-clients)

## Inclusive practices as SR<sup>54</sup>

Familiarise yourself with resources about the LGBTIQ+ community, and inclusive and appropriate language.<sup>55</sup> Remember that inclusive language is ever evolving, and you are not expected to get it right every time.

Communicate in a way that is welcoming to the LGBTIQ+ community. Avoid assumptions and talk openly with the child, while also taking active steps to protect their privacy after the conversation.

Learn common LGBTIQ+ terms. Consider how knowledge of sexual orientation, gender identities and variations of sex characteristics might help you to understand the child's network of support.

Signal inclusivity to the child and their family. Place LGBTIQ+ related posters or stickers in your office or wear a LGBTIQ+ related lanyard.

Participate in training. LGBTIQ+ specialist organisations run a variety of training packages that can increase your knowledge and confidence. Training is accessible in Tasmania with Working it Out.<sup>56</sup>

Research information about specialist services for LGBTIQ+ care. Make appropriate referrals when misunderstandings or issues beyond mainstream service expertise arise. There are LGBTIQ+ support and health services you can refer children and their families to.<sup>57</sup> Many of these have contact details for Tasmanianbased services.

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54 Adapted from the Inclusive communication with LGBTIQ+ clients - CFCA Evidence to Practice Guide, available at [aifs.gov.au/resources/practice-guides/inclusive-communication-lgbtqi-clients](https://aifs.gov.au/resources/practice-guides/inclusive-communication-lgbtqi-clients)

55 Refer to the LGBTIQ+ Inclusive Language Guide, available at <https://www.vic.gov.au/inclusive-language-guide>

56 Working it Out provides LGBTIQ+ cultural awareness and inclusivity training developed specifically for Tasmania. Further information is available at [www.workingitout.org.au/for-organisations/](http://www.workingitout.org.au/for-organisations/)

57 More information can be found at [www.health.tas.gov.au/health-topics/sexual-and-reproductive-health/lgbtiq-health-services-and-groups](http://www.health.tas.gov.au/health-topics/sexual-and-reproductive-health/lgbtiq-health-services-and-groups) and [au.reachout.com/articles/lgbtqi-support-services](http://au.reachout.com/articles/lgbtqi-support-services)

## **10 Practice Standard: The child – views and diversity**

### 10.1 The SR must:

- explain the main issues that the Court is being asked to consider regarding the child's safety
- explain what the child's 'views' means, i.e. what the Court wants to learn from the child
- explain to the child how the child's views will be put before the Court
- explain the limits on confidentiality between the SR and the child
- discuss how the Court will consider the child's views.

### 10.2 The SR must:

- consider the child's diversity, background, and needs, and how they will communicate their views
- follow, and insist that all parties follow, the principles in s 10G for Aboriginal and Torres Strait Islander children and their families
- explore the child's preferences and reasoning for their views
- give the child a recap of their views and reiterate how their views will be heard, and by whom.
- talk to the child about what things they would like the SR to share
- inform the child what they (the SR) will do with the information the child provides to them
- consider the child's concerns about their views being shared
- inform the child if they (the SR) intend to recommend something different to the child's preferences and the reasons for doing this.

### 10.3 The SR must:

- explain to the child what to do if they change their views
- respond to the child's change in views by presenting to the Court the child's current views and the child's reason for their change in views
- not impose any personal interpretation or reasoning about the child's changed views when informing the Court.

# 7

## Separate Representative practice

### 7.1 Conduct and primary functions of the SR

#### Honest broker

As the SR, it can be useful to think of yourself as an honest broker working on behalf of the child and in the case overall.

As an honest broker, you:

- act impartially and independently
- facilitate and assist parties to reach a resolution, by negotiation or judicial determination, that is in the child's best interests
- act in a timely manner regarding resolutions and proceedings
- advise other parties of your SR role and its limitations, and make referrals where appropriate.

Your responsibilities in your honest broker role include the following:

- making applications upholding the best interests of the child, supported by evidence.
- considering making applications on behalf of the child throughout the proceedings following consideration of issues such as time with family, living arrangements, and extracurricular activities.

Independence does not stop you from supporting the position of one parent or CSS, as long as it is consistent with the child's best interests and safety. Likewise, you can tell a parent or CSS that you will oppose a course of action or application.

You must bring to the Court's attention any facts which would question the advisability of any agreed orders proposed by CSS and/or the parties. In addition, you must not support any agreement reached unless you are independently satisfied that the agreement is in the child's best interests and addresses risks to the child.

At all stages of the proceedings, consider opportunities to settle or limit the scope of the dispute. Engage the parties in negotiations and hold a SR conference where appropriate, potentially at the following stages:

- prior to the making of interim orders, where you have access to all filed material, the child safety file, have met the child, and have formed an interim view
- prior to the final hearing, after CSS has filed all their material, including any reports
- during the proceedings, when new urgent issues arise, e.g. where access has been suspended between a child and family member.

## Ethical obligations unique to SRs

A SR is appointed by the Court to represent the interests of the child and not the interests of a party. As a SR, you don't have a client, and are not bound by instructions – your role is obligation based.

You have a unique role as a SR and you are required to be transparent and open in all of your dealings. You have an obligation to ensure that evidence relevant to the Court's enquiry is put before the Court. This includes evidence that is contrary to your case or to your views.

The outcome you are seeking is one that is consistent with, and informed by, the best interests of the child.

In most cases, the best interests of the child will be achieved by upholding your role as an honest broker. This includes standing up to the Court if you disagree with a proposal and you have evidence that it would not be in the child's best interests. Occasionally, that will put you in a very difficult position; if that happens, it may be helpful to seek guidance from a senior SR.

You have the same ethical obligations to the Court as any other solicitor. This includes being bound by the Australian Solicitors' Conduct Rules<sup>58</sup>, the *Legal Profession Act 2007 (Tas)*<sup>59</sup>, the Legal Profession (Barristers) Rules 2016 (Tas)<sup>60</sup>, and relevant case law.

## 7.2 Relationships with other counsel

Tasmania is a very small jurisdiction, and you may know and be on good terms with other counsel in the case. The child and the child's parent/s expect you to be neutral, impartial and independent in all dealings.

You should avoid familiar interactions with other counsel which could lead the child or their parent/s to conclude that you have taken a side or are biased. You should greet and be polite to other counsel, but avoid engaging in small talk. Before engaging in conversations with other counsel, you should consider how this looks to the other participants in the case.

### 11 Practice Standard: Conduct and primary functions of the SR

#### 11.1 The SR must:

- conduct themselves in an impartial and independent manner
- seek an outcome consistent with the best interests of the child, their safety, and informed by the child's perspective
- bring to the Court's attention any facts which question the advisability of an agreed settlement
- not support any agreement unless independently satisfied that the agreement is in the child's best interests
- actively consider opportunities to settle or limit the scope of the dispute, including negotiating and holding conferences
- ensure that evidence relevant to the Court's enquiry is put before the Court, including evidence contrary to the case or views of the SR.
- avoid familiar interactions with other counsel.

<sup>58</sup> Refer to [www.lawcouncil.asn.au/files/web-pdf/Aus\\_Solicitors\\_Conduct\\_Rules.pdf](http://www.lawcouncil.asn.au/files/web-pdf/Aus_Solicitors_Conduct_Rules.pdf)

<sup>59</sup> Refer to [www.legislation.tas.gov.au/view/html/inforce/current/act-2007-024](http://www.legislation.tas.gov.au/view/html/inforce/current/act-2007-024)

<sup>60</sup> Refer to <https://www.legislation.tas.gov.au/view/html/inforce/current/sr-2016-077>

## 7.3 Upon appointment as the SR

Once appointed, you should notify key parties in the case.

You must notify the Magistrates Court District Registrar in writing of your appointment,<sup>61</sup> and this notice should include:

- the child's name and date of birth
- your contact details
- the case number.

You must advise parties and key stakeholders of your appointment, including the:

- child (if age appropriate)
- child's parent/s and their legal representatives
- Child Safety Legal Group (Department of Public Prosecutions, who represent CSS – Department of Communities)
- foster or kinship carer/s
- Department of Education, Children and Young People, Catholic Education Office or other private school.<sup>62</sup>

Send each parent and carer a questionnaire requesting information about the child's needs, education and health. The questionnaire must be accompanied by a cover letter introducing yourself and explaining how you will use any information provided. Example questionnaires are at Appendix 2 and 3.

Arrange a meeting with the child's caseworker through the Child Safety Legal Group and send them the caseworker questionnaire at Appendix 4.

Arrange to meet with the child – you may like to first provide the child (through their caseworker) with a letter/video of introduction (see Appendix 1 for an example) that includes:

- information about your role as the SR
- a brief biography (including a photo)
- some personal details about you and your interests
- a copy of your 'Working with vulnerable people' card.

### 12 Practice Standard: Upon appointment as a SR

12.1 Upon appointment, the SR must promptly:

- notify the Magistrates Court District Registrar
- advise the child, parties and key stakeholders of their appointment as the SR
- send parent/s and carer/s a letter of introduction, information about the role of the SR, and a questionnaire about the child
- arrange to meet with the child's caseworker through the Child Safety Legal Group
- arrange to meet the child and send them a letter/video of introduction and a brief biography.

<sup>61</sup> Rule 42, Magistrates Court (Children's Division) Rules 2012

<sup>62</sup> If public school: write to the Manager at the Department of Education, Children and Young People Legal Services: [legal.services@decyp.tas.gov.au](mailto:legal.services@decyp.tas.gov.au). If Catholic school: write to [ceo@catholic.tas.edu.au](mailto:ceo@catholic.tas.edu.au). If other private school: contact school directly.

## 7.4 Risk

As the SR, your role requires you to consider risk to the child throughout the case. During your appointment, you should constantly assess any risk, even though CSS are doing this too.

### The meaning of 'at risk'

The meaning of 'at risk' provided under s 4 of the Children, Young Persons and Their Families Act is as follows.

"(1) For the purposes of this Act, a child is at risk if –

- (a) the child has been, is being, or is likely to be, abused or neglected; or
- (b) any person with whom the child resides or who has frequent contact with the child (whether the person is or is not a guardian of the child) –
  - (i) has threatened to kill or abuse or neglect the child and there is a reasonable likelihood of the threat being carried out; or
  - (ii) has killed or abused or neglected some other child or an adult and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person; or
- (ba) the child is an affected child within the meaning of the Family Violence Act 2004; or
- (c) the guardians of the child are –
  - (i) unable to maintain the child; or
  - (ii) unable to exercise adequate supervision and control over the child; or
  - (iii) unwilling to maintain the child; or
  - (iv) unwilling to exercise adequate supervision and control over the child; or
  - (v) dead, have abandoned the child or cannot be found after reasonable inquiry; or
  - (vi) are unwilling or unable to prevent the child from suffering abuse or neglect; or
- (d) the child is under 16 years of age and does not, without lawful excuse, attend a school, or other educational or training institution, regularly.

(2) For the purposes of subsection (1), it does not matter whether the conduct that puts a child at risk occurred or, as the case requires, is likely to occur wholly or partly outside Tasmania."

You should consider past, present and future risk. In some cases, the risk may have been mitigated, and you should bring this to the Court's attention, so that orders are appropriate to the level of risk. For example, where a risk of exposure to family violence has been mitigated by the making of family violence orders, access may be able to progress from supervised to unsupervised.

You should work with CSS and the parent/s and carer/s to identify risks to the child and ways to mitigate those risks.

During the evidence-gathering phase, consider any past, present and future risks to the child and speak to witnesses and file material to inform the Court of those risks.

Where you identify a risk to the child, check any referrals CSS has made for the child. If a referral has not been made, or is not appropriate, you must advocate on behalf of the child so that appropriate referrals are made.



## Ecological model of child development – relationship to risk assessment

When you are assessing risk to the child, be aware of the Ecological Model of Child Development theory<sup>63</sup>.

This theory looks at a child's development within the context of the system of relationships that form their environment, which includes their immediate environment and their interaction with the larger environment.

The Ecological Model of Child Development is relevant because, as a SR, you need to:

- consider a child's development and anything that impacts on it within the context of the whole child, i.e. the influence of their environment
- develop an awareness and understanding of the child's family's values and beliefs, and the way these influence and shape the child's developing identity
- recognise that there will be key differences from one family's culture (values and beliefs) to the next
- identify what's working well for the child and their family and note that this is equally as important as understanding risks.

### Ecological model of child development



<sup>63</sup> Bronfenbrenner, Urie. *The Ecology of Human Development: Experiments by Nature and Design*. Cambridge, Mass: Harvard University Press, 1979

### 13 Practice Standard: Risk assessment and management

13.1 The SR must:

- constantly assess any risk to the child during their appointment
- actively seek orders or negotiate agreements to mitigate risks to the child
- work with CSS and the parent/s and carer/s to identify risks to the child and ways to mitigate those risks.

13.2 Where the SR identifies a risk to the child, they must check any referrals CSS has made for the child. If a referral has not been made, or is not appropriate, the SR must advocate on behalf of the child so that appropriate referrals are made.

## 7.5 Family violence

### General information

Family violence is prevalent in Australia. Family violence is a serious issue and you must consider it at every stage of the case: from initial evidence-gathering and risk assessment, through ongoing risk assessment, to any resolution or orders.

Family violence in a relationship commonly changes over time. In many cases, it begins as abuse, isolation and control, introduces physical forms of violence, and then over longer periods changes to psychological forms, which by then are sufficient to maintain control.

This control, also known as coercive control, is a key indicator of family violence. Coercive control is known as a pattern of ongoing abuse over time that can be covert and difficult to identify. These patterns may be acts of assault, threats, humiliation or intimidation or any other abuse that is used to harm, punish, or frighten a victim-survivor. This controlling behaviour is designed to make a person dependent on the perpetrator by isolating them from support, exploiting them, depriving them of independence and regulating their everyday behaviour.<sup>64</sup>

Perpetrators of family violence often do not use violence all the time, and there may be periods of harmony and peace within the relationship. This can create a sense of deep confusion about the experience of violence and lead the victim-survivor to believe that the violence may stop, the violence isn't as bad as they imagined, or that they somehow provoked the violence.<sup>65</sup>

Family violence does not end with separation: it can worsen when the perpetrator realises that control is being lost, and the behaviours can worsen.<sup>66</sup> Risk of homicide for survivors of family violence can be highest at the point of or after separation.

It is frequently assumed that both adult and child victims of family violence are passive in the face of abuse and violence: this is inaccurate in most cases. Victims of family violence often try out and adopt various strategies to avoid or appease, and even to provoke an incident at an early stage rather than let it build up to a worse and more violent outburst. These strategies may appear, be, or become, maladaptive and also need to be understood and addressed during proceedings and in orders, as well as therapeutically. The strategies used by people to try to keep safe from violence must be considered as a responsive survival strategy and used due to the impact of violence, not as a standalone behaviour.

<sup>64</sup> For more information about non-physical violence, refer to [www.safefromviolence.tas.gov.au/resources-hub/non-physical-violence](http://www.safefromviolence.tas.gov.au/resources-hub/non-physical-violence)

<sup>65</sup> For information about the cycle of violence, refer to [safechoicestas.org.au/news/the-cycle-of-violence](http://safechoicestas.org.au/news/the-cycle-of-violence)

<sup>66</sup> 'For 37% of the 124,100 single mothers [in Australia] who had experienced violence more than once while living with their most recently violent previous partner, the violence increased after the final separation.' Anne Summers, *The Choice: violence or poverty*, p. 11, available at [www.uts.edu.au/news/social-justice-sustainability/violence-or-poverty-dire-choice-many-australian-women](http://www.uts.edu.au/news/social-justice-sustainability/violence-or-poverty-dire-choice-many-australian-women)

Addressing family violence is difficult because there is often little independent evidence of exactly what occurred. Victims of family violence may take a long time to recognise the nature and impacts of family violence, and develop the confidence and obtain the resources needed to leave a violent relationship. Responding to allegations of family violence with empathy and supporting victim-survivors to access support services for safety and counselling can make a significant difference.

If a person decides to leave a violent relationship, they are often faced with a myriad of complexities that can significantly impact on their ability to leave safely. These can include threats of homicide and suicide, threats to pets, lack of housing, poverty, worries about family law court outcomes, poor mental health, concerns for children and the impacts of trauma from the violence. Perpetrator programs may be available, but may not be effective in creating behaviour change.<sup>67</sup>

As a SR, you must have a comprehensive understanding about the impact and significance of non-physical forms of violence and coercive and controlling behaviour.

You should seek out training and keep up to date with research on the effects of family violence, of recovery from abuse and violence, and of reform from using abuse and violence.

As a SR, you should be aware that:

- family violence affects children's physical and mental wellbeing, development and education
- family violence is the leading cause of children's homelessness in Australia
- family violence often co-occurs with other forms of child abuse, including sexual abuse
- there is a correlation between gender roles, stereotypes and violence-supportive attitudes and the possibility of future perpetration of family violence
- therapeutic responses to children exposed to family violence should include working with mothers (or the non-offending parent) and children to strengthen attachment and should be trauma informed.<sup>68</sup>

## Parents and parenting capacity

If a parent perpetrates family violence, this will be directly relevant to their capacity to parent (abusive parenting). Their behaviour may also negatively affect the other parent's capacity to parent, and often actively targets the relationship between the child and the other parent.<sup>69</sup>

Experiences of family violence often undermine the parenting confidence and behaviours of the victim, and can result in further abuse towards the victim and the child. As a SR, you must ensure that your response to family violence does not blame the victim and does not prioritise access or parental communication over safety or recovery.

## Systems abuse

Child protection systems can replicate damaging power dynamics: family violence is usually perpetrated by men, but mothers are blamed for a failure to protect their children.<sup>70</sup> For example, children can be removed because a mother has not been protective enough, and the focus is on her inaction rather than the father's actions.

Be aware, too, that perpetrators can use court processes, including family law and child protection processes, to continue control and abuse, to gain access to the victim, and to involve others in blaming and pressuring victims.

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<sup>67</sup> Bell, C., & Coates, D. (2022). *The effectiveness of interventions for perpetrators of domestic and family violence: An overview of findings from reviews* (WW.22.02/1). ANROWS. [apo.org.au/sites/default/files/resource-files/2022-02/apo-nid316299.pdf](https://apo.org.au/sites/default/files/resource-files/2022-02/apo-nid316299.pdf)

<sup>68</sup> For more information about children's exposure to domestic and family violence, refer to [aifs.gov.au/resources/policy-and-practice-papers/childrens-exposure-domestic-and-family-violence](https://aifs.gov.au/resources/policy-and-practice-papers/childrens-exposure-domestic-and-family-violence)

<sup>69</sup> *Domestic and family violence and parenting: Mixed method insights into impact and support needs: Final report, 2017*, available at [aifs.gov.au/sites/default/files/2022-03/4824-domestic-family-violence-parenting-impact-support-needs.pdf](https://aifs.gov.au/sites/default/files/2022-03/4824-domestic-family-violence-parenting-impact-support-needs.pdf), pp20-21.

<sup>70</sup> Refer to *Parents in the Child Protection System* by Teresa Hinton, available at [www.anglicare-tas.org.au/research/parents-in-the-child-protection-system/](https://www.anglicare-tas.org.au/research/parents-in-the-child-protection-system/) p107.

## Impacts on children

Exposure to family violence can have lifelong impacts on children, and if not addressed, these children may either be more likely to abuse others, or to experience abuse in future relationships.<sup>71</sup>

Children are not little adults, they are beings in their own right as children and future adults. Their brains are wired to have attachment with both parents, and they may unconsciously adopt strategies – such as aligning with an abuser – which promote their own safety. A child's attachment to a parent as well as the family narratives (about who is to blame for abusive and violent conduct) may affect whether the child can accurately assess their own safety. Parents' voices can become the child's internal voice. Just because a child loves and wants to be with a parent, it does not mean that this parent is safe to be with.

Some children may adopt similar behaviours as the perpetrator towards the other parent, towards other children, or in future relationships. Problem behaviour in the child can reflect exposure to abusive and violent behaviours and should be investigated, while therapeutic responses to the behaviour should be explored.

Other children have already internalised a strong moral sense of fairness, and may face risky situations when challenging the perpetrator. For example, they may speak out or stand up to a perpetrator.

In your role as the SR, it is important to understand the impacts of family violence on children, including that where family violence occurs:

- children are denied their right to, and sense of, personal safety
- children are presented with poor role models
- children may learn to use aggression as their main way to solve problems
- children may become fearful and withdrawn
- children may blame themselves for causing a parent's anger/violent behaviour or for the harm caused to the victim
- children may blame themselves for not being able to stop or prevent the family violence
- children may 'switch off' to help protect themselves from emotional trauma
- children may have difficulty concentrating
- children may suffer from post-traumatic stress
- children may not be getting the care they need from parents or family.

The tables below identify some of the short-term and long-term signs of distress for children who are exposed to family violence.

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<sup>71</sup> "Women and men who experienced childhood abuse or witnessed parental violence as a child were about twice as likely to experience partner emotional abuse in their adulthood", Mr Milne [ABS director of the National Centre for Crime and Justice Statistics] said. "The rate was highest for women who were both physically and sexually abused as a child." <https://www.abc.net.au/news/2022-08-24/nearly-quarter-of-women-experience-emotional-abuse-by-partner/101366202>

### Short-term signs of distress for children exposed to family violence

- Feelings of fear, anger, depression, grief, shame, despair and distrust
- Anxious, nervous and withdrawn behaviour
- A lack of confidence and an increasing sense of powerlessness
- Disturbed sleep and nightmares
- Delays or problems with language development in young children
- Physical reactions including headaches, stuttering, stomach cramps, eating difficulties, frequent illness
- Unusual bed-wetting or soiling
- A change in personality, e.g. used to be happy and outgoing but now quiet and reserved
- Cruelty to animals
- Behavioural problems
- Use of aggressive language and behaviour
- Developmental delays caused by low self-esteem, poor concentration
- Poor school performance, difficulty relating to peers
- Substance abuse

### Long-term signs of distress for children exposed to family violence

They may grow up to:

- believe that violence and abuse in relationships is normal
- believe that fear is normal in a relationship or family
- enact behaviour witnessed as they grew up
- choose or remain with an abusive partner
- normalise violence as a response in all situations.

Because children rely on their parents for survival, an attack on a parent is often experienced by the child as an attack on that child's ability to survive. In a similar way, when a parent speaks in a derogatory way about the other parent, the child can internalise the message as a criticism of themselves.

It is important to understand that a parent's fear may impact on their ability to provide a sense of security for the child when they are at home. A child may notice if a parent feels unsafe, for example, the parent may frequently check locks or security cameras, or take different routes home to avoid the perpetrator. A perpetrator's behaviour directly and indirectly affects the child, as the child will know if a parent feels unsafe.

In terms of learning, behaviour and wellbeing, studies have found that exposure to family violence can affect a child's mental wellbeing and contribute to poorer educational outcomes and a range of behavioural issues. These may include:

- impaired cognitive functioning
- behavioural problems
- poorer academic outcomes
- externalising and internalising behaviours
- learning difficulties
- depression and poor mental wellbeing
- low self-esteem
- low school attendance
- bullying (both as victim and perpetrator).

## Substance abuse

There are strong links between family violence and parental substance use, which present equally as the most prevalent risk factors in child abuse rates and child deaths. These links are complex, and although substance use is not the cause of family violence, it is frequently associated with it in both perpetrator and victim.<sup>72</sup>

## Definitions of family violence and risk in Tasmania

Family violence is recognised as posing a risk of harm to children and is contained in the definition of 'at risk' under s 4 of the Children, Young Persons and Their Families Act, as outlined above.

Under the *Family Violence Act 2004* (Tas), a child is at risk if the child is an 'affected child' as defined in s 4; that is, 'a child whose safety, psychological wellbeing or interests are affected or likely to be affected by family violence'.<sup>73</sup>

## Legal definitions related to family violence in Tasmania

There are differences between social welfare/psychology and legal definitions related to family violence. Legal definitions used for the purposes of child safety proceedings are detailed below.

### Family violence

#### Section 7: Family Violence Act

"In this Act –

*family violence* means –

- (a) any of the following types of conduct committed by a person, directly or indirectly, against that person's spouse or partner:
  - (i) assault, including sexual assault
  - (ii) threats, coercion, intimidation or verbal abuse
  - (iii) abduction
  - (iv) stalking and bullying within the meaning of section 192 of the Criminal Code
  - (v) attempting or threatening to commit conduct referred to in subparagraph (i), (ii), (iii) or (iv);  
or
- (b) any of the following:
  - (i) economic abuse
  - (ii) emotional abuse or intimidation
  - (iii) contravening an external family violence order, an interim FVO, an FVO or a PFVO; or
- (c) any damage caused by a person, directly or indirectly, to any property –
  - (i) jointly owned by that person and his or her spouse or partner; or
  - (ii) owned by that person's spouse or partner; or
  - (iii) owned by an affected child."

<sup>72</sup> *Parents in the Child Protection System*, Teresa Hinton, available at [www.anglicare-tas.org.au/research/parents-in-the-child-protection-system/](http://www.anglicare-tas.org.au/research/parents-in-the-child-protection-system/) p107.

<sup>73</sup> s 4, *Family Violence Act 2004*

## Economic abuse

### Section 8: Family Violence Act

"A person must not, with intent to unreasonably control or intimidate his or her spouse or partner or cause his or her spouse or partner mental harm, apprehension or fear, pursue a course of conduct made up of one or more of the following actions:

- (a) coercing his or her spouse or partner to relinquish control over assets or income
- (b) disposing of property owned –
  - (i) jointly by the person and his or her spouse or partner; or
  - (ii) by his or her spouse or partner; or
  - (iii) by an affected child –without the consent of the spouse or partner or affected child
- (c) preventing his or her spouse or partner from participating in decisions over household expenditure or the disposition of joint property
- (d) preventing his or her spouse or partner from accessing joint financial assets for the purposes of meeting normal household expenses
- (e) withholding, or threatening to withhold, the financial support reasonably necessary for the maintenance of his or her spouse or partner or an affected child."

## Emotional abuse or intimidation

### Section 9: Family Violence Act

"(1) A person must not pursue a course of conduct that he or she knows, or ought to know, is likely to have the effect of unreasonably controlling or intimidating, or causing mental harm, apprehension or fear in, his or her spouse or partner.

(2) In this section –

a *course of conduct* includes limiting the freedom of movement of a person's spouse or partner by means of threats or intimidation."

## Stalking and bullying

### Section 192: *Criminal Code Act 1924 (Tas)*

- "(1) A person who, with intent to cause another person physical or mental harm, including self-harm, or extreme humiliation or to be apprehensive or fearful, pursues a course of conduct made up of one or more of the following actions:
- (a) following the other person or a third person
  - (b) keeping the other person or a third person under surveillance
  - (c) loitering outside the residence or workplace of the other person or a third person
  - (d) loitering outside a place that the other person or a third person frequents
  - (e) entering or interfering with the property of the other person or a third person
  - (ea) making threats to the other person or a third person
  - (eb) directing abusive or offensive acts towards the other person or a third person
  - (f) sending offensive material to the other person or a third person or leaving offensive material where it is likely to be found by, given to or brought to the attention of the other person or a third person
  - (g) publishing or transmitting offensive material by electronic or any other means in such a way that the offensive material is likely to be found by, or brought to the attention of, the other person or a third person
  - (h) using the internet or any other form of electronic communication in a way that could reasonably be expected to cause the other person to be apprehensive or fearful
  - (i) contacting the other person or a third person by postal, telephonic, electronic or any other means of communication
  - (j) acting in another way that could reasonably be expected to cause the other person physical or mental harm, including self-harm, or extreme humiliation or to be apprehensive or fearful –
- is guilty of a crime.
- (2) For the purposes of subsection (1) –
- (a) a person pursues a course of conduct if the conduct is sustained or the conduct occurs on more than one occasion; and
  - (b) if the conduct occurs on more than one occasion, it is immaterial whether the actions that make up the conduct on one of those occasions are the same as, or different from, the actions that make up the conduct on another of those occasions.
- (3) A person who pursues a course of conduct of a kind referred to in subsection (1) and so causes another person physical or mental harm, including self-harm, or extreme humiliation or to be apprehensive or fearful is taken to have the requisite intent under that subsection if at the relevant time the person knew, or ought to have known, that pursuing the course of conduct would, or would be likely to, cause the other person physical or mental harm, including self-harm, or extreme humiliation or to be apprehensive or fearful."



## Harassment

### Section 4 (Interpretation): Family Violence Act

*"harassing* means doing any one or more of the following actions in respect of a particular person:

- (a) following the person
- (b) keeping the person under surveillance
- (c) loitering outside the residence or workplace of the person
- (d) loitering outside a place that the person frequents
- (e) entering or interfering with the property of the person
- (f) sending offensive material to the person or leaving offensive material where it is likely to be found by, given to or brought to the attention of the person
- (g) publishing or transmitting offensive material by electronic or any other means in such a way that the offensive material is likely to be found by, or brought to the attention of, the person
- (h) using the internet or any other form of electronic communication in a way that could reasonably be expected to cause the person to be apprehensive or fearful
- (i) contacting the person by postal, telephonic, electronic or any other means of communication."

## Gathering and presenting evidence about family violence

The issue of family violence is always relevant to both the safety and the best interests of the child. Children's views and experiences are critical when gathering evidence about family violence. The child's experience of family violence must be at the forefront of your enquiries. Children are never 'just witnesses' to family violence. Any family violence experience has an impact on the child, whether the child witnesses it directly or is exposed to the consequences.

In your role as the SR, you must always ensure evidence about family violence and the impact on the child is before the Court, and addressed in submissions. You must also address the risks to the child caused by exposure to family violence. This is of particular importance when there are self-represented parties.

This will include the impacts on the child of:

- the effect of family violence on the parent
- any underlying attitudes of entitlement or blame
- the ability of an abusive parent to encourage or support a relationship with the other parent.

You must ensure there is evidence and submissions about:

- risk factors for the child and the family
- safety factors for the child and the family
- the likely future impacts (direct and indirect) if the conduct continues long term
- how the risk is likely to fluctuate over time
- options for and likely outcomes of therapeutic or rehabilitative intervention.

Information about family violence may be kept by Tasmania Police, CSS, the child's school/s, and health services (such as the hospital, CHaPS nurses, GPs) or be contained in records of the Magistrates Court and Supreme Court, including findings and sentencing remarks.

Tasmania Police records include entries on databases such as IDM, FVMS and SIMS, as well as CRIMES (soon to be replaced by Astria).

In some cases, victims may not have previously disclosed some or all of the family violence to professionals.

When expert evidence is required, you must advocate for terms of reference about family violence that include:

- its direct and indirect impacts and risks
- how it can be addressed
- the likely success or otherwise of those measures.

## Family violence and risk assessment

You should consider family violence in the risk assessment aspect of your role. Remember, too, that risk assessment must not be confined to one point in time. Risk fluctuates over time, and Court and other events have been found to increase risk, providing both opportunities and motives for further offending. This may impact upon the child.

It is important that as the SR, you do not support arrangements for the child that could expose them – or the victim – to family violence. When considering arrangements for access, Court appearances or for the preparation of expert reports, assess the risks and take measures to mitigate risks. Questions you must consider include the following:

- What are the impacts of the behaviours upon the child and other parent?
- Are the behaviours understood (by the parties, support services and the Court)?

- Are the behaviours preventable or can they be controlled?
- What interventions may be effective?
- Would any intervention be effective?
- What further information is needed to determine the above?
- Are there rehabilitation options?
- Has rehabilitation been successful and do arrangements reflect this?

Be aware of some of these issues in family violence:

- Societal myths, e.g. –
  - 'If it's true, why didn't she leave earlier?'
  - 'Just because there's conflict, it doesn't make him a bad parent.'
  - 'He says he's a victim, so he can't be an offender.'
  - 'She was violent too.'
  - 'The child wasn't home when the violence happened, so they weren't impacted.'
- Legal myths – if it isn't proven to the criminal standard, the Court must treat it as if it didn't happen.
- Misidentification of offenders.
- Comorbidities.
- The efficacy (and availability) of rehabilitation.
- Failure to recognise or give adequate recognition to the impacts of non-physical forms of violence.
- The inability of perpetrators to understand the impacts of their behaviour.

#### **14 Practice Standard: Family violence**

14.1 The SR must:

- use a trauma-informed approach when working with a child exposed to family violence
- ensure there is evidence before the Court about family violence and the impacts of family violence on the child and their family
- consider family violence in the risk assessment aspect of their role
- consider whether expert evidence is required where family violence is an issue and advocate for terms of reference that address family violence
- make submissions and propose solutions to address family violence
- complete and keep up-to-date with training about family violence and its impacts
- keep up-to-date with current family violence legislation and any changes to this.

## 7.6 Restraint order under s 23 and s 43 of the Children, Young Persons and Their Families Act

If the Court receives an application for an assessment or care and protection order, it can make a restraint order as well as, or instead of, making the assessment/care and protection order. CSS are usually proactive about applying for a restraint order in appropriate cases. The making of a restraint order may be appropriate in cases involving family violence or where there is conflict within an extended family unit which has escalated to the point that it is impacting on the child.

As the SR, a part of your risk assessment role will include considering whether a restraint order is needed to mitigate risks to the child and the child's family. Where you form a view that a restraint order is needed, you should express that view to all parties and explore if there is agreement about this. Where there is no agreement, explore if CSS will make the application. If CSS decline, then you should make the application in the best interests of the child.

## 7.7 Understanding the statutory pathway for applications

When an application is filed, you must consider whether the Court has jurisdiction to make a care and protection order. For a final care and protection order to be made, there are three jurisdictional grounds:

The 'risk' provision	s 42 (3)(a)	To make an order, the Court must be satisfied that both s 42(3)(a)(i) and s 42(3)(a)(ii) are met.
The 'proper arrangements' provision	s 42 (3)(b)	To make an order, the Court must be satisfied that s 42(3)(b)(i) and (ii) and (iii) are met.
The 'extension of care and protection order' provision	s 44 (1)(a) and (b)(i) or (ii)	To make an order, the Court must be satisfied that a family group conference has been held under s44 (1)(a), and either subsection (b)(i) or (ii) is met.

Once you understand the statutory pathway for applications, you can focus on the evidence to bring before the Court.

## 7.8 Case planning

Soon after you are appointed, you will need to develop a case plan (the steps you intend to take). You must then provide an outline of your case plan to all parties. This does not mean you must provide the entire case plan, as this could place the child or other parties at risk

Tasks that may be identified in your case plan include:

- inspecting CSS's files – inspection can only occur at CSS's offices by appointment
- requesting information from and speaking to the child's caseworker
- identifying the issues as well as risk factors to the child
- developing a chronology
- risk assessment and safety planning, including minimisation of trauma to the child
- planning the child's participation, including meeting with the child (initially, during and on conclusion of the case) and exploring whether the child wants to meet the Magistrate
- speaking with the child's foster or kinship carer/s and family
- contacting other parties relevant to the child and their best interests, e.g. schools, childcare centres, support services and other agencies (through summons where necessary)<sup>74</sup>
- reviewing written material relevant to identified protective concerns, e.g. police records, intervention orders and hospital records
- speaking with Aboriginal Community Controlled Organisations about cultural support for Aboriginal and Torres Strait Islander children
- summoning relevant material
- speaking to the parties' lawyers (a quick phone/video conference will suffice) to identify the basis for the parties' opposition to orders. For example, is it because they disagree with access proposals, the restoration plan, or are they opposing the finding of risk?
- identifying appropriate witnesses for affidavits
- identifying the need for any expert assessments of the child or other parties, and working with CSS, the parent/s, other parties and the Court to ensure such assessments occur.<sup>75</sup>
- referring the child and/or other parties to appropriate support services where necessary or to seek independent legal advice
- considering if interim access orders are required and supporting parties to make those applications or making those applications in the best interests of the child
- seeking orders for the filing of material by all parties and other case management orders
- considering at what stage conferencing will assist, and conducting those conferences
- making a plan to review and update evidence prior to the final hearing
- considering whether third parties ought to participate where appropriate, and seek orders to facilitate that participation.

A sample SR checklist is at Appendix 5.

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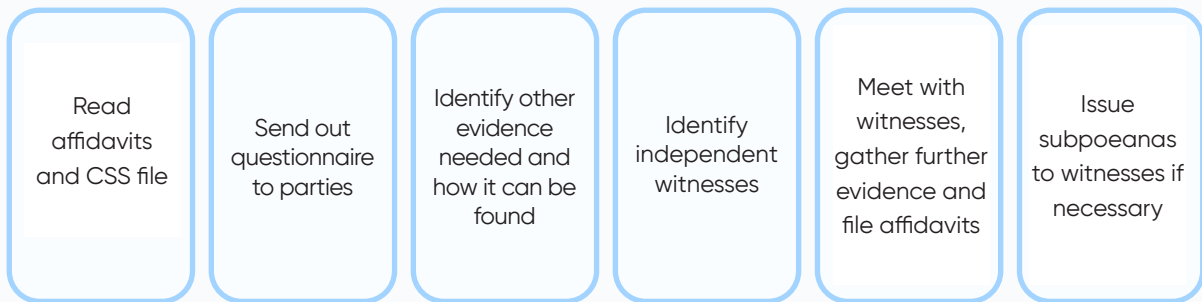
<sup>74</sup> See topic 'Summons' in these guidelines.

<sup>75</sup> It is the practice in Tasmania for CSS to fund expert assessments. On rare occasions, Tasmania Legal Aid will fund a report about views.

### 15 Practice Standard: Case planning

- 15.1 The SR must develop a case plan soon after being appointed.
- 15.2 The case plan must identify issues and risk factors and contain a chronology, a plan for the child's participation, a safety plan, and a plan for evidence gathering, including expert evidence and conferencing
- 15.3 The SR must communicate an outline of the case plan to all parties.

## 7.9 Evidence gathering



### General information

As you gather evidence, always consider the child's experiences and views. As you meet with witnesses, gather further evidence and file affidavits is required and where you can find this.

You must seek relevant information which informs the Court on the issues.

When preparing affidavits, you should include an explanation of the deponent and their relationship to the child and other parties.

If you are filing a report, the report should clearly identify the source of the information and their relationship to the child, so that the writer can be cross-examined. You should share any information collected with all other parties (via their legal representatives, where represented) before hearings.

### Evidence gathering and the child

In addition to gathering the child's views, you need to gather information from other sources to prepare a comprehensive case.

You need to talk with the child about why this information would be helpful and who you might talk to. While you do not have to ask for the child's consent to speak to witnesses, it is respectful to ask the child if there is anyone they do not want you to speak to and why not. This is an essential part of building trust through transparency, predictability and respect. If you still want to speak to that witness, you should explain why to the child. For example, you may wish to speak to a former carer, who the child does not like, but that carer has important contextual information that you need.

When gathering evidence, the best interests of the child should be at the forefront of your mind. Critically consider:

- whether the evidence is relevant
- what impact it will have on the child (if it is made known)
- what impact it will have on the child's relationships.

If the evidence is relevant but is likely to have a detrimental impact on the child and/or their relationships, you must make a plan about how those risks will be managed in a way that reduces the impact for the child.

You should be aware of, and where possible, give effect to, the Charter of Rights for Tasmanian children and young people in out of home care,<sup>76</sup> and in particular, the child's right to privacy.<sup>77</sup>

## Relevant evidence

You must seek relevant evidence which informs the Court on the issues, rather than limiting your enquiries to information which would only support one position, for example, the child's views or CSS's recommendation.

The information-gathering process can include:

- requesting and inspecting CSS's files
- talking to teachers and staff from the child's school<sup>78</sup>
- requesting information from people and services with knowledge of the child, such as carers, family members, counsellors, and health services (through summons where necessary)<sup>79</sup>
- reviewing written material relevant to identified protective concerns, e.g. police records, intervention orders and hospital records
- liaising with Aboriginal Community Controlled Organisations regarding cultural support for Aboriginal and Torres Strait Islander children
- requesting information (via a parent's lawyer) regarding the parent's progress in addressing protective concerns, e.g. undertaking treatment for drug and alcohol issues, mental health issues, drug screens, attending parenting courses and engaging in counselling
- identifying the need for any expert assessments of the child or other parties, and working with CSS, the parents, other parties and the Court to ensure such assessments occur.<sup>80</sup>

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<sup>76</sup> For a poster of the charter, refer to [publicdocumentcentre.education.tas.gov.au/library/Shared%20Documents/Poster-Charter-of-Rights-Digital-Communities.pdf](http://publicdocumentcentre.education.tas.gov.au/library/Shared%20Documents/Poster-Charter-of-Rights-Digital-Communities.pdf)

<sup>77</sup> 'Knowing that personal information about me is shared only where it is needed and to adults who have a right to know'.

<sup>78</sup> Requests to public schools must be directed to Legal Services at the Department of Education, Children and Young People. Requests for Catholic schools must be directed to the Catholic Education Office. Requests for other private schools can be made directly to the school.

<sup>79</sup> See topic 'Summons' in these guidelines.

<sup>80</sup> It is the practice in Tasmania for CSS to fund expert assessments. On rare occasions, Tasmania Legal Aid will fund a report about views.

## Witnesses

Identify independent witnesses who could inform you and the Court of issues from the child's perspective.

Witnesses may include doctors, teachers, childcare workers, police, counsellors, sports coaches, religious or cultural leaders, and family members.

Important factors to consider when engaging with witnesses include:

- planning who to speak to, avoiding duplication with CSS
- filing affidavits from any independent witness as early as possible – affidavits must be available in plenty of time for preparation of the expert reports and for the final hearing
- organising in-person, video or phone meetings with witnesses
- considering what evidence will be required by health professionals or other stakeholders to verify your request for information
- identifying if you should issue a summons – think about what independent evidence should be available to inform the Court on the issues it will determine.

## Communicating with witnesses

When communicating with a witness, you should:

- clearly identify yourself and explain your role
- explain what the proceedings are about and what the Court has to decide (risk)
- tell the witness what you intend to do with the information they give you, whether they might be required to give evidence, and that a summons can be issued requiring them to attend Court as a witness
- explain the issues that are relevant to the witness's expertise or experience of the child
- ask the witness for some general/background information about their relationship with the child
- ask the witness about the child's needs
- ask the witness about allegations of risk that have been raised by CSS and whether those allegations accord with the witness's own observations
- explore with the witness any ideas about risk management, having regard to the witness's knowledge of the child and their needs.

## 7.10 Rules of evidence

### General information

Child safety proceedings under the Children, Young Persons and Their Families Act are usually conducted in an informal manner. Informal processes may accelerate proceedings, which serves the best interests of the child, and reduces the burden and stress on the child from protracted proceedings.

### Evidence and SRs

The rules of evidence used in child safety proceedings are in the following Acts:

- *Children, Young Persons and Their Families Act 1997*
- *Evidence Act 2001*
- *Magistrates Court (Children's Division) Act 1998* (Magistrates Court Act).



## Evidence in child safety proceedings (s 63 Children, Young Persons and Their Families Act)

"In any proceedings under this Act, the Court –

- (a) is to conduct proceedings before it in an informal manner; and
- (b) is not bound by the rules of evidence; and
- (c) is to consider evidence on the balance of probabilities; and
- (d) may inform itself in any way it considers appropriate."

### Applying s 63

The rules of evidence are generally not used in child safety proceedings. Rather than strictly apply the rules of evidence, the Court will consider the best interests of the child in accepting or rejecting evidence.

As the SR, you must assess all evidence through the lens of the child's best interests. You must be prepared to make submissions to the Court about the evidence as it relates to the best interests factors in s 10 of the Children, Young Persons and Their Families Act. You should advocate for the admission of evidence if that admission would serve the best interests of the child. This may mean that you would urge the Court to proceed informally and inform itself with that evidence. In other cases, you may determine that it would not be in the child's best interests for the evidence to be admitted. In those cases, you would ask the Court to strictly apply the rules of evidence in relation to that piece of evidence.

If you decide that the child's best interests will be served by the rules of evidence being applied, you should tell the other parties that you intend to make this application. You should then make the application to the Court, making reference to the applicable best interests principles.

The Court may determine that it will apply the rules of evidence in relation to some or all of the evidence. Where the Court must decide if a fact is true or untrue, the balance of probabilities test will be applied. In doing this, the Court may inform itself in any way it considers appropriate.

The more serious the consequences of the case, the more likely the rules of evidence will be applied. The rules of evidence might be applied if a piece of evidence is very contentious or would have serious consequences if accepted. An example of this is evidence about the sexual abuse of a child where there are related criminal proceedings in progress.<sup>81</sup>

## Evidence in Magistrates Court Children's Division (s 13 Magistrates Court Act)

This section sets out the balance of proof for child safety matters.

- "(1) In any proceedings before the Court, the court is bound by the rules of evidence except where the Court determines otherwise.
- (2) The Court may determine that it is not bound by the rules of evidence in any proceedings before it if it is satisfied that it would not be in the best interests of the child to be bound by those rules.
- (3) In proceedings where the Court is not bound by the rules of evidence, the Court may inform itself in any way it considers appropriate.
- (4) A fact to be proved in proceedings before the Court is sufficiently proved if proved on the balance of probabilities.'

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<sup>81</sup> For a comprehensive guide on evidence, refer to *Uniform evidence law*, by Stephen Odgers.

## Applying the Evidence Act

Where the Court determines that the Evidence Act will apply, you should be aware of these common issues.

### *Relevance (s 55)*

The Court will determine what evidence is relevant to a fact in issue. You must consider if the evidence will affect the Court's determination about a fact.

### *Hearsay (s 59)*

The hearsay rule (s 59) says that hearsay is not admissible.

Understanding hearsay:

- Generally, only people who personally witnessed an event can give evidence about it.
- Hearsay is a rule that prevents outofcourt statements being used to prove that an event occurred.
- Exceptions exist to this rule and can be allowed if the maker of the statement is unavailable, if calling the maker would delay the proceedings, or if that person is going to give evidence later in the proceedings:

Consider:

- Is the evidence within the personal knowledge of the witness?
- Is the evidence about something someone else told the witness?
- Does one of the exceptions to hearsay apply (s 60 or s 61) –
  - s 60 – do you want the evidence admitted, not to prove the fact, but for some other reason? (e.g. what the witness did next or believed)
  - s 61 – was the witness competent at the time of making the representation?

Other exceptions to hearsay may include:

- s 69 Exception: business records
- s 70 Exception: contents of tags, labels and writing
- s 71 Exception: electronic communications
- s 72 Exception: Aboriginal and Torres Strait Islander traditional laws and customs
- s 73 Exception: reputation as to relationships and age
- s 74 Exception: reputation of public or general rights
- s 75 Exception: interlocutory proceedings

First-hand hearsay is evidence given by a witness who is one step removed from the person who actually perceived the events in question. Section 62 provides an exception to the normal restriction on firsthand hearsay.

There are some limited exceptions that may apply to firsthand hearsay in child safety proceedings:

- s 63 Exception: civil proceedings if maker not available
- s 64 Exception: civil proceedings if maker available
- s 66A Exception: contemporaneous statements about a person's health, etc.

### *Opinion (s 76)*

Generally, opinions are not admissible; however, there are some exceptions that may be applied:

- s 77 Exception: evidence relevant otherwise than as opinion evidence
- s 78 Exception: lay opinion
- s 78A Exception: Aboriginal and Torres Strait Islander traditional laws and customs
- s 79 Exception: opinion based on specialised knowledge

### *Admissions (s 81 and s 82)*

An admission may be relevant if a person has made an admission about abusing a child or their parent. If it is a serious admission, the Court may apply the rules of evidence. The hearsay rule and the opinion rule may not apply to evidence of an admission (s 81).

An exception that may be relevant in child safety proceedings is exclusion of admission influenced by violence and certain other conduct (s 84).

### *Tendency (s 97)*

“(1) Evidence of the character, reputation or conduct of a person, or a tendency that a person has or had, is not admissible to prove that a person has or had a tendency to act in a particular way, or to have a particular state of mind unless –

- (a) the party seeking to adduce the evidence gave reasonable notice in writing to each other party of the party’s intention to adduce the evidence; and
- (b) the court thinks that the evidence will have significant probative value.”

### *Discretionary and mandatory evidence (s 135 and s 136)*

The discretion of the Court to admit discretionary and mandatory evidence is covered specifically in s 135 and s 136. These sections are generally used if evidence would otherwise be admissible under other sections of the Evidence Act. As the SR, you must consider the probative value of the evidence as well as prejudice to a party, through the lens of the best interests of the child. You may need to make submissions about these sections with reference to the impact of the admission into evidence on an unrepresented party. This is part of your role as an honest broker.

### *Civil proceedings: standard of proof (s 140)*

“(1) In a civil proceeding, the court must find the case of a party proved if satisfied that it has been proved on the balance of probabilities.

- (2) Without limiting the matters that the court may take into account in deciding whether it is so satisfied, it is to take into account –
  - (a) the nature of the cause of action or defence; and
  - (b) the nature of the subject matter of the proceeding; and
  - (c) the gravity of the matters alleged.”

## 16 Practice Standard: Evidence gathering

16.1 The SR must read all material immediately following their appointment.

16.2 The SR must make a plan for the evidence they intend to gather.

16.3 The SR must put the evidence gathered into admissible form as early as possible.

16.4 The SR must identify what evidence will need to be gathered by summons and issue those summons.

16.5 In preparing the case, the SR must assume that the rules of evidence will be applied.

16.6 The SR must assess all evidence through the lens of the child's best interests.

16.7 The SR must advocate for the admission or exclusion of evidence, if the admission/exclusion of that evidence would serve the best interests of the child.

## 7.11 Expert assessments and reports

In Tasmania, expert assessments are usually requested and funded by CSS.

As the SR, you play a role in:

- identifying appropriate experts
- considering the child's and parent/s' views about proposed experts
- contributing to terms of reference for the report.

If an agreement cannot be reached with respect to the terms of reference, you should ask for the case to be relisted and seek a direction from the Magistrate.

In most cases, CSS will have or will seek an interim order requiring the child and the parent/s and carer/s to comply with any reasonable and lawful direction of the Secretary. This means that CSS can compel parents and the child to participate in an expert assessment. You have a role to play in ensuring that the expert proposed is appropriate and that the terms of reference properly address the issues before the Court.

If you consider that an assessment by a medical practitioner, psychologist or other relevant expert is important to the Court having the best information about the child and their best interests, you should find out if CSS intends to seek a report. If not:

- weigh up the likely benefit of the report against the risk of systems abuse to the child
- consider the impact of any delay to proceedings associated with the report.

After weighing up the risks, if the child's best interests require expert evidence:

- identify an appropriate expert
- draft terms of reference
- ask the expert for a quote
- seek a disbursement grant.

If you receive a grant of aid for an expert report, you should:

- ask that the case be relisted and make an application for the expert report,<sup>82</sup> including an order under s 60 that the child be made available for examination
- serve that application and affidavit on all parties.

82 Application to be made under s 61 of the Children, Young Persons and Their Families Act – order that report be made.

If the order for the assessment is made:

- tell the child about what the assessment involves, why it was ordered and the Court's expectation that they participate
- arrange the assessment
- ensure the assessment is done in a way that causes the least disruption and harm to the child (e.g. for the appointment to occur locally so that a child living in regional Tasmania does not need to travel to Launceston or Hobart).

## 7.12 After release of the expert report

If the report was requested by CSS, they will file it with the Court, and serve a copy on all parties.

If you requested the report, you should file it with the Court and serve a copy on all parties. An expert report may contain very sensitive information which could place the child or others at risk. You must consider the issue of risk and how any risks can be addressed before the report is served on all parties. You can work with the expert concerned, CSS or other professionals to make a safety plan about the release of the report.

You should talk with the child about the expert report. When doing so:

- summarise the main recommendations in the report and the reasons for those
- summarise their views outlined in the report
- discuss their views about the recommendations and whether those views have been reflected accurately
- find out what the child would like you to tell the Court about the recommendations
- discuss if the recommendations are different to their views and how they feel about this.

Once an expert report is released, it may be a good time to convene a conference. If a s 52 conference has not been ordered, you should consider calling a SR conference.

If the case does not settle, you should tell any expert that you have instructed about when the hearing will be. It is important to confirm the expert's availability for cross-examination at the hearing. If the expert will not be available, you should ask the Court to relist the case as soon as possible to seek directions on the timing of the expert evidence. You should also seek a grant of aid to cover the expert's time preparing for and attending Court.

## 17 Practice Standard: Expert reports

17.1 The SR must critically examine whether an expert report is required and whether this report will be arranged by CSS, the SR, or a party.

17.2 Where an expert report is required, the SR must assist in:

- identifying appropriate experts
- considering the child's and parent/s' views about proposed experts
- contributing to the terms of reference for the report.

17.3 Where the SR is arranging an expert report, they must:

- set the scope for the expert advice and draw up terms of reference limited to the scope
- identify appropriate experts
- consult all parties about the terms of reference, the expert, and who will bear the costs of the report
- confirm the availability of the expert, request tentative interview dates, establish how quickly the report could be released, and obtain a quote for the expert's fees
- if Tasmania Legal Aid is to bear any part of the costs, make an application for legal aid to cover that cost.

17.4 In arranging for expert advice to be provided, the SR must:

- make an application for an expert report under s 61 of the *Children, Young Persons and Their Families Act 1997*, including an order under s 60 that the child be made available for examination
- seek leave for the expert to have copies of, or access to, filed and summonsed material
- if they (the SR) have consent, give the expert the consent of the parties to access material
- give details to the expert of how the cost will be borne
- brief the expert and provide copies of affidavits and summonsed materials
- liaise with the expert and identify further information the expert may need, e.g. speaking to other people involved with the child
- ensure the assessment is done in a way that causes the least disruption and harm to the child
- arrange interviews and undertake safety planning that includes how each interviewee can safely travel to and from the interview and attend the interview
- respond to queries or requests for further information
- apply for grants of aid to make applications for expert evidence and, if the parties are legally aided, for a disbursement grant to cover part or all of the expert's costs
- seek another grant of aid before approval is given to any work being done by the expert that is beyond the original agreed scope of work.

17.5 Following receipt of the expert report, the SR must:

- consider the issue of risk and how those risks can be addressed before the report is served on all parties
- work with the expert concerned, CSS or other professionals to make a safety plan about the release of the report
- ensure the report is filed with the Court and served on all parties
- assess the veracity of the expert's opinion, and whether it aligns with the known facts
- ensure that the expert is available for cross-examination and facilitate their attendance for this purpose
- seek feedback from the expert (if they are prepared to engage with the SR) during negotiations and ask them whether the settlement proposals are consistent with the child's best interests.
- talk with the child about the expert report. When doing so:
  - summarise the main recommendations in the report and the reasons for those
  - summarise their views outlined in the report
  - discuss their views about the recommendations and whether those views have been reflected accurately
  - find out what the child would like you to tell the Court about the recommendations
  - discuss if the recommendations are different to their views and how they feel about this.

### 7.13 The CSS file – the SR's rights and responsibilities

As the SR, you can inspect the CSS file and take notes. After your appointment, email the Director of the Child Safety lawyers<sup>83</sup> and ask to inspect the CSS file. CSS will let you know when the file is ready.

The time you will need to inspect the file will depend on the history of the case. For example, cases with years of history may take hours to inspect. You will be able to assess the history of the case by reading the CSS affidavits.

You can inspect the file at the CSS office in your area. Before you inspect the file, you will be required to sign an undertaking not to disclose the names or details of any notifiers. You can take notes, but not copies, of the file.

Be aware that there may be errors in the file, which you should bring to the attention of CSS. For example, there might be a reference to a document that is not in the CSS file, or the CSS file may contain letters or emails, including legal advice given by the Child Safety lawyers to CSS, which are not disclosable.

Sometimes, redaction of details can exclude large amounts of information, not just information which would identify a notifier. You should raise this with the CSS Records Department or the Child Safety lawyers.

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<sup>83</sup> DPP Child Safety Legal Group (DoJ) at [CSLG@justice.tas.gov.au](mailto:CSLG@justice.tas.gov.au)

## 7.14 Summons

You may occasionally need to issue a summons to obtain relevant information where it cannot be obtained directly, including:

- when you do not have clear consent to tender a document into evidence
- where a witness (e.g. a professional) requires you to issue a summons for them to attend Court.

You should issue a summons as early as possible to minimise delays to proceedings.<sup>84</sup> In deciding what summons to issue, think about what information the Court will need. Consider whether this can be produced in another way; for example, in an affidavit and/or in a report.

The Court may be assisted by having information from:

- medical professionals and institutions (including hospitals)
- schools (teachers, school counsellors)
- police.

While some of this information is available on the CSS file, not all of the information may be carried over from the CSS file to affidavit. For example, the CSS file might include information from the school, which as SR you think is relevant to the child's best interests, but this information is not in CSS affidavits. The CSS file might state that the school reported that the child's attendance, presentation and demeanour are good, but this is not included in the CSS affidavit.

You should also consider whether original records will provide better information for context. For example, an affidavit may focus on one incident, but the records may show that the incident was isolated or frequent.

To issue a summons for witnesses or documents, you should:

- refer to s 16 of the Magistrates Court Act, which gives the Court the power to issue a summons
- complete 'Form 3' – 'Summons to Witness for Child Protection form', available under the Children's Division forms via the Magistrates Court website.<sup>85</sup>
- file the form at the Court registry – the form will go before the Registrar, or the Magistrate in chambers, or be given a Court date.
- ensure that the form is signed and approved
- serve the form on the witness being summonsed and all parties to the proceedings. This gives witnesses the opportunity to object to it – they need to apply to the Court to have the summons set aside (the witness must also send this application to you and all other parties).<sup>86</sup>

Once the summons is issued:

- if the summons is for documents, check with the Registry that at least some documents – or an objection – have been received before the Court date
- if documents have not been received, follow up with the person or organisation summonsed. If they cannot comply within the time frame, consider whether to seek a consent adjournment of the mention date
- if the summons is for documents, attend the mention date, at which the Court will hear any objections to the material being released and make orders giving permission for parties and/or their lawyers to inspect and/or copy the documents.

After orders are made to inspect the documents:

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<sup>84</sup> Caution should be exercised when issuing summons to police for when an investigation or prosecution is on foot. The SR should consider limiting the scope of the summons so that the Court has relevant information but the investigation/prosecution will not be compromised. In addition, timing may be affected by when the person or organisation summonsed is likely to have all the information complete.

<sup>85</sup> This form is available at [www.magistratescourt.tas.gov.au/forms](http://www.magistratescourt.tas.gov.au/forms)

<sup>86</sup> Rule 52, Magistrates Court (Children's Division) Rules 2012.



- once leave is granted to the parties/lawyers, you can inspect or inspect and copy documents – make sure that you comply with the order and that you do not copy without the Court’s leave
- on rare occasions, the person being summonsed will send the documents to you, instead of directly to the Court; if this happens –
  - take the documents to the Court without reading them
  - notify the Court and all parties of what has happened; the Court will follow the proper processes to remedy this. It is important to emphasise to witnesses that the documents need be sent straight to the Court, as the summons is issued under the power of the Court, not by you
- check that the request has been fully complied with, and if the correct documents have been sent. If not –
  - make enquiries as to who sent them and see if it’s possible to get the additional documents sent to the Court
  - notify the witness concerned, other parties and the Court
  - advise the witness that they may need to drop off the correct documents
  - seek another order to inspect and copy the correct documents
  - ensure that the documents are not used other than for the purposes of the proceedings.

The Magistrates courts in Tasmania are currently not equipped to receive documents in some electronic forms (e.g. CDs), so it is important to let the witness know what format to use to provide the documents.

### **Dealing with common issues with summonses**

- If a witness has not produced documents or has objected, you should make enquiries as to what is happening – has the person forgotten, or are they delayed? A person may have gone overseas, or on leave without notifying anyone.
- If your witness doesn’t come to the final hearing, you can choose whether to rely on their evidence. You must make a determination about the importance of that evidence to your case and, if important, whether the evidence can be adduced in another way, e.g. tendering documents by consent or finding another witness who is able to give that evidence.
- If you do hear from the witness and they are available at a later time, you can explore this with the Court. In some circumstances, the Court may be prepared to have the case parheard to hear from that witness.
- If a witness is interstate or overseas, find out if they are contactable by electronic means, and make an application to the Court for the witness to give evidence remotely.
- If you determine that the summonsed witness who failed to appear is essential to your case, you can:
  - ask the Magistrate to issue a warrant for their arrest (the case may need to be adjourned for that to occur), or
  - make submissions to the Court about assumptions that the Court could make about the evidence.

## 7.15 Importance of the SR having views

As SR, you add considerable value by forming and expressing views as early as possible in proceedings. You should be expressing a view about risk and whether the risk is sufficient for an order to be made. You must also express a view about the child's needs for access with family members and about the child's care needs. You should revisit your views throughout proceedings, in light of new evidence, and communicate any changes in your views to the child, other parties, and the Court.

Appropriate times to share your views include:

- prior to a SR, family group or s 52 conference
- following the filing of any expert reports
- well before the final hearing – the parties should not be hearing your views for the first time at the final hearing.

## 7.16 Working with schools and school staff

### General information

The child's school is usually a good independent information source. You should always speak with the child's teachers, school counsellor and Principal.

When you want to request the input of teachers and school counsellors, do so well in advance. Make sure you know school holiday periods in Tasmania and note that school staff are not expected to reply or be available during school holidays.

When making contact, provide evidence of your appointment and preferably the child's full name, date of birth and school. Contacts in Tasmania are as follows:

- Public schools: Legal Services, Department of Education, Children and Young People.<sup>87</sup>
- Catholic schools: Catholic Education Tasmania.<sup>88</sup>
- Independent/private schools: Contact the school directly.

If the child is enrolled in a public school, the Department of Education, Children and Young People's Legal Services will facilitate your introduction to the school, and will usually invite you to contact the school directly to arrange meetings with school staff.

After that, most of the contact will be between you and the school; however, Legal Services will settle any document prepared by you on behalf of a school staff member. You must provide draft documents to both the school and Legal Services and you should make any requests for school staff to give evidence both to the school and to Legal Services.

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<sup>87</sup> Email Legal Services, Department of Education, Children and Young People via [legal.services@decyp.tas.gov.au](mailto:legal.services@decyp.tas.gov.au)

<sup>88</sup> Email Catholic Education Tasmania via [ceo@catholic.tas.edu.au](mailto:ceo@catholic.tas.edu.au)

## Case planning note

When preparing a case for Court, be aware of school staff availability and negotiate suitable times and dates. When the case is listed for final hearing, you must be in a position to advise the Court of times that school witnesses are unavailable.

## Supporting school staff

School staff are skilled professionals in their field; they are not legally trained and may be unfamiliar with Court and legal processes. Schools and their staff may be heavily impacted by involvement in these processes, both personally and from a school resourcing perspective. To minimise this impact:

- explain in detail what is required of school staff
- explore the logistical impacts on the school
- brief staff on what to expect at each stage of proceedings.

## Briefing school staff for the final hearing

Tell school staff what to expect when giving evidence and being cross-examined, including any documents they should bring to Court. Be careful not to coach them and only provide information about the processes and proceedings. If they have concerns or questions about their evidence, direct them to their school's legal department or officer.

## Summons

Before issuing a summons, contact Legal Services, Department of Education, Children and Young People, or Catholic Education Tasmania, or the independent/private school's legal department. Discuss time frames and whether the information can be released without the need for summons.

# 7.17 Dealing with represented and self-represented parties

## Represented parties

Send a letter of introduction that includes:

- a clear explanation of your role
- clear instructions for them to communicate with you via their legal representative only – in the case of an emergency, relevant information would need to be communicated to your secretary
- a questionnaire about the child's needs (Appendix 2).

If you need to have direct contact with a party during the course of the case, you must seek consent from all parties via their representatives.

## Self-represented parties

The letter of introduction to a self-represented party must include the same content as it would to a represented party. Make sure you communicate in plain English.

The letter must include information about the limitations of your role in assisting the self-represented party, including that you cannot give them legal advice. You can let them know that you can provide them with some procedural information, as well as referrals.

Unlike your dealings with represented parties, you can deal directly with self-represented parties, including by correspondence, telephone and in person.

Important things to consider in your dealings with a self-represented party include:

- holding meetings in the presence of all parties wherever possible

- taking precautions to avoid being misinterpreted or misreported –
  - keep accurate and detailed records of all contact (verbal and written)
  - consider limiting face-to-face discussions with a parent/party where there is not a witness present
- remaining unbiased, independent, objective and focused on the best interests of the child
- acknowledging whether the party has any functional literacy problems and adjusting your communication accordingly. Instead of communicating in writing, consider conveying important information by phone calls, meetings or virtual meetings, and/or whether to enlist a family member or support person
- considering any trauma experienced by the party and whether this impacts on their dealings with the child and capacity to participate in proceedings.

### **Communicating with parties**

Regardless of how parties are represented, each party needs to be informed of your communication with another party, especially CSS. All correspondence from you to a particular party must be circulated to all parties, unless you determine that it would be contrary to the child's best interests to do so.

If a party is self-represented and then becomes legally represented, all correspondence from you must be directed to the party's legal representative from that point.

## **7.18 After a care and protection application is filed**

At every stage of the proceedings, it is important to remember that it is the child's case, and they must know what is happening. Sharing information can prepare the child for possible outcomes, which may help them understand the process and reduce distress.

After an application is filed but before any conference is held, give the child a summary of:

- what you have done so far
- where the case is at and what this means
- possible outcomes.

In providing this information, you can be detailed or brief, depending on the child. In your first meeting with the child, you would have asked the child about how they would like to receive this information (in person, video, writing, phone, with a support person).

Factors to consider include:

- whether the child would like more information
- whether the information is confronting for the child to hear
- whether the child needs support.

## 7.19 Evidence (Children and Special Witnesses) Act

Part 4, s 8A of the *Evidence (Children and Special Witnesses) Act 2001* prevents an unrepresented party in child safety proceedings<sup>89</sup> from cross-examining a person who is the alleged victim of any family violence offence.<sup>90</sup> In some child safety cases, one parent may be the victim of a family violence offence perpetrated by the other parent. In these cases, an application must be made to the Court for the family violence perpetrator to be represented by counsel for the cross-examination. This avoids the perpetrator directly cross-examining the victim. As the SR, you should tell the Court if you are aware that any party has allegedly been the victim of a family violence offence and the alleged perpetrator is unrepresented.

If the Court is satisfied that the requirements of s 8A are met, the Court will make an order for the representation of the alleged perpetrator for the cross-examination.

## 7.20 Limited adjournments

An application for an assessment order must be heard within 14 days from the lodgement date. The Court must not adjourn the hearing of application unless it is satisfied there are exceptional circumstances. The Court may not adjourn the hearing of an application for an assessment order more than once.<sup>91</sup>

An application for a care and protection order or the variation or revocation of a care and protection order must be heard within 10 weeks from the lodgement date. The Act says that the Court must consider this timing when asked to adjourn an application.<sup>92</sup>

If you make an application for an adjournment, you must outline the basis of your application with particular focus on why the adjournment would serve the best interests of the child. Some examples of this are where the parties are trialling an arrangement and/or where a conference is scheduled.

## 7.21 General advocacy

At times, your position as SR may overlap with the position of other parties in the case. You should be prepared to argue your position and present evidence that supports it, rather than simply deferring to or endorsing another party's position.

Your submissions must always be supported by evidence (e.g. an expert report) and not reflect your personal views or opinions or the views of another representative.

When making submissions about best interests, you should:

- present the child's views to the Court
- present all relevant evidence, not just evidence that supports your views on the child's best interests
- canvass the merits and limitations of all possible courses of action, including the proposals of all other parties.

<sup>89</sup> s 3 of the Evidence (Children and Special Witnesses) Act provides that prescribed proceedings includes an application under s 42 of the Children Young Persons and Their Families Act.

<sup>90</sup> s 3 of the Evidence (Children and Special Witnesses) Act provides that family violence offence has the same meaning as in the *Family Violence Act 2004*.

<sup>91</sup> s 25 of the Children, Young Persons and Their Families Act.

<sup>92</sup> s 45 of the Children, Young Persons and Their Families Act.

## 7.22 Interim orders

If the Court adjourns an application for a care and protection order, it may make an interim care and protection order. If made, this order has effect for the period of the adjournment and any subsequent adjournment. An interim order can be in similar terms to a final care and protection order, except only for a limited period.

The Court may be asked to make an interim order before, at the time of, or shortly following your appointment. In many cases, an interim order may be in place by the time you are appointed. When an interim order is sought shortly after your appointment, you may not have had the opportunity to fully investigate the child's circumstances, views and best interests. You should not feel compelled to make a submission about the child's best interests; instead, limit yourself to an analysis of the options available and the evidence that is available which would support or counter each option.

Where the Court is considering making an interim order, you must consider whether the order is consistent with the best interests of the child. Representing the child's best interests includes seeking the child's views.<sup>93</sup> You should make submissions about the child's views (if known) and any other available evidence relevant to the proposed interim order.

There may be the need for interim orders throughout the life of the proceedings, for example, on issues of access. Applications for interim orders are generally made by CSS; less frequently, by the parties. As the SR, making an application for interim orders is a last resort, and you would only consider this if no other party was prepared to make the application.

However, there may be some circumstances where you must make an application for interim orders on behalf of the child.<sup>94</sup> In applying for interim orders, you must be prepared to make submissions about whether the proposed orders serve the best interests of the child, considering the factors in s 10E.

You should also be prepared to make submissions about the principles in Part 1A of the Children, Young Persons and Their Families Act, as well as an assessment on the issue of risk.

In preparing submissions for interim orders, you must consider the relevant sections of the Children, Young Persons and Their Families Act.

- s 4 – meaning of 'at risk'
- s 10C – role of child's family
- s 10D – treating child with respect
- s 10E – best interests of child
- s 10F – child participation
- s 10G – Aboriginal children
- s 26 – interim assessment order on adjournment.
- s 27 – restraint order on adjournment
- s 46 – interim care and protection order on adjournment
- s 48 – variation, revocation, suspension and end of care and protection order or interim care and protection order
- s 49 – effect of and limitations on care and protection order or interim care and protection order

<sup>93</sup> s 10E (2)(b) Children, Young Persons and Their Families Act.

<sup>94</sup> You make this application under s 48 of the Children, Young Persons and Their Families Act. The Child Protection – Application for Child Protection form is available at [www.magistratescourt.tas.gov.au/forms](http://www.magistratescourt.tas.gov.au/forms)

## 7.23 Preparing for the first mention

Practice Standard 18 below sets out the actions you must take to prepare for the first mention.

### 18 Practice Standard: Preparing for the first mention

18.1 In preparing for the first mention, the SR must:

- read all affidavits
- read the CSS file
- meet with the child and have an understanding of their experience and views (if any)
- find out the parent/s' views about the application (do they oppose/agree to the application, or do they need more time?)
- meet with important independent witnesses, such as schoolteachers and counsellors
- file short affidavits from independent witnesses if time permits
- call a SR conference if time permits
- where possible, form and communicate to the parties a view about any interim issues, or, if the parent/s are not opposing the application, a view about the final issues
- where interim orders are being sought –
  - give an indication of the interim orders you will support, and circulate to all parties
  - draft submissions, relevant to the *Children, Young Persons and Their Families Act 1997*, linking the evidence in the affidavit material that the Court will be asked to determine on an interim basis
- consider if expert evidence is required, identify the type of expert evidence needed and who will arrange this evidence (commonly it is CSS that arranges and pays for expert assessments)
- consider if Part 4, s 8A of the *Evidence (Children and Special Witnesses) Act 2001* applies and make all parties aware of any application the SR intends to make to the Court.

## 7.24 Where parents do not oppose or are not participating

Sometimes, CSS bring an application for a care and protection order at the request of a parent, and as a result, the parent will not be opposing the application. In these cases, there are often very limited options, and a care and protection order may be the only option available. For example:

- a parent who acknowledges that they cannot care for the child due to their own circumstances (mental illness, disabilities or illness)
- a parent who cannot keep a child safe because –
  - the child is running away
  - the child is making decisions that are placing themselves at risk.

Sometimes, a parent/s will choose not to participate in the proceedings. In these cases, it is vital that you meet with the child so that you understand and can tell the Court about the child's experience and the child's views. For example, the child may accept that they can't live with their parent/s for now, but they hope to return home in the future. This may prompt you to tell the Court that the child would prefer a shorter order, rather than an order until the child turns 18.

It is also important for you to explore the child's views about access with their family and aspects of their living arrangements, such as where they live or go to school. You should also talk to the child about whether they would like you to stay on as their SR after the order is made. Where the parents do not have a voice in the proceedings, it is even more important that the child's voice is heard by the

Court. In making submissions where an application is not opposed, you should:

- inform the Court of the child's views about the application as well as access and living arrangements
- inform the Court of the views you have formed about the child's best interests and addressing s 10E of the Children, Young Persons and Their Families Act
- make submissions about orders that would best respect the child's views and meet their best interests
- make submissions about whether your role should be extended for monitoring/support purposes.

**19 Practice Standard: Where parents do not oppose or are not participating**

19.1 In preparing for Court where parents do not oppose the application or are not participating in the proceedings, the SR must:

- inform the Court of the child's views about the application as well as access and living arrangements
- inform the Court of the views they (the SR) have formed about the child's best interests and addressing s 10E of the *Children, Young Persons and Their Families Act 1997*
- make submissions about orders that would best respect the child's views and meet their best interests
- make submissions about whether their (the SR's) role should be extended for monitoring/support purposes.



## 7.25 At the first mention

Practice Standard 20 below sets out what you will need to present and/or provide to the Court at the first mention.

### 20 Practice Standard: At the first mention

20.1 At the first mention, the SR must:

- provide the Court with the case plan, a summary of what they have done as the SR, and their assessment of the issues to be determined
- inform the Court of the child's views
- inform the Court of any views they have formed supporting the child's best interests and addressing s 10E of the *Children, Young Persons and Their Families Act 1997*
- outline what future directions will be required and be prepared to tell the Court about witnesses and an estimate of the time required for the final hearing
- make submissions to the Court about what conferencing is appropriate, including a SR conference, family group conference or a s 52 conference
- provide the Court with a summary of any agreements that have already been reached, outlined in a Minute of Order
- make their submissions, drawing together the evidence and the law as they relate to issues to be determined (the SR is not an expert and cannot express an opinion). The SR's submission or argument must be supported by admissible evidence and/or law
- provide the Court with an assessment of the evidence of each party and explain how this supports or does not support the interim view of the SR
- make the Court aware of the need for any expert evidence and seek orders/directions to support that evidence being filed in a timely manner
- if relevant, tell the Court that Part 4 s 8A of the *Evidence (Children and Special Witnesses) Act 2001* applies.

## 7.26 After the first mention

It is important that you explain to the child, in developmentally appropriate language, any interim orders that have been made and what that means for the child. If the outcome is likely to be distressing for the child or involves a significant and sudden change, you must urgently arrange support for the child in consultation with their caseworker. The support person could be a carer, caseworker, family member, or a service provider.

Practice Standard 21 below sets out what you are required to do between the first mention and final hearing.

### **Practice Standard 21: After the first mention**

21.1 Following the making of interim orders, the SR must:

- tell the child about any interim orders that have been made and what that means for the child
- if there is a breakdown in arrangements for the child, or a significant or sudden change, take steps to minimise the impact on the child, including arranging appropriate support for the child
- consider how to keep the child engaged and informed
- consider if the child needs counselling or therapy and advocate for that
- consider the ongoing relationships between the child and others.

21.2 The SR must review and update their case plan.

21.3 The SR must tell their witnesses that they may be required for cross-examination.

21.4 The SR must give their witnesses notice of the final hearing date; if there are issues with their availability, the SR must notify all parties and the Court, and seek directions in relation to that evidence.

21.5 The SR must consider:

- relisting the case (if issues arise)
- the ongoing relationships and access between the child and others
- organising a SR conference
- any further reports or information to assist in negotiations.

## 7.27 Negotiations and conferences

You have an important role to play in negotiations and conferences during proceedings.

### Negotiations

You should encourage negotiation at every stage of the proceedings and conduct yourself in a non-adversarial manner which encourages parties to adopt a conciliatory approach. You should actively explore the issues of access between the child and the parties early in the proceedings and lead negotiations to resolve this as early as possible. You should also lead negotiations about steps the parties can take to address risks, including engaging in therapy, rehabilitation and counselling.

### The SR's role regarding the child's relationships and time with family

You should play an active role in monitoring what access the child is having with parents, siblings and other family members. Both s 10C and s 10E(2)(d) of the Children, Young Persons and Their Families Act require consideration to be given to the nature of the relationship with significant people, including siblings. You should consider whether the arrangements meet the child's needs, are aligned with the child's views, and whether the conditions are appropriate to the risk. Siblings will not always be placed together with the same carer/s, and it is important to consider the need for the child to remain connected with their sibling group. It may be the case that the respective carers of the siblings will be willing to facilitate access which does not have to involve the parents, for example, by going to a park, the movies or other outing.

CSS sometimes:

- refuse to review access and reduce the conditions, even when parents have effectively responded to the risk
- unilaterally stop access, without making a plan to restart it
- do not progress access or make – or follow – a plan to progress it.

In these cases, you should call CSS to account and ask for reasons for their decisions. You should always advocate for the child to have access to a parent, if the child wants to maintain the relationship and provided it is in the child's best interests.

In some cases, it is child-parent access issues that prevents the case from resolving. Parents who perceive CSS are being unreasonable about access arrangements may be reluctant to agree to a care and protection order – even if one is appropriate. You must encourage CSS to act as a model litigant, particularly around this issue.



## Safety planning for conferences

You must have a safety plan for each conference you attend. If the conference is being hosted by a facilitator or by the Court, you have a role in ensuring that you and other parties can attend safely.

For a family group conference, this can include:

- making enquiries about the suitability of the meeting venue and its security<sup>95</sup>
- planning how participants will get to and from the conference safely, e.g. walking to and from their means of transport
- considering whether any party or participant can attend virtually (via video or phone)
- working out an exit plan if someone's behaviour in the conference escalates.

The same applies for s 52 and for SR conferences; however, for these, the Court or you determine the venue.

If you believe there are risk factors or considerations that need to be taken into account prior to the conference, discuss these with the facilitator.

## 7.28 Family group conferences

### General information

Under s 30 of the Children, Young Persons and Their Families Act, CSS can convene a family group conference if they are of the opinion that:

- the child is at risk
- arrangements need to be made for the child's care and protection
- a family group conference is a suitable way of making those arrangements.

The Court can also adjourn proceedings and refer a case to a family group conference.

A family group conference must also be held when two or more family members request one, or if a family group conference is deemed a good way to review arrangements.

The purpose of a family group conference is to provide an opportunity for a child's family and conference participants:

- to make informed recommendations as to the arrangements for best securing the care and protection of the child through a family plan; or
- to review those arrangements and make further recommendations in respect of those arrangements from time to time.<sup>96</sup>

You should consider and make representations to CSS and the Court about whether a family group conference would help CSS and the family determine what the child's care and protection arrangements should be.

Many SRs are invited to a family group conference and do not take up the invitation. This is a valuable opportunity to help resolve the case, in a child-focused and non-adversarial forum. By attending and participating in the writing of the family plan, you are able to build a working relationship with the parents and the child's professional support team. These relationships can be helpful during your appointment or any extension. During the conference, you can reality-test ideas for the family plan and assess if they are in the best interests of the child. Your presence at and participation in the conference confirms your position as an independent voice for the child who is separate to CSS.

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<sup>95</sup> For example, if the venue is geographically remote or not close to police, consider whether all the parties will be safe if someone's behaviour at the conference escalates. If not, request a different venue or ask that parties attend virtually.

<sup>96</sup> s 31 of the Children, Young Persons and Their Families Act.

You should seek a family group conference where the family:

- is open to negotiations about managing risks and making a plan
- has some capacity to work toward a common goal
- is accepting that there are risks that need managing
- is open to a process to manage these risks.

Where a conference is to be held, CSS must consult with the child and the child's family about a suitable facilitator for the conference. Section 32 of the Children, Young Persons and Their Families Act requires invitations for the conference to be issued to:

- the child
- the child's guardians
- the child's advocate (you)
- a CSS employee
- any other person named in a Court order for a conference.

The facilitator is not required to invite the child or any guardian to the conference if the facilitator believes it would not be in the best interests of the child for the child or another person to attend. It is your role to assist the facilitator to make this determination. You should speak with the child about whether they would like to attend part or all of the conference (with your support), or whether they would prefer you to attend on their behalf.

You should be prepared to provide recommendations about who should be invited to the family group conference.

Section 32(10) of the Children, Young Persons Act sets out a list of people who can also be invited to attend a family group conference, including:

- members of the child's immediate or extended family
- people with close association with the child, counsellors, advisors or support people for the child or the child's guardians
- a person from a recognised Aboriginal organisation
- a person who has examined, assessed or treated the child
- a representative from the Department for Education, Children and Young People.

You should speak with the facilitator prior to the conference to identify any possible barriers that could prevent an agreement being reached. You should also speak with the facilitator after the conference to obtain their perspective and confirm what was agreed upon.

## **Before the conference**

To prepare for the family group conference, you should:

- have read the CSS file
- have met with the child
- gather the child's views
- have asked the child whether they want to participate
- talk to the facilitator
- talk to the child about your views regarding their best interests
- talk to the child's carers
- speak to independent witnesses, such as teachers, about the child and the child's needs
- come to a view about how the risks identified by CSS can be managed, and the process for this.

## At the conference

At the family group conference, you should:

- give the participants a summary of your enquiries so far
- outline the child's views
- express a view about the best interests of the child
- be in a position to contribute to negotiations about the child's arrangements and the management of risks
- if invited,<sup>97</sup> take the opportunity to join the family time<sup>98</sup> (within the conference, without CSS present) and offer suggestions that address risks,<sup>99</sup> respect the role of the child's family,<sup>100</sup> and consider the best interests of the child.<sup>101</sup>
- offer suggestions that may help progress the negotiations, e.g. if an order is made, your role is extended to allow monitoring of progress, and for conferences to be held at scheduled times (e.g. every three months).

## 7.29 Section 52 conferences

### General information

The Court can convene a conference either before or during child safety proceedings. This is called a s 52 conference. The purpose of the conference is to determine what matters are in dispute or resolve any matters in dispute on an interim or final basis. Many cases resolve completely at s 52 conferences. Where this happens, the Court can (if appropriate) make orders on the day. There may be more than one s 52 conference held during the course of the case.

Section 52 conferences can be useful where:<sup>102</sup>

- a family member is in custody
- there are safety issues between parties.

Section 52 conferences are held at the Magistrates Court. A Magistrate or an officer of the Court nominated by the Magistrate<sup>103</sup> presides over the conference.<sup>104</sup>

The child, you, the parties and their representatives are invited to attend the conference. Evidence of anything said or done at the conference is inadmissible, except where everyone agrees that the evidence will be admitted.<sup>105</sup>

A s 52 conference can occur:

- early in the proceedings, after the application is filed and a parent opposes the application
- later in the case, and where it appears the case will proceed to final hearing.

Where a s 52 conference is scheduled before you are appointed, you should consider whether there is enough time to properly prepare for the conference. If not, you should apply to relist the case to request a later date.

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<sup>97</sup> Many SRs are invited and do not take up the invitation, but it is a valuable opportunity to help resolve the case, in a child-focused and non-adversarial forum.

<sup>98</sup> s 34(3) of the Children, Young Persons and Their Families Act.

<sup>99</sup> s 4 of the Children, Young Persons and Their Families Act.

<sup>100</sup> s 10C of the Children, Young Persons and Their Families Act.

<sup>101</sup> s 10E of the Children, Young Persons and Their Families Act.

<sup>102</sup> Safety issues are managed by the presence of Court security staff.

<sup>103</sup> A conciliator.

<sup>104</sup> In North and North-West Tasmania, s 52 conferences are usually chaired by the Magistrate directly. In Southern Tasmania they are usually chaired by a conciliator appointed by the Court.

<sup>105</sup> s 52(4) of the Children, Young Persons and Their Families Act.

If a s 52 conference is held early in the proceedings, this may be the first time that you meet the parties and hear their concerns. This may also be the first time you can ask parties for information. In this situation, the conference is more likely to be used to explore the issues in dispute as you will not have completed your investigations.

### **Before the conference**

Unless a s 52 conference is held at short notice and very early in the proceedings, you should take these actions before the conference:

- read the CSS file
- meet with the child
- gather the child's views
- speak to the child about the s 52 conference and identify whether the child wants to attend or if there is anything the child wants you to say at the conference
- speak with independent witnesses, such as teachers, about the child and the child's needs
- make a list of issues
- come to a view about the best interests of the child and communicate this to the child and the parties
- come to a view about how the risks identified by CSS can be managed and the process for this.
- prepare some terms of settlement
- identify the evidence you will rely on at the hearing
- identify what CSS and party witnesses you want to cross-examine.

### **At the conference**

At the s 52 conference, you should:

- give the participants a summary of what you have done so far –
  - met with the child and gathered their views
  - met with independent witnesses
  - formed your views
- outline your list of issues
- outline the child's views
- outline your views and any factors which could impact those views
- engage in negotiations about the child's arrangements and the management of risks
- offer suggestions that may help progress the negotiations, e.g. if an order is made that your role extends to allow monitoring of progress and scheduled conferences into the future
- if agreement is reached, consider these factors about orders –
  - if the child is there, you can ask them what they think about the proposed orders
  - if you have spoken with the child before the conference, they have been clear about what they want, and this is consistent with the proposed orders, then orders can be made
  - if you are not sure whether the agreement is consistent with what the child wants or if you believe that the child may not be happy with any aspect of the agreement, you should ask for another date for the making of orders, so you can speak to the child again before final orders are made
- if it looks like the case will not resolve, you should help narrow the issues to be tested and identify the evidence which will need to be tested to achieve this
- actively contribute to a final hearing plan, including identifying how much hearing time is required, what evidence each party will call and who will cross-examine those witnesses.

## 7.30 SR conferences

### General information

A Separate Representative conference (SR conference) is called by the SR to resolve matters in dispute. There is no section of the Children, Young Persons and Their Families Act that addresses convening these conferences. Sometimes, Magistrates will make an order requiring parties to attend a SR conference.

### Calling a conference

You can call a SR conference at any stage of the proceedings. SR conferences are held to:

- resolve the case
- resolve pressing interim issues such as the child's access with parents
- review arrangements after an order has been made.<sup>106</sup>

In deciding whether to call a SR conference, you need to consider what other conferences have been held already. In calling a conference, you must be satisfied that there is new information to discuss, or the case is at a stage where it could be resolved, for example:

- the case may have started with a family group conference where interim care and protection arrangements have been agreed and commenced, and the case is set down for a final hearing
- you may have received an expert report and the parties have filed their affidavit material.

These are good points at which to call a SR conference, particularly if the Court has not ordered a s 52 conference.

In some cases, final care and protection orders are made and the appointment of the SR has been extended. In these cases, a SR conference can be valuable in following up the progress of restoration plans and/or access arrangements, particularly where problems arise that threaten to derail these.

### Attendance

SR conferences usually include you, parent/s, CSS (this usually includes the lawyer for CSS, the child's caseworker, and the team leader).<sup>107</sup>

Traditionally, SR conferences have not included the child, as the SR will have spoken to the child shortly before the conference and is in a position to state the child's views. However, there is no reason why the child cannot attend a SR conference. Be flexible about this, and consider the following:

- Does the child want to attend? If so, how would they like to participate? Options include –
  - the child attending part/s of the conference, e.g. at the beginning and/or towards the end
  - the child attending in person, or by video
  - the child preparing a video statement to be played at the start of the conference
  - the child preparing a letter or document (drawing) to share.
- Is it in the child's best interests to attend, or could this be harmful to the child and the child's relationships?
- Is there agreement from all parties about the child's participation? For example –
  - in some cases it may be appropriate (on the evidence) for the parents to agree to the making of a care and protection order, but they may be worried about their child witnessing this and the child feeling rejected or unwanted
  - in other cases, it may be very difficult for a child to witness discussions that may be critical of their parent/s.

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<sup>106</sup> Provided that the SR's appointment has been extended.

<sup>107</sup> The team leader is the caseworker's manager who may have the authority to make decisions at the conference.



- If the child does want to attend, and there is agreement around this, explore what the child's participation might look like. This includes –
  - how you will support the child
  - if the child will need support from their Care Team or the Child Advocate
  - making an application for Tasmania Legal Aid to have the conference chaired by an independent mediator, so that you can focus on supporting the child.

Sometimes it is appropriate to have additional participants attend the conference, such as grandparents, carers, extended family or people providing support or therapy to the child and/or the parent/s. You should consider whether the additional participants would assist the process, and be focused on the child. All parties must agree on any additional participants.

## Arranging the conference

You can arrange the conference by identifying a suitable date and venue, and then inviting parties and legal representatives.

You must actively consider any risks to participants and manage those risks. For example, if there has been family violence between the parents, you should consider whether the conference should be by shuttle, or from different locations. You can ask Tasmania Legal Aid to provide facilities to hold the conference, and make them aware of any safety issues and plans. Where parties are attending the same venue, you must plan for how the parties will arrive and leave. This can include staggering arrival and leaving times.

## Before the conference

You should prepare for a SR conference by:

- reading the CSS file
- meeting with the child
- gathering the child's views
- speaking with the child about the SR conference, whether there's anything the child wants you to say at the conference, and whether they would like to attend
- speaking with independent witnesses, such as teachers, about the child and the child's needs
- making a list of issues
- preparing and distributing a conference agenda to all parties
- coming to a view about the best interests of the child and communicating this to the child
- forming a view about risks and best interests of the child
- considering whether expert evidence is required<sup>108</sup>
- making a conference safety plan.

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<sup>108</sup> Where expert evidence is required, it is a better use of resources to hold the SR conference after the release of the expert report.

## At the conference

At the SR conference, you should:

- explain that the conference is confidential<sup>109</sup>
- explain the process and agenda for the conference, including who will speak when and opportunities to take breaks and have separate sessions. Where the conference is a shuttle conference, explain how that will work
- identify the issues to be discussed at the conference
- ask CSS to confirm the issues and whether there are any more issues
- ask CSS to explain:
  - their proposals for access
  - their proposals for the resolution of the case
  - their proposals or position on restoration
  - what actions/steps the parents need to take
  - a timeline for actions and restoration, if applicable
- outline the child's views
- outline your views and reasons for these
- explain that you will call a break – giving the parties the opportunity to process what has been discussed so far
- reconvene and give the parties the opportunity to respond
- facilitate negotiations where it appears that some or all matters can be resolved
- offer suggestions that may help progress the negotiations, or discuss and break down roadblocks
- draft any agreement and give the parties the opportunity to go on the record and sign it – if they are comfortable to do so
- plan for the next meeting (e.g. if there is an interim agreement which is to be reviewed. This could include an access plan which is part of a restoration plan).

### 7.31 Negotiating and drafting orders

Where the parties can agree that there should be a care and protection order, you should take an active role in negotiating and drafting those orders. Your focus should be on:

- ensuring that therapeutic support is provided to the child
- ensuring the child has safe and appropriate time with their family in line with the child's views
- including review mechanisms
- what should happen after the order is made, including whether you should continue in your role.

You should carefully consider the needs of any unrepresented party and whether their position is reflected in the orders and notations. For example, where the plan is for a child to be restored to one parent, it is also important to explore the access the child will have with the other parent, both before and after the restoration.

An order under the Children, Young Persons and Their Families Act cannot be made by consent; rather, the parties can say that they support the order or do not oppose it. It is the role of the Magistrate to make a finding that an order is needed to secure the care and protection of the child and that it satisfies the legislative requirements.

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<sup>109</sup> Unless an issue is raised regarding the child being harmed or being at risk of harm – the caseworker or other mandatory reporters in the meeting would report this, and it is not confidential.

## **22 Practice Standard: Negotiations and conferences**

22.1 In preparing for a conference, the SR must:

- have read the CSS file
- met with the child
- gathered the child's views
- spoken to the child about the conference and identified whether the child wants to attend
- spoken with independent witnesses about the child and the child's needs
- have made a list of issues
- come to a view about the best interests of the child and have communicated this to the child
- formed a view about risks and best interests of the child
- considered whether expert evidence is required
- made a safety plan.

22.2 At a conference, the SR must:

- ensure that all parties understand any limits on confidentiality and admissibility
- give the participants a summary of what they (the SR) have done so far
- outline a list of issues
- outline the child's views
- outline their views and any factors which could impact those views
- engage in negotiations about the child's arrangements and the management of risks
- if agreement is reached, consider whether the child's views align with this or whether more input from the child is needed
- if it looks like the case will not resolve –
  - help narrow the issues and identify the evidence which will need to be tested to achieve this
  - actively contribute to a final hearing plan, including identifying how much hearing time is required, what evidence each party will call and who will cross-examine those witnesses.

## 7.32 Before the final hearing

The final hearing is the culmination of all of your work throughout the case and draws together all of your case planning, evidence gathering and relationship building.

Due to time pressures, you may have discussions and negotiations with other lawyers on the day of Court. This can happen when CSS produces reports or affidavits on the day of or shortly before Court. Sometimes these have not been provided to the child. While sometimes this is unavoidable, you can take steps to avoid rushed, last-minute discussions with the child by:

- maintaining regular contact with the child between hearing dates
- seeking commitments and wherever possible, directions, requiring CSS to file and serve their material before any Court event, allowing enough time for you, the child and the parties to consider and discuss any material.

Preparation by you and other lawyers will reduce unnecessary delays and adjournments to proceedings, which can cause uncertainty for the child about their future living arrangements.

Before every hearing date, ask CSS if they are proposing different orders or conditions to those included in the application.

You should seek hearing directions at the time that the Court is setting the matter down for final hearing. This should include time frames within which each party is to file their affidavits, giving notice of intention to cross-examine any deponent and prohibiting any evidence being filed out of time without leave of the Court. Be mindful that unless the Court otherwise orders, an application and affidavit is to be served at least two clear days before the hearing.<sup>110</sup>

An example of hearing directions you can seek is at Appendix 7.

## 7.33 Making submissions that are different to the child's views

If you form a view that the child's best interests will be served by orders that are different to the child's views, you must:

- advise the child, before the hearing, that you are going to ask for orders that are different from their views, and your reasons for this
- tell the Court about the child's views and the child's response to your proposed orders, together with any arguments which may support the Court adopting the child's views
- make submissions explaining why you are seeking orders that are different to the child's views
- make submissions supporting your position as to the child's best interests and set out the evidence to support this.<sup>111</sup>

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<sup>110</sup> Magistrates Court (Children's Division) Rules 2012, Rule 20.

<sup>111</sup> s 10E of the Children, Young Persons and Their Families Act.

## 7.34 Child's attendance at Court

The child can choose to attend Court hearings, as they are a party to the application.<sup>112</sup> Some older children like to attend, while some children may be suspicious of authorities and formal processes. There is no expectation for the child to attend, nor can anyone make the child attend.

For the child to make an informed decision about attending any hearing, you should discuss the following with them:

- whether they will experience anxiety or distress by being in the courtroom or seeing family members at Court
- whether they would prefer to attend Court virtually
- what the hearing will involve and how long it might take
- potential disruption to their daily routine (school, employment)
- the practicalities of them getting to and from Court, such as mode of transport
- whether they would want any person excluded from the courtroom and their reasons for this.

You must not use Court hearings to ascertain a child's views. You should speak with the child before the hearing, even when the child is planning to attend Court.

If the child says they want to attend Court but is intimidated by or afraid of another person who will be present, you should make arrangements to ensure that the child feels safe, for example:

- make an application for the child to attend virtually
- arrange for the child to participate from a safe witness room (or interview room if safe witness room is unavailable) with their caseworker or another person that they feel safe with – you should make these arrangements with CSS and alert Court security to any potential risks
- arrange for the child to go into the courtroom only if a person they're worried about isn't in there
- speak with the registry staff who may be able to assist with further arrangements to make the child feel safe – this may involve taking the child into an empty room to explain where everyone will be sitting when a hearing takes place.

When the child does go to Court, you should:

- explain what is happening
- check that the child feels comfortable and safe
- explain submissions being made
- further clarify any views



<sup>112</sup> s 64 of the Children, Young Persons and Their Families Act.

### 7.35 Child giving evidence

It is very rare for children to choose to give or be called to give evidence in child safety proceedings. You may occasionally need to consider this.<sup>113</sup>

The decision should include careful consideration of the following:

- the availability of other evidence which may substitute for direct evidence from the child (meeting with the Magistrate or through an expert report)
- whether the child can swear an affidavit instead of giving direct evidence
- whether the Court will make orders for limited, conditional or no cross-examination of the child<sup>114</sup>
- the value of the child's direct evidence to the case
- the child's need or desire to give evidence
- any possible repercussions for the child, including to the child's physical and emotional welfare
- the availability of video-conferencing or remote facilities for the child to give evidence
- the child's developmental ability to give direct evidence and withstand possible cross-examination.

Where a child does give direct evidence, you should consider who may be present and, where appropriate, ask the Court to restrict entry to the courtroom while the child gives evidence.

### 7.36 Carer/s giving evidence

While great care is taken to not have to call a carer/s to give evidence, as SR, you do need to consider whether to call them as a witness. You also need to consider the consequences for future relationships between the carer/s and the child's family should an order be made and the carer/s are required to facilitate future access arrangements.

The carer/s will have important information in relation to the child and CSS would normally ensure that this information forms part of the evidence that they present. When they are not going to call such evidence, you need to consider the probative value of any evidence you wish to lead from the carer/s.

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<sup>113</sup> This is more likely with much older children and where the SR is acting as a direct representative.

<sup>114</sup> For example, questions being put by the Magistrate, or by written questions or limited to certain topics.

### 7.37 Preparing a case outline

You may prepare a case outline for the final hearing.<sup>115</sup> Although this is not generally ordered by the Court, it is best practice. The case outline should be filed with the Court and served on all parties before the hearing.

You can use your case plan as a foundation for the case outline. As the case plan is updated throughout the proceedings, this can be merged with the witness list to form the case outline.

The case outline should:

- set out the application being made
- identify documents you will rely on
- address s 42 of the Children, Young Persons and Their Families Act –
  - is the child at risk?  
or
  - is it a case where proper arrangements exist for the care and protection of the child and it would be in the best interests of the child to incorporate those arrangements in a care and protection order?
- include submissions in dot-point form on proposed orders in the best interests of the child
- address legislative provisions – matters taken into account<sup>116</sup>
- state your position and the orders you propose.



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<sup>115</sup> Sometimes case outlines can be filed for s 52 conferences, particularly s 52 conferences chaired by the Magistrate or that are held late in the proceedings.

<sup>116</sup> Children, Young Persons and Their Families Act, Part 1A – Principles to be Observed in Dealing with Children.

Practice Standard 23 below sets out the actions you must take to prepare for the final hearing.

### **23 Practice Standard: Before the final hearing**

23.1 The SR must:

- meet with the child and have an up to date understanding of their views
- tell the child their (the SR's) views and, if they are different to the child's views, explain why and understand and be able to convey the child's response
- start the process of preparing the child for the end of the proceedings and the SR-child relationship, approaching the conversation in the way that best reflects the SR's knowledge of and existing relationship with the child
- consider how the child's views will be put before the Court
- find out if the child wants to attend the hearing and/or give evidence.

23.2 The SR must:

- apply for a grant of aid for final hearing preparation
- read all affidavits, case outlines and summonsed material from the parties
- file affidavits from any independent witnesses being called by the SR and confirm their availability for cross-examination.

23.3 The SR must:

- consider calling a SR conference to explore a full settlement or settlement of discrete issues
- form and express a view about the current issues and communicate this to the parties; where the SR's view is contingent on certain evidence or findings, make this clear.

23.4 The SR must:

- prepare a case outline document
- prepare draft orders and circulate to all parties.

23.5 The SR must:

- prepare evidence in chief and cross examination that tests the evidence on the issues and law that the Court will need to determine
- in preparing evidence and cross examination, avoid causing unnecessary damage to the child's relationships and to the family's relationships. Where evidence or cross examination is likely to damage relationships, seriously consider whether the evidence is relevant and necessary to the case and whether there are other options which may avoid negative outcomes
- if intending to object to any evidence, communicate this in writing to the party and attempt to reach agreements about the evidence
- where there are self represented parties, consider whether to call or test evidence which would normally be called or tested by a party
- make a final hearing plan outlining the witnesses to be called and a time estimate of each, and circulate this to all parties
- assist the parties in reaching an agreement about the final hearing plan
- give witnesses written notice that they will be required to give evidence, providing as much information as possible about when and for how long they will be required



- where required, file a summons requiring a witness to give evidence (e.g. for reluctant witnesses or where an employer requires a summons for an employee)
- give all parties written notice of which of their witnesses the SR requires for cross examination, for approximately how long they will be needed, and what documents each witness must bring with them – this may require the SR to summons hospital records, or the child's school file.

23.6 The SR must prepare opening and closing statements which link the evidence the SR will be calling to the issues and law.

## 7.38 At the final hearing

Practice Standard 24 below sets out what you will need to present and/or provide to the Court at the final hearing.

### **24 Practice Standard: At the final hearing**

24.1 The SR must:

- inform the Court of their views on the first day of hearing and, where appropriate, provide details of draft orders.

24.2 The SR must:

- make a brief opening statement, outlining their views and how the evidence they submit will support those views
- address the Court on the views of the child and what evidence supports and does not support those views
- in eliciting evidence and in cross-examining, avoid causing unnecessary damage to the child's relationships and to the family's relationships. Where evidence or cross-examination is likely to damage relationships, seriously consider whether the evidence is relevant and necessary to the case and whether there are other options which may avoid negative outcomes
- in cross-examination, make sure that all questions relate to the issues to be determined – questions must test the evidence to elicit evidence that both supports and does not support the SR's views
- keep notes on the evidence and identify the evidence they will use in closing submissions
- update closing submissions at the end of each day to include the evidence identified during each day of the hearing
- keep the parties and the Court updated regarding any changes to witness availability or changes to time estimates.

24.3 The SR must:

- make the Court aware of any significant events coming up for the child, particularly where there will be an adjustment or transition
- make the Court aware if either interim or restraint orders or other orders will be required to support the child.

24.4 The SR must consider settlement opportunities and seek leave of the Court to negotiate wherever appropriate – this may involve a request to stand the matter down to allow negotiations, or to allow negotiations to occur while a witness is under cross-examination

24.5 The SR must make closing submissions which draw together all the evidence relevant to the issues and express a final view based on that evidence.

24.6 The SR must, if their view has changed, immediately inform the parties. In informing the Court, the SR must outline the basis for the change in view.

24.7 The SR must have a final meeting with the child and, if necessary, ask the Court to extend their appointment to allow for this.

## 7.39 Extension of the SR's appointment

The extension of your appointment can be agreed during negotiations, or can be suggested by the Court. Where it is agreed, all parties will need to make submissions to the Court as to why the appointment should be extended. Extension is subject to a grant of aid being made by a Tasmania Legal Aid Grants Officer (Grants Officer), though usually the Court's request is taken into account. Most orders for extension are prefaced 'Subject to a grant of Legal Aid funding'.

The extension of your role may be appropriate:

- where the child's welfare needs independent monitoring, particularly where there are changes or adjustments for the child
- where longterm care and protection orders are made and the child needs support and assistance to adjust to this
- where restoration is likely, and a plan for restoration has been or will be made
- where the child requires therapeutic support, to ensure that this occurs
- where the parents need therapy/treatment/education to enable restoration, to see if the parents are proactively addressing concerns
- to ensure that appropriate access is occurring between the child and their parents, and between siblings
- to monitor plans for progression of access and the making of/following the readiness for a restoration plan
- to check in with the child about how they are and how their care and access/restoration arrangements are going.

Where the parties would like your appointment extended, and where the Court is likely to order this,<sup>117</sup> you should email the Grants Officer, before any order for extension is made, to ask if Tasmania Legal Aid will fund the extension.

At the time of, or preferably before the making of a final order, you need to make an independent determination as to whether you can value add to the child's representation during the course of the order, or for a relevant specific period of time (shorter than the length of the order).

Where you determine that your role should continue, you need to ensure that the continuation of your appointment is an order made by the Court and documented in the order.

You need to ensure there is a clear outline of your responsibilities during the continued appointment, so you can meet these responsibilities and expectations.

Part of your responsibilities includes monitoring whether access/restoration plans are being followed and taking action if this isn't happening. Where issues with compliance arise, you should:

- urgently convene a SR conference and attempt to negotiate a resolution
- ask one of the parties to make an application under s 48 of the Children, Young Persons and Their Families Act where conferencing does not resolve the issue
- make an application yourself under s 48 if no other party is prepared to make an application, and it is in the best interests of the child for this issue to be resolved.

Once your appointment is extended, you must resubmit all the actions required and action those resubmits so that all meetings and reviews occur on time.

An extended order/notation might look like this:

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<sup>117</sup> Not all Magistrates are prepared to make an order extending the SR's appointment.

### **Example order/notation**

That subject to Legal Aid funding, the order for a Separate Representative for the child(ren) continue for a period of \_\_\_\_\_months/years/duration of the order.

#### **Notation:**

That subject to Legal Aid funding, the Separate Representative will conduct reviews at a Separate Representative Conference every three months after the making of the order, and the agenda will include the following items.

- What is working well.
- What is not working well.
- What needs to happen next.
- A review of the access arrangements, including their nature, frequency and duration.
- Consideration of .... (parental involvement in school and other extracurricular activities).
- The frequency of future Care Team meetings
- Any other agenda items –
  - that the parties agree to attend the Separate Representative Conferences as scheduled
  - that the Separate Representative will be invited to attend/participate in Care Team meetings held during the course of the order.

### **25 Practice Standard: Extensions**

25.1 In seeking an extension of the SR's appointment, the SR must:

- make submissions to the Court about how the SR can add value to the child's representation during any extension of appointment
- ensure that there is a clear outline of the tasks the SR will perform during the extended appointment
- make sure that details of these tasks are communicated to the child, the Court, and to the parties; this will clearly identify the SR's responsibilities and enable the management of expectations.

## **7.40 After the final hearing**

### **Final meeting with the child**

It is best to meet with the child to conclude your relationship. The final meeting is like an exit interview and may give the child a sense of closure.

Even if you have only had a limited relationship with the child due to their age or particular circumstances, you should still consider carefully how to conclude the relationship with the child. The end of the relationship must not come as a surprise or create distress for the child and/or their family.

You might be only one of many professionals in the child's life and communication may have been limited or difficult during the case. For a different child, you may have become a consistent, supportive adult presence in their life. Be particularly sensitive to the needs of the child, discuss any support needs they have, and who they can talk to about this.

## Communicating orders to the child

It is very important that you arrange for orders to be explained to the child. This can occur in a number of ways:

- in a meeting with you
- in a meeting with you and the child's caseworker
- in a meeting with you and another expert or professional
- by the Magistrate (if the child is in Court when the orders are made)
- in limited circumstances, by an expert or professional without you being present.

Once orders are made, you must meet with the child as soon as possible to explain them, in developmentally appropriate language. If you expect that the child will be unsatisfied with the orders, you may seek the support of an expert/professional to help you communicate the orders to the child.

A child may not want to have a final meeting with you, particularly if the child does not agree with the outcome of proceedings. If the child declines to meet with you for a final meeting, you should arrange for another person to explain the orders and consider writing a card or a brief letter to the child via their guardian to conclude the relationship. You must review all published orders to ensure that they conform to the Court's declared orders.

In your meeting with the child, discuss the order and its consequences and check that the child understands what is to happen next. Always communicate the outcome of the case to the child. This must be done verbally. Be careful to respect the child's relationship with their parents when discussing the orders or conditions, for example, if a child asks why the orders contain certain conditions. Some older children will find a written explanation of the orders helpful. This is something that can be explored during your conversation, and is not a substitute for talking with the child.

Sometimes, the child may prefer someone else to explain the orders to them in developmentally appropriate language. This might be the case for younger children, depending on their age and developmental level. You must be the person to decide who explains the orders to the child, because you will consider the child's views, safety and best interests. It is important not to be influenced by others' views about who is to speak with the child about the orders unless those views are aligned with the child's. It is part of your role to help identify an appropriate person. This could be a counsellor, treating psychologist or other professional working with the child. The child's carer/s are not independent and therefore are not usually the right people to explain the orders to the child.

Where the decision of the Court is not in line with what the child wants, take extra care as you have this conversation with the child, as they may be upset and express this in a range of different ways. Take time to discuss with the child:

- the Court's decision and reasons for this
- any particular issues causing the child distress
- who might help to support the child following your discussion.

### **Practice Standard 26: Final meeting and explaining orders**

26.1 When the case concludes, the SR must:

- have a final meeting with the child
- explain the final orders to the child
- seek support from an independent party to explain the orders to the child if needed.

## 7.41 Advocating for services and support for the child

It is important to consider the support needs of the child and their family throughout the proceedings and following the final order. Be prepared to advocate for services and supports for the child and, where necessary, for their family. For example, you may need to advocate for:

- appropriate therapeutic and medical services for the child<sup>118</sup>
- CSS funding for services for the child and their family
- transport services so the child or parents can see each other and attend therapy, medical appointments and support services
- educational needs, including staying at a school, moving to a new school (including specialist schools) or additional educational support
- services or support to be provided to a parent that will address protective concerns.

### 27 Practice Standard: Services and support for the child

27.1 The SR must advocate and seek orders for relevant and appropriate services and supports for the child, including, if necessary, an extended period of support from the SR in a monitoring role.

## 7.42 Conclusion of proceedings

At the conclusion of the proceedings, you can write to witnesses and thank them for their assistance and cooperation. Where your role is to continue, write to the parties explaining what steps you intend to take during your extension, when they can expect to hear from you, and what they should do if problems arise.

## 7.43 Appeal or review of decisions

### Appeal of case planning decisions by CSS

If the child expresses dissatisfaction with a case planning decision by CSS at any point during the case, you can explore, with the child, making an application to review that decision.

When discussing this with the child, you should explain:

- their right to have the decision reviewed
- the process
- possible outcomes.



<sup>118</sup> This can be particularly challenging in regional areas, where there are few services and long waiting lists.

Because you operate on a best interests model, you must make the application to review the decision on the child's behalf. Before making the application, you must be satisfied that the application serves the best interests of the child. The first step of the process is to seek an internal review of the decision carried out by CSS. If you and the child are not satisfied with this decision, you can take further steps as outlined on the Department for Education, Children and Young People website.<sup>119</sup>

It is very rare for a SR to make review applications. You will need to satisfy the Grants Officer of the following:

- that the application serves the best interests of the child
- that the child wants to apply for a review
- that there are no other means to achieve the desired outcome
- that the process is likely to deliver an outcome that addresses the issues in the review
- that it is not the case that by the time the review is determined, the issue will no longer be relevant
- that the application is a good use of public funds
- that there will be a prospect of success.

### **Appeal of the Court's decision**

It is rare for a SR to appeal the Court's decision. When assessing the decision to appeal, you should consider whether:

- the child wants to appeal the Court's decision
- the decision is contrary to, or inconsistent with, evidence about risk
- the decision is contrary to, or inconsistent with, evidence about the best interests of the child
- the decision is inconsistent with the facts that were before the Court
- the decision is contrary to the views of the child and the Court has not given reasons for the decision or has given inadequate reasons
- there has been an error of law which has led to a decision inconsistent with the risk, the child's best interests, or their clearly expressed views.

Before considering whether to appeal a decision, you must talk to the child and gather their views. For example, even if a decision appears to be wrong at law, the child might be satisfied with the outcome and not want to appeal. The child might want the proceedings to end and to not drag on through an appeal.

In deciding whether to apply for aid for an appeal, you should find out if any other party intends to appeal. If you do apply for aid, the application should set out in detail the proposed grounds of appeal, and an assessment of the prospects of success and/or the public interest considerations.

When applying for aid for an appeal, you will need to inform the Grants Officer of the child's view about the appeal. You will need to satisfy the Grants Officer of the following:

- that the application serves the best interests of the child
- that there are no other means to achieve the desired outcome
- that the process is likely to deliver an outcome that addresses the issues in the appeal
- that it is not the case that by the time the review is determined, the issue will no longer be relevant
- that the application is a good use of public funds
- that there will be a prospect of success.

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<sup>119</sup> Refer to the Department for Education, Children and Young People website at [www.decyp.tas.gov.au/children/out-of-home-care-in-tasmania/child-advocate/is-something-not-ok/](http://www.decyp.tas.gov.au/children/out-of-home-care-in-tasmania/child-advocate/is-something-not-ok/)

### **Practice Standard 28: Reviews and appeals**

28.1 Before applying for aid to review a CSS decision, the SR must consider whether:

- the application serves the best interests of the child
- the child wants to apply for a review
- there are no other means to achieve the desired outcome
- the process is likely to deliver an outcome that addresses the issues in the review
- by the time the review is determined, the issue will no longer be relevant
- the application is a good use of public funds
- there will be a prospect of success.

28.2 In applying for aid to review the Court's decision, the SR must address:

- if the decision is contrary to the views of the child and the Court has not given reasons for the decision, or has given inadequate reasons
- if the decision is contrary to, or inconsistent with, evidence about risk
- if the decision is contrary to, or inconsistent with, evidence about the best interests of the child
- if there has been an error of law which has led to a decision inconsistent with the child's clearly expressed views or best interests
- if the decision is inconsistent with the facts that were before the Court
- that the application serves the best interests of the child
- that there are no other means to achieve the desired outcome
- that the process is likely to deliver an outcome that addresses the issues in the appeal
- whether, by the time the appeal is determined, the issues will still be relevant
- that the application is a good use of public funds
- if there will be a prospect of success.

## **7.44 Potential Conflicts**

### **Representing multiple children - general**

Many applications will involve more than one child from the same family. You will usually represent a sibling group, unless there is a real or potential conflict of interest preventing you from representing all of the children.

Unless one of the children is refusing a one-on-one meeting, you should have one-on-one conversations with each child.

When you are representing a sibling group, you will need to consider whether the children have competing interests or views, including that:

- information provided by CSS about protective concerns conflicts with the children's views
- the siblings do not have the same parents
- the children are in conflict with each other
- the applications have been made on different grounds or there are substantially different facts relating to the siblings
- the applications involve allegations of abuse between the children
- the applications have been made on the same ground, but relate to actual harm for one or more siblings, and likelihood for others.

You must carefully consider the issues involved and the views of the children, and determine if you can



properly represent the best interests of each child. If not, you should advise the Court of the conflict and the reasons for it. You must continue to consider these issues throughout the proceedings.<sup>120</sup> The Court may make an order for an additional SR or, in rare cases, for a direct representative.

### **Representing multiple children in one family with different views**

You may find a conflict arises where you are representing multiple children (siblings) with different views.

Questions to consider include the following:

- Can you adequately present the views of each of the children?
- Is each child's voice heard and their views considered regarding their best interests?
- Are there strongly divergent views within the sibling group?
- Have the siblings been separated and are with separate carers? Are some of the siblings still at home? Does this greatly affect their views?

If each child's views are gathered and can be put before the Court in admissible form, separate SRs may not be needed. If this is not the case, you must raise the situation with the Court, and an additional SR may be appointed.

### **Child's views differ to siblings and/or the SR's view of best interests**

There may be circumstances where a child's views vary greatly to those of their siblings. For example, the children may have had different experiences at home. One child may have reported abuse and been removed from home, while their siblings have stayed at home and are aligned with their parent's views. This may have created a rift in the sibling group.

There may be times where the child's views also differ considerably to your view of what's in the best interests of the child. For example, in the case above, you may have formed the view that the whole sibling group is at risk, but the siblings that are aligned with the parent have a strong desire to remain at home.

If this occurs, consider whether the child needs a separate SR. Speak to the child about this and ask how they feel about it. You should then consider all the factors and the child's views (including about a separate SR) and decide whether to make an application for a separate SR.



#### **Practice Standard 29: Potential conflicts**

29.1 The SR must actively consider, throughout the proceedings, whether there is a conflict in representing a sibling group.

29.2 If the SR believes that a conflict may have arisen, they should speak to the children about it and bring it to the Court's attention. If appropriate, they (the SR) should make an application for another SR or a direct representative.

<sup>120</sup> For example, the sibling group may have a common view at the beginning of the matter, but fall into conflict and have radically different views towards the end of a matter.

## Restraining and discharging the SR

It is possible for a party to apply to:

- restrain you, as the SR, from accepting or continuing your appointment
- discharge you as the SR altogether.

### Restraining the SR

You should consider the basis of the opposition and whether at law:

- there is a conflict of interest
- there is apprehension of bias
- the parent/s have objectively and validly called into question your conduct (the Magistrate will decide this).

If you need advice or an independent opinion about the application, contact Tasmania Legal Aid or a senior SR or a practitioner on the Law Society of Tasmania's Senior Practitioner list.<sup>121</sup>

Where conflict or bias is accepted, contact the Grants Officer as soon as possible and request the appointment of a new SR. If you have formed a relationship with the child, make sure that you explain what has happened and introduce the new SR.

### Discharging the SR

When facing an application to discharge you, seek advice or an independent opinion about the merits of the application. You must consider, as objectively as possible, if there has been any malpractice – incompetence, unsatisfactory conduct, bias or other breach of a solicitor's duty.

If you are facing an application to discharge you, you can ask Tasmania Legal Aid to fund counsel to represent you.

## 7.45 Criticism of the SR

### General information

You may receive criticism from the solicitor for a party or from self-represented parties (or, occasionally, from third parties).

It is important to distinguish an enquiry about your practice from a criticism of your practice. Sometimes, parties simply need you to explain why you have or have not done something. A proper explanation will often resolve the enquiry.

Some of the criticisms you may experience as the SR include that you:

- have acted on personal views rather than evidence-based views, e.g. by making value-based statements such as 'siblings must always live together' or 'children need their Mum'
- are focused on the child's relationship with only one parent, without full consideration of the child's best interests
- are 'part of a system' which sides with a particular group, e.g. you may hear things such as 'You just do what CSS says'.

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<sup>121</sup> Refer to the Senior Practitioner list at [www.lst.org.au/senior-practitioners-list/](http://www.lst.org.au/senior-practitioners-list/)

## Managing criticism

If you are criticised, take the criticism seriously, acknowledge it, and consider what all parties can do to remedy it.

The criticism may be valid; for example, that you have not met with the child, spoken with the child's carer/s, or have failed to speak with the child's school.

Reflect on the criticism. If necessary, seek out guidance from a senior SR or a practitioner on the Law Society of Tasmania's Senior Practitioner list.

Address the criticism. If you accept the criticism and form a view that you cannot independently and impartially represent the best interests of the child, you must raise this with the Court and seek to be discharged.

If you reject the criticism, clearly communicate this to the parties. You may wish to tell the party that they can apply to the Court to have you removed as the SR. You should communicate your proposed response to any application.

### **30 Practice Standard: Criticism of the SR**

30.1 Where a SR receives criticism, they must provide a response.

30.2 If the SR accepts the criticism and forms a view they cannot independently and impartially represent the child, they must raise this with the Court and seek to be discharged.

30.3 If the SR rejects the criticism, this must be clearly communicated to all parties.

## 7.46 Child-SR relationship – contact, complaints, termination

Issues may arise in the relationship between you and the child. Reasons for this can include:

- a child thinking that you are not representing their views properly
- a child thinking that you are aligned with CSS
- difficulties in communication
- where your assessment of best interests differs from the child's views and they cannot be reconciled.

Things you can do to try to avoid these issues include clearly explaining your role at your first meeting with the child and maintaining regular contact with the child throughout proceedings.

Where an issue does arise, first try to resolve this directly with the child. Criticism from the child does not need to lead to a breakdown of the relationship.

Take any concerns raised by the child seriously and consider whether the issues compromise your ability to fulfil your role. Can you properly put forward the views of the child notwithstanding the criticism? It is important that you consider the child's views, and act impartially, despite the criticism.

If you believe the child's best interests would be served by the appointment of a different representative, you must raise this with the Court. You also must let the child know that they can make a complaint to Tasmania Legal Aid's Associate Director of Legal Services if they are unhappy with you as their SR. You can help the child identify a different adult to help them with this process.

### **Practice Standard 31: Child-SR relationship – contact, complaints and termination**

31.1 The SR must maintain regular contact with the child during the course of their appointment.

31.2 If the child chooses to make a complaint about the SR, the SR must direct the child to the Associate Director of Legal Services at Tasmania Legal Aid.

31.3 If the relationship between the child and the SR breaks down, the SR must consider if the child's interest would be served by the appointment of a different SR and, if so, raise this with the Court.

## **7.47 Your safety**

You must acknowledge the highly emotive nature of child safety proceedings and the risk associated with being part of a process that can lead to a child being removed from a parent. While threats to SRs are rare, they can happen.

Consider the following measures to protect and manage your safety:

- Consider removing your name from the electoral roll and becoming a silent elector.
- Don't have your private phone numbers listed.
- Avoid having your full/real names on social media platforms.
- Consider a personal safety plan for your Court appearances and for conferences.
- Report any threats from parties to the police.
- Engage in professional discussion only with other counsel at the bar table and don't disclose personal information.

## **7.48 Commissioner for Children and Young People – Tasmania**

The Commissioner for Children and Young People is an independent statutory officer established under the *Commissioner for Children and Young People Act 2016* (Tas). At its very essence, the Commissioner's role is to promote and protect the rights and wellbeing of all children and young people in Tasmania aged less than 18 years.

The Commissioner for Children and Young People Act sets out the guiding principles, functions and powers of the Commissioner. The Commissioner's general functions include the following:

- Advocating for all children and young people in Tasmania generally, with a particular focus on, but not restricted to, those involved with the child safety system and/or the youth justice system.
- Advocating for children and young people detained under the *Youth Justice Act 1997*. The Commissioner regularly visits Ashley Youth Detention Centre to meet with the young people who are detained there.
- Researching, investigating and influencing policy development into matters relating to children and young people generally.
- Promoting, monitoring and reviewing the wellbeing of children and young people in Tasmania generally. The term 'wellbeing' in relation to children and young people includes the care, development and education, and the physical, emotional and psychological health and safety of children and young people.
- Promoting and empowering the participation of children and young people in the making of decisions or the expressing of opinions on matters that may affect their lives. This includes encouraging and promoting the establishment by organisations of appropriate and accessible mechanisms for the participation of children and young people in matters that may affect them.

The Commissioner must act according to the overarching principle that the wellbeing and best interests of children and young people are paramount, and observe any relevant provisions of the UN Convention on the Rights of the Child. Noting the importance of the overarching principle above, the Commissioner's work is also undertaken according to the following principles:

- Children are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation.
- The interests and needs of children and young people who are disadvantaged for any reason, or vulnerable, should be given special regard and serious consideration.
- The contributions made by children to the community should be recognised for their value and merit.
- The views of children on all matters affecting them should be given serious consideration and be taken into account.
- Parents, families and communities have the primary role in safeguarding and promoting the wellbeing of children and should be supported in carrying out their role.

Importantly, the Commissioner may initiate an inquiry or investigation into systemic matters and has powers to compel the production of information and documents. The Commissioner may also refer information to relevant authorities, including Tasmania Police, the Ombudsman and the Custodial Inspector.

The Commissioner is responsible for providing independent oversight of the Tasmanian outofhome care system through the outof-home care monitoring program. The Commissioner is not a complaint handler and does not have the authority to investigate or review the circumstances of, or decisions relating to, individual children (unless requested to do so by the Minister for Education, Children and Youth). The Commissioner may, however, investigate or otherwise respond to an issue that affects the wellbeing of children more generally, even if it is raised through a matter relating to a specific child.<sup>122</sup>

## 7.49 Child Advocate – Tasmania

You can consult with the Child Advocate for children in care.<sup>123</sup> This is a role within the Department of Communities Tasmania, created to provide additional oversight and monitoring of the experiences children and young people have in care in Tasmania.

The Child Advocate can advocate for individual children as well as for improvements to the child safety system. The Child Advocate can become involved to ensure that decision-making and subsequent actions/plans are in the child's best interests.

The child, or any adult in the child's network, including you, can make a referral to the Child Advocate if it is believed that the rights of the child are not being upheld. You should consult with the child before making that referral.

The Child Advocate can:

- provide advice to adults on how to ensure a child's participation in decisions
- directly engage in consultation processes with a child
- directly consult with important adults in a child's life and make recommendations regarding decisions and plans considered to be in the child's best interests.

It is possible for you and the Child Advocate to work together, and how this looks will depend on the presenting issues and/or pre-existing connections the child may have with either role

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<sup>122</sup> For more information about the Commissioner's OOH Monitoring Program or the Commissioner's role more generally, refer to [www.childcomm.tas.gov.au/](http://www.childcomm.tas.gov.au/) or contact the Commissioner's office on 03 6166 1366.

<sup>123</sup> For more information about the Child Advocate service, refer to [www.decyp.tas.gov.au/children/out-of-home-care-in-tasmania/child-advocate/is-something-not-ok/](http://www.decyp.tas.gov.au/children/out-of-home-care-in-tasmania/child-advocate/is-something-not-ok/)

Examples of how this work can look include that:

- the Child Advocate may provide advice to you on the particular needs and experiences of the child that could impact on their participation
- the Child Advocate may facilitate your connection with the child, with the Child Advocate acting as a familiar person at a consultation to support a relationally safe space
- the Child Advocate may act to aid the translation of information in ways that helps the child's understanding of either CSS processes or the interpretation of legal processes.

## 7.50 Grants of aid

On an administrative level, you must ensure that all expert accounts and other SR disbursements have been paid. You will also need to cost and claim grants of aid.

## 7.51 Reporting and record-keeping requirements

### Reporting to the Tasmania Legal Aid Grants Officer

The Grants Officer might ask you for a report on the proceedings and positions of the parties. If that happens:

- set out your views and summarise the evidence supporting those views
- don't make subjective assessments that are not based on evidence – your views can have an impact on the Grants Officer's assessment of a party's merit.

### SR's file

Throughout proceedings, make sure that you:

- keep files (including electronic files) organised in such a way that if anyone else assumes management of, audits, or reviews the file, that person can immediately find key information, including important dates and deadlines
- ensure that the file contains documented forensic and legal analysis of the case as well as the case plan and the child's views
- ensure that all important documents are easily identifiable in the file, and the file is maintained in chronological or other logical order
- clearly indicate any document in draft form
- retain files in accordance with legislative requirements.

### Destruction of documents

Since December 2019, a disposal freeze applies to all organisations or agencies providing services to children, as defined in the *Archives Act 1983* (Tas).<sup>124</sup> This means that all records that contain information about children, services provided to them, and employees that provide the service must be kept until 2029. The disposal freeze was issued to allow identification of records that may be relevant for future disclosures of child abuse.<sup>125</sup> Once the disposal freeze has ended in 2029, you will have an obligation to keep the file and its documents for a minimum of seven (7) years from the conclusion of the case.<sup>126</sup>

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<sup>124</sup> Refer to the *Archives Act 1983* (Tas) at [www.legislation.tas.gov.au/view/whole/html/inforce/current/act-1983-076](http://www.legislation.tas.gov.au/view/whole/html/inforce/current/act-1983-076)

<sup>125</sup> Refer to the Notice of a disposal freeze on records relating to children at [www.informationstrategy.tas.gov.au/Resources/Documents/Disposal%20freeze%20for%20records%20relating%20to%20children%20-%20CIRCSA%20toolkit.pdf](http://www.informationstrategy.tas.gov.au/Resources/Documents/Disposal%20freeze%20for%20records%20relating%20to%20children%20-%20CIRCSA%20toolkit.pdf)

<sup>126</sup> Refer to s 650, *Legal Profession Act 2007* at [www.legislation.tas.gov.au/view/html/inforce/current/act-2007-024](http://www.legislation.tas.gov.au/view/html/inforce/current/act-2007-024)

As a SR, you may be required to keep files for more than seven (7) years. According to the Legal Profession Board of Tasmania, factors to be considered in relation to keeping a file for a longer period include 'the age of the child or children, the type of case or the type of documents contained in the file, possible taxation implications and any statutory limitation period that might be relevant'. Where a minor is concerned, lawyers generally keep the file until seven (7) years after the minor has reached 18 years of age.<sup>127</sup>

### **Practice Standard 32: Reporting and record keeping requirements**

- 32.1 If requested, the SR must provide a report to the Tasmania Legal Aid Grants Officer that contains a summary of their views and the evidence both supporting and not supporting those views.
- 32.2 The SR's file must be well organised, well documented, labelled, and satisfy legal professional requirements.
- 32.3 The SR file must be retained as per legislative requirements.
- 32.4 The SR must keep all files and records until 2029 (the disposal freeze).
- 32.5 After the disposal freeze has ended, the SR must keep all files and records until seven (7) years after the child has reached 18 years of age.

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<sup>127</sup> Refer to the Legal Profession Board of Tasmania's *File Ownership and Handling* at [lpbt.com.au/wp-content/uploads/2020/10/File-ownership-and-handling-review-24.09.20.pdf](http://lpbt.com.au/wp-content/uploads/2020/10/File-ownership-and-handling-review-24.09.20.pdf)

# 8 Acknowledgements & appendices

## 8.1 Acknowledgements

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## Appendix 1: Example letter to child, including biography and information about SR's role

[insert date]

[Child's name]

Via email

Hi [Child's name]

I would like to introduce myself. My name is [your name] [pronouns] but my friends usually call me [insert informal name].

I have been asked to help the Court decide about your living arrangements. I know that you are not a young child anymore and may have your own thoughts and views about your living arrangements. If you want to tell me about your views, we can talk about whether you would like me to tell the Court about them.

I have put in a photo of me. [say something about the photo].

I have also put in a copy of my 'Working with vulnerable people' card. This card means that I am allowed to work with children.

If you would like to know a bit about me [insert information below]:

[Example]

- I am a lawyer.
- I love working with children and helping them.
- I have 2 children of my own.
- My favourite animal is my dog, Flower. I have enclosed a picture of Flower. She comes with me to my office sometimes.
- I love AFL and go for Richmond.

You and I will be meeting on [insert date] at [insert location].

If you would prefer to meet somewhere else or in another way (phone/video), just let me know. My number is [insert phone number]. Or you can email me at [insert email address]. When we do meet, we can talk about how and where we can meet next time.

I look forward to meeting you and will do my best to answer any questions you have.

[your name]

**Appendix 2: Separate Representative's (SR) questionnaire about the child**

**For the parent/s**

Completed by \_\_\_\_\_

Child's name: \_\_\_\_\_ Pronouns: \_\_\_\_\_

Relationship to child: \_\_\_\_\_

Please note: If you need more space to write your answers, please attach additional pages to the questionnaire.

1. Is your child living with you?  
 Yes     No (If no, go to Question 4)

2. Who else is living at this address?

Name	Date of birth	Relationship to child

3. How long has your child lived at this address?

\_\_\_\_\_

4. If your child does not live with you, what are the arrangements to spend time with your child?

Supervised:  Yes     No

When? How often?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**5.** Please provide the details of medical support for your child.

Name	Address	Telephone number

If you are the child's guardian, do you give consent for the lawyer to speak to the doctor?

Yes     No

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

**6.** Please give the details of any allied health professionals working with your child (such as counsellors/social workers, speech therapists, occupational therapists, child psychologists)

Name	Address	Telephone number

If you are the child's guardian, do you give consent for the SR to speak to allied health professionals?

Yes     No

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

**7.** Does your child have any additional needs? (such as disability, diversity, education, LGBTIQ+)  
Please give details.

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8. Are there any Court orders relating to your child, in any Court, in Tasmania or any other state, which were made before or after the current proceedings started? If so, please provide details.

Date of order	Name & place of Court	Details of order made (If you don't know the exact date, please give a general idea of the date)

9. Have you experienced or been affected by family violence?

Yes     No

If yes, please provide details.

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10. Has your child experienced or been affected by family violence?

Yes     No

If yes, please give details.

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**11.** Are there any Family Violence Orders made in Tasmania or any other state involving yourself, the other party/parties or your child? If so, please give details.

Date of order	Name & place of Court	Details of order made

**12.** Do you have children from any other relationship?

Yes     No

If yes, please give details.

Name	Date of birth	Who does the child live with?	If not living with you, what time do you spend with the child (when and how long)?

**More about you and your child**

**13.** Was your child born in Australia  Yes  No  
If No, where was the child born? \_\_\_\_\_  
When did the child start living in Australia? \_\_\_\_\_

Where you born in Australia  Yes  No  
If No, where you born? \_\_\_\_\_  
When did you start living in Australia? \_\_\_\_\_

**14.** Does your child identify as Aboriginal or Torres Strait Islander?  
 Yes  No  Prefer not to say

Does you identify as Aboriginal or Torres Strait Islander?  
 Yes  No  Prefer not to say

**15.** Does your child identify as being culturally and/or linguistically diverse (for example: was the child born overseas and/or is English not their first language)?  
 Yes Details \_\_\_\_\_  
 No  Prefer not to say

Does you identify as being culturally and/or linguistically diverse (for example: was the child born overseas and/or is English not their first language)?  
 Yes Details \_\_\_\_\_  
 No  Prefer not to say

**16.** Does your child need an interpreter?  
 Yes Lanugage \_\_\_\_\_  
 No

Does you need an interpreter?  
 Yes Lanugage \_\_\_\_\_  
 No

**17.** Do you have suggestions on where your child would be comfortable meeting with their SR?  
(SR's office, school, park, café, therapist's/counsellor's office)

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**18.** Please tell us about your child (interests, things you like to do together, what you'd like the SR to know)

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**19.** Is there any other information your child's SR needs to know before meeting your child?

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Thank you for completing this questionnaire.

**Appendix 3: Separate Representative's (SR) questionnaire about the child**

**For the carer/s**

Carer/s, please note:

- this is an optional questionnaire and you are under no obligation to respond – information that you provide may be shared with others (if it is in the child's best interests)
- you can fill in this questionnaire and return it to the child's SR, or call them to give your answers over the phone/video
- any answers you do provide would be very useful for the SR and will help them better understand the child's needs
- if you need more space to write your answers, please attach additional pages to the questionnaire.

**20.** Your name: \_\_\_\_\_

Foster carer/Kinship carer (please circle)

If kinship carer, what is your relationship the child? \_\_\_\_\_

Child's name: \_\_\_\_\_ Pronouns: \_\_\_\_\_

**21.** Can you tell us about the child's living arrangements and your household.

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**22.** How long has the child lived with you?

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**23.** How do you support the child's connections with their family?

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**24.** How do you support the child's educational needs?

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**25.** What additional needs does the child have that you support?

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**26.** Does the child identify with a particular community? (Such as Aboriginal, Torres Strait Islander, culturally diverse, linguistically diverse, LGBTIQ+)

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**27.** Who are the medical professionals working with the child?

Name	Role

**28.** Who are the allied health professionals working with the child? (such as counsellors/social workers, speech therapists, occupational therapists, child psychologists)

Name	Role

**29.** Do you have suggestions on where the child would be comfortable meeting with their SR ? (SR's office, school, park, café, therapist's/counsellor's office)

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**30.** Please tell us about the child (interests, things you like to do together, what you'd like the SR to know)

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**31.** Is there any other information the child's SR needs to know before meeting the child?

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**32.** How and when is best to contact you?

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Thank you for completing this questionnaire.

**Appendix 4: Separate Representative's (SR) questionnaire for the child's caseworker**

Caseworker/s, please note:

- as the child's caseworker you have important information and insights about the child's needs
- this information helps the child's SR plan the child's participation in Court proceedings and find out how best to engage with the child
- there are many ways for you to provide this information to the SR –
  - filling out and sending back the questionnaire below
  - telling the SR over phone/video
  - telling the SR before or after meetings/conferences/Court
- if you need more space to write your answers, please attach additional pages to the questionnaire.

**33.** Your name: \_\_\_\_\_

Child's name \_\_\_\_\_

Pronouns \_\_\_\_\_

How long have you been working with the child? \_\_\_\_\_

Is there likely to be a change in the child's caseworker in the near future?

Yes     No

**34.** What can you tell us about the child, their personality and strengths?

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**35.** What can you tell us about the child's living arrangements?

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**36.** What access is the child having with their family?

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**37.** What are the child's schooling arrangements?

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**38.** What are the child's extracurricular activities?

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**39.** What additional needs does the child have?

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**40.** Does the child identify with a particular community? (such as Aboriginal, Torres Strait Islander, culturally diverse, linguistically diverse, LGBTIQ+)

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**41.** Who are the medical professionals working with the child?

Name	Role

**42.** Who are the allied health professionals working with the child? (such as counsellors/social workers, speech therapists, occupational therapists, child psychologists)

Name	Role

**43.** Do you have suggestions on where the child would be comfortable meeting with their SR ?  
(SR's office, school, park, café, therapist's/counsellor's office)

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**44.** Does the child face any challenges or have any triggers that may impact on their meeting with the SR?

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**45.** Please tell us about the child's interests.

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**46.** Is there any other information the child's lawyer needs to know before meeting the child?

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Thank you for completing this questionnaire.

File Name:	File Number:
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**Part A: Open file and start proceedings**

STAGE	TASK	DETAILS & DATE
OPEN FILE	Appointment by Court	1. Conflict check
		2. Notify key parties and stakeholders: <ul style="list-style-type: none"> <li>• Magistrates Court District Registrar</li> <li>• child's parent/s and their legal representatives</li> <li>• Child Safety Legal Group (Department of Public Prosecutions, who represent CSS – Department of Communities)</li> <li>• child's school</li> </ul>
	Immediately following appointment	1. Request and read copies of all filed documents 2. Inspect CSS file 3. Send out questionnaire to parent/s and carer/s and authorities if relevant 4. Include information for the child (role and bio) and information for parent/s 5. Meet with the child's caseworker 6. Meet with the child 7. Make plan with the child for their participation and ask if they want to meet the Magistrate and/or attend each Court and/or conference event
	Case planning	1. Make list of issues and risk factors 2. Safety planning 3. Identify and contact independent witnesses, including foster carers, schools, support services etc. 4. Consider relevant material for summons 5. Consider if expert evidence is required and who will call that evidence 6. Consider if interim or procedural orders are required and who will make that application 7. Consider mediation/conferencing options
STAGE	TASK	DETAILS & DATE
	Meet with professionals and other witnesses, e.g. school, childcare, therapist, counsellor. Consider best way to gather evidence (in person, phone, email)	Professionals and other witnesses contacted:
	Consider if you need to prepare affidavit material for interim hearing and if so, prepare and file affidavit.	

	Attend family group conference if arranged.		
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**Part B: First mention**

STAGE	TASK	DETAILS & DATE
	Provide the Court with a summary of what you have done and issues to be determined	
	Inform the Court of the child's views	
	Tell the Court about the evidence you are relying upon, including affidavit material filed by you (if any)	
	Inform the Court of your interim view (if formed)	
	Seek further directions, including about conferencing	
	Make submissions with reference to s 10 about what orders are in the child's best interests	
	Address outcome of hearing, including resubmits to check compliance with access arrangements, assessments and other orders	
	Inform the child of outcome	

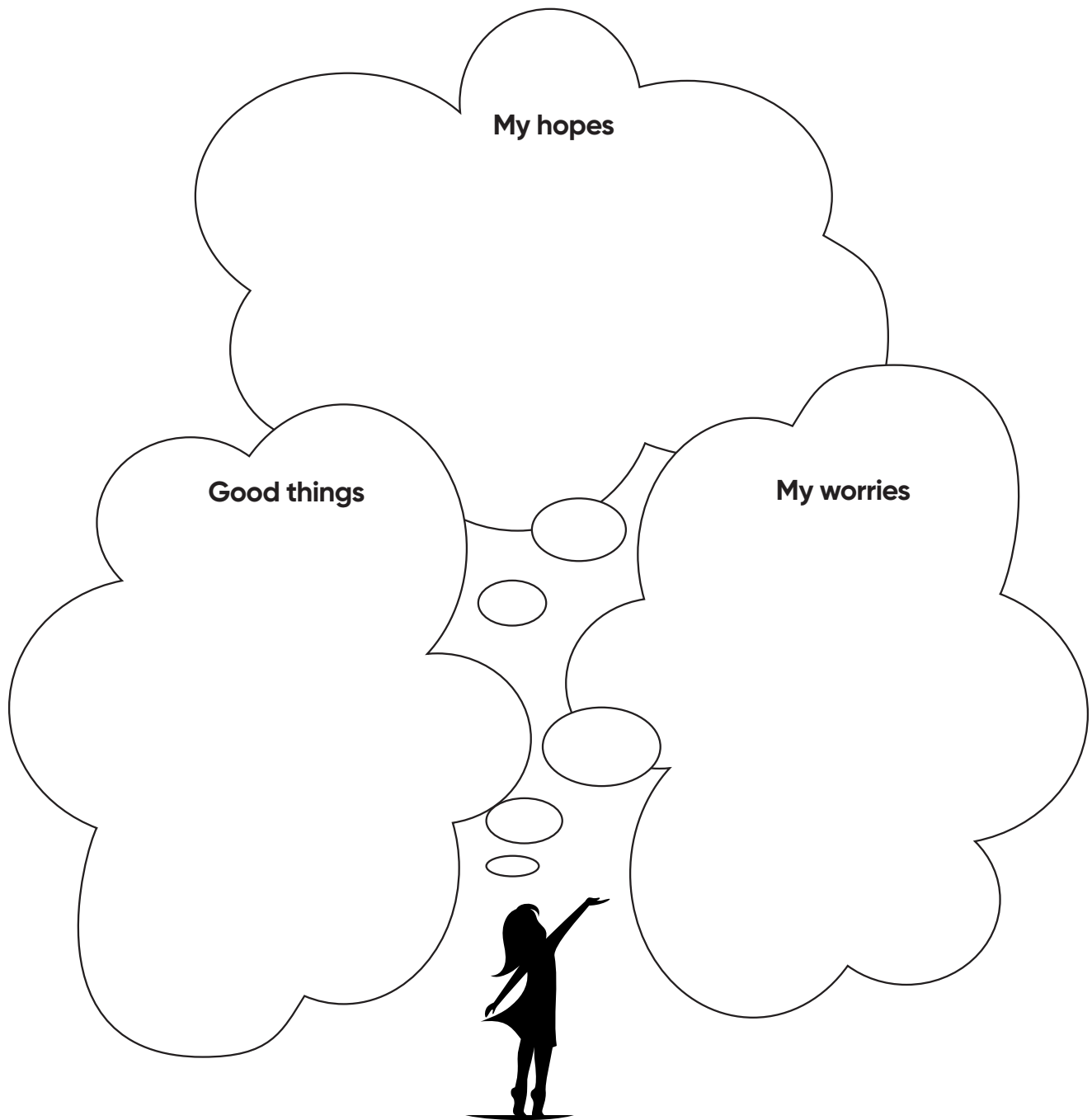


## Part C: Preparation for final hearing and post-final hearing

STAGE	TASK	DETAILS & DATE
MEET WITH THE CHILD AND DISCUSS VIEWS	Meet with the child and ascertain their views Tell the child what your views are Check in with the child about attending Court and any upcoming conference	
PREPARE AFFIDAVIT MATERIAL	Prepare affidavit material	
YOUR VIEWS	Form your views and communicate these (preferably in conference – see below)	
MEDIATION	Consider conferencing options, including a s 52 or SR conference	
HEARING PREPARATION	Consider conferencing options, including a s 52 or SR conference	
	Critical assessment of expert evidence Consider: <ul style="list-style-type: none"> <li>• what material was available to the expert</li> <li>• who they met with and who they did not meet with</li> <li>• what enquiries were made or not made</li> <li>• how they got to the conclusions reached (reasoning)</li> </ul>	
	File affidavits as directed	Filing date
		Filing date
		Filing date
	File and serve summons	Filing date
	Brief to counsel (if applicable)	
	Put witnesses on notice	
	Give notice of intent to cross-examine other parties, witnesses, and any evidence you intend to object to	
	Prepare case outline and hearing plan (witnesses to be called and time needed for each)	Send brief to counsel
	Check in with child just before hearing (can be by telephone/ video)	
FOLLOWING HEARING	Address outcome of hearing	<ol style="list-style-type: none"> <li>1. Meet with the child and explain orders</li> <li>2. Check that engrossed orders accurately reflect the orders proclaimed</li> <li>3. If your appointment has been extended, diarise the tasks you will perform during extension, and communicate this to the child and parties</li> <li>4. Follow up regarding any therapy/ supports for the child and/or family</li> </ol>
	Ensure all followup is complete Claim grants used within 28 days of final event – once discharged, close file Retain file until 2029, pursuant to <i>Archives Act 1983</i> (Tas)	

**Appendix 6: Hopes, worries and good things resource**

**When I think about my family at the moment...<sup>128</sup>**



**Name:** \_\_\_\_\_

**Age:** \_\_\_\_\_

128 Adapted from Turnell A. & Edwards S. (1999), Signs of Safety : A solution and safety oriented approach to child protection case work. WW Norton, New York.

## Appendix 7: Hearing directions

1. That the evidence in chief of all witnesses to be called by any party, including the Separate Representative, be reduced to writing and verified by affidavit, with such affidavit or affidavits to be filed with the Court and served on each other party on or before XXXX.
2. That any evidence in reply is to be reduced to writing and verified by affidavit, with such affidavit to be filed with the Court and served on each other party on or before YYYY.
3. That notice of intention to cross examine the deponent of any affidavit is to be provided to the party calling that witness no later than ZZZZ.
4. That no party be entitled to call any evidence in chief other than that which is contained in affidavits filed and served in accordance with these orders, without the leave of the Court.
5. That no party be entitled to cross examine the deponent of any affidavit without having given notice to cross examine in accordance with these orders, without the leave of the Court.

## Appendix 8: List of Separate Representative (SR) practice standards

### 1 Practice Standard: Role of the SR

- 1.1 The SR should gather evidence and views that are relevant to the definition of the best interests of the child under the *Children, Young Persons and Their Families Act 1997*.
- 1.2 The SR should explain to the child that their role is to:
  - listen to and think about the child's views
  - find out other information about the child (from CSS, doctors, teachers, psychologists and carer/s)
  - after listening to the child and other people who know about the child, think about what is in the child's best interests
  - tell the Court about the child's views and their (the SR's) views
  - tell the Court and the child if their (the SR's) views are different from the child's and why.

### 2 Practice Standard: Direct representation

- 2.1 As a direct representative, the SR must:
  - provide the child the same loyalty, confidentiality and competent representation as they would provide an adult client
  - represent the child in a competent and professional way in accordance with the Australian Solicitors' Conduct Rules and general legal obligations
  - never substitute their own views for those of the child
  - only act on the instructions given by the child regarding their (the child's) views
  - reality-test instructions of the child in a developmentally appropriate way.

### 3 Practice Standard: Talking to the child's kinship or foster carer/s

- 3.1 The SR should contact the kinship or foster carer/s through the Child Safety Lawyer to arrange a meeting.
- 3.2 The SR must provide any questions for the kinship or foster carer/s before the meeting and ask them to complete the questionnaire at Appendix 3 of these *Separate Representative Practice Standards & Guidelines*.

### 4 Practice Standard: Talking to the child's caseworker

- 4.1 The SR must contact the caseworker through the Child Safety lawyers to arrange a meeting.
- 4.2 The SR must provide any questions for the caseworker before the meeting and ask them to complete the questionnaire at Appendix 4 of these *Separate Representative Practice Standards and Guidelines*.

## **5 Practice Standard: Trauma-informed practice**

5.1 The SR must:

- complete foundation training in trauma and trauma-informed practice as soon as possible, and update this training every 2–3 years
- keep up-to-date with research and practice about the effects of trauma; in particular –
  - the effects of trauma on children and approaches that help to respond
  - the risk of vicarious trauma to SRs as a result of the content and nature of their work
- take steps to manage their own mental and physical wellbeing.

## **6 Practice Standard: Confidentiality and disclosure**

6.1 At the first meeting, the SR must explain, in child-friendly language:

- that during meetings with the SR, the child does not have to talk or answer questions if they do not want to
- that the child's parents and the Magistrate cannot make the SR tell them what the child has talked about during meetings
- that the only time the SR will tell anyone what the child has talked about during meetings is if the child says something that makes the SR worry that the child is not safe.

6.2 The SR must talk to the child about what things the child would like the SR to share and what the child would like the Court to know.

6.3 In disclosing information in the best interests of the child, the SR must:

- inform the child about what they intend to disclose and, if the child objects to the disclosure, discuss the child's concerns with them
- develop a disclosure plan that addresses the child's concerns and the risks and possible impact of disclosure on the child
- consider the impact of the disclosure on the child and the child's relationships with parents, carers, significant others and with professionals such as psychologists, counsellors and teachers.

## **7 Practice Standard: Meeting arrangements**

- 7.1 The SR must have a plan for contact with the child and must meet with the child at a minimum soon after appointment as the SR, before the final hearing begins, and upon conclusion of the case:
- in person, unless –
    - the child is in an extremely remote location
    - the child would prefer to meet by virtual means
    - there is evidence that the child is refusing a meeting and would be traumatised if a meeting was to take place
    - the child is pre-verbal; in this case, the SR must observe rather than meet with the child
  - one-on-one, unless –
    - a support person or interpreter is needed
    - the child agrees to a witness for the SR being present at a neutral location.
- 7.2 The SR must obtain consent from the child for another person to be present during any meetings involving the child and the SR.
- 7.3 The SR must arrange a registered interpreter (not a family member) for meetings if English is not the child's first language, or if the child uses sign language or another non-verbal communication aid.

## **8 Practice Standard: The child meeting the Magistrate**

- 8.1 If the child has the maturity to understand the SR's explanation about expressing views and about talking to the Magistrate, the SR must ask the child if they would like to meet the Magistrate.
- 8.2 If the child wants to meet with the Magistrate, the SR must:
- inform the Court and the parties that the child would like a meeting
  - make a plan for the child's meeting with the Magistrate
  - prepare the child for the meeting with the Magistrate
  - ensure the child understands what will happen with the information that they give the Magistrate.
- 8.3 When supporting the child in their meeting with the Magistrate, the SR must:
- be early for the meeting
  - prepare the child for the meeting
  - debrief with the child after the meeting.

## **9 Practice Standard: Respecting the child's relationships**

9.1 The SR must:

- avoid being critical of the child's parent/s during meetings, respecting the long-term and ongoing nature of the child-parent relationship and avoiding the possibility of further trauma or detriment to the child
- request that the child's carer/s and parent/s not ask the child questions about the child's meetings with the SR or ask what the child has disclosed during meetings
- not provide advice to the child's carer/s and parent/s regarding anything of a legal nature or answer questions about how other parties' cases should be conducted
- limit the information they provide the child's carer/s and parent/s to matters relating to Court or administrative processes. Parents who are represented must be referred back to their lawyer. Carers must be referred to the child's caseworker.

## **10 Practice Standard: The child – views and diversity**

10.1 The SR must:

- explain the main issues that the Court is being asked to consider regarding the child's safety
- explain what the child's 'views' means, i.e. what the Court wants to learn from the child
- explain to the child how the child's views will be put before the Court
- explain the limits on confidentiality between the SR and the child
- discuss how the Court will consider the child's views.

10.2 The SR must:

- consider the child's diversity, background, and needs, and how they will communicate their views
- follow, and insist that all parties follow, the principles in s 10G for Aboriginal and Torres Strait Islander children and their families
- explore the child's preferences and reasoning for their views
- give the child a recap of their views and reiterate how their views will be heard, and by whom.
- talk to the child about what things they would like the SR to share
- inform the child what they (the SR) will do with the information the child provides to them
- consider the child's concerns about their views being shared
- inform the child if they (the SR) intend to recommend something different to the child's preferences and the reasons for doing this.

10.3 The SR must:

- explain to the child what to do if they change their views
- respond to the child's change in views by presenting to the Court the child's current views and the child's reason for their change in views
- not impose any personal interpretation or reasoning about the child's changed views when informing the Court.

## **11 Practice Standard: Conduct and primary functions of the SR**

11.1 The SR must:

- conduct themselves in an impartial and independent manner
- seek an outcome consistent with the best interests of the child, their safety, and informed by the child's perspective
- bring to the Court's attention any facts which question the advisability of an agreed settlement
- not support any agreement unless independently satisfied that the agreement is in the child's best interests
- actively consider opportunities to settle or limit the scope of the dispute, including negotiating and holding conferences
- ensure that evidence relevant to the Court's enquiry is put before the Court, including evidence contrary to the case or views of the SR.
- avoid familiar interactions with other counsel.

## **12 Practice Standard: Upon appointment as a SR**

12.1 Upon appointment, the SR must promptly:

- notify the Magistrates Court District Registrar
- advise the child, parties and key stakeholders of their appointment as the SR
- send parent/s and carer/s a letter of introduction, information about the role of the SR, and a questionnaire about the child
- arrange to meet with the child's caseworker through the Child Safety Legal Group
- arrange to meet the child and send them a letter/video of introduction and a brief biography.

## **13 Practice Standard: Risk assessment and management**

13.1 The SR must:

- constantly assess any risk to the child during their appointment
- actively seek orders or negotiate agreements to mitigate risks to the child
- work with CSS and the parent/s and carer/s to identify risks to the child and ways to mitigate those risks.

13.2 Where the SR identifies a risk to the child, they must check any referrals CSS has made for the child. If a referral has not been made, or is not appropriate, the SR must advocate on behalf of the child so that appropriate referrals are made.



#### **14 Practice Standard: Family violence**

14.1 The SR must:

- use a trauma-informed approach when working with a child exposed to family violence
- ensure there is evidence before the Court about family violence and the impacts of family violence on the child and their family
- consider family violence in the risk assessment aspect of their role
- consider whether expert evidence is required where family violence is an issue and advocate for terms of reference that address family violence
- make submissions and propose solutions to address family violence
- complete and keep up-to-date with training about family violence and its impacts
- keep up-to-date with current family violence legislation and any changes to this.

#### **15 Practice Standard: Case planning**

15.1 The SR must develop a case plan soon after being appointed.

15.2 The case plan must identify issues and risk factors and contain a chronology, a plan for the child's participation, a safety plan, and a plan for evidence gathering, including expert evidence and conferencing

15.3 The SR must communicate an outline of the case plan to all parties.

#### **16 Practice Standard: Evidence gathering**

16.1 The SR must read all material immediately following their appointment.

16.2 The SR must make a plan for the evidence they intend to gather.

16.3 The SR must put the evidence gathered into admissible form as early as possible.

16.4 The SR must identify what evidence will need to be gathered by summons and issue those summons.

16.5 In preparing the case, the SR must assume that the rules of evidence will be applied.

16.6 The SR must assess all evidence through the lens of the child's best interests.

16.7 The SR must advocate for the admission or exclusion of evidence, if the admission/exclusion of that evidence would serve the best interests of the child.

## 17 Practice Standard: Expert reports

17.1 The SR must critically examine whether an expert report is required and whether this report will be arranged by CSS, the SR, or a party.

17.2 Where an expert report is required, the SR must assist in:

- identifying appropriate experts
- considering the child's and parent/s' views about proposed experts
- contributing to the terms of reference for the report.

17.3 Where the SR is arranging an expert report, they must:

- set the scope for the expert advice and draw up terms of reference limited to the scope
- identify appropriate experts
- consult all parties about the terms of reference, the expert, and who will bear the costs of the report
- confirm the availability of the expert, request tentative interview dates, establish how quickly the report could be released, and obtain a quote for the expert's fees
- if Tasmania Legal Aid is to bear any part of the costs, make an application for legal aid to cover that cost.

17.4 In arranging for expert advice to be provided, the SR must:

- make an application for an expert report under s 61 of the *Children, Young Persons and Their Families Act 1997*, including an order under s 60 that the child be made available for examination
- seek leave for the expert to have copies of, or access to, filed and summonsed material
- if they (the SR) have consent, give the expert the consent of the parties to access material
- give details to the expert of how the cost will be borne
- brief the expert and provide copies of affidavits and summonsed materials
- liaise with the expert and identify further information the expert may need, e.g. speaking to other people involved with the child
- ensure the assessment is done in a way that causes the least disruption and harm to the child
- arrange interviews and undertake safety planning that includes how each interviewee can safely travel to and from the interview and attend the interview
- respond to queries or requests for further information
- apply for grants of aid to make applications for expert evidence and, if the parties are legally aided, for a disbursement grant to cover part or all of the expert's costs
- seek another grant of aid before approval is given to any work being done by the expert that is beyond the original agreed scope of work.

17.5 Following receipt of the expert report, the SR must:

- consider the issue of risk and how those risks can be addressed before the report is served on all parties
- work with the expert concerned, CSS or other professionals to make a safety plan about the release of the report
- ensure the report is filed with the Court and served on all parties
- assess the veracity of the expert's opinion, and whether it aligns with the known facts
- ensure that the expert is available for cross-examination and facilitate their attendance for this purpose
- seek feedback from the expert (if they are prepared to engage with the SR) during negotiations and ask them whether the settlement proposals are consistent with the child's best interests.
- talk with the child about the expert report. When doing so:
  - summarise the main recommendations in the report and the reasons for those
  - summarise their views outlined in the report
  - discuss their views about the recommendations and whether those views have been reflected accurately
  - find out what the child would like you to tell the Court about the recommendations
  - discuss if the recommendations are different to their views and how they feel about this.

## **18 Practice Standard: Preparing for the first mention**

18.1 In preparing for the first mention, the SR must:

- read all affidavits
- read the CSS file
- meet with the child and have an understanding of their experience and views (if any)
- find out the parent/s' views about the application (do they oppose/agree to the application, or do they need more time?)
- meet with important independent witnesses, such as schoolteachers and counsellors
- file short affidavits from independent witnesses if time permits
- call a SR conference if time permits
- where possible, form and communicate to the parties a view about any interim issues, or, if the parent/s are not opposing the application, a view about the final issues
- where interim orders are being sought –
  - give an indication of the interim orders you will support, and circulate to all parties
  - draft submissions, relevant to the Children, Young Persons and Their Families Act 1997, linking the evidence in the affidavit material that the Court will be asked to determine on an interim basis
- consider if expert evidence is required, identify the type of expert evidence needed and who will arrange this evidence (commonly it is CSS that arranges and pays for expert assessments)
- consider if Part 4, s 8A of the Evidence (Children and Special Witnesses) Act 2001 applies and make all parties aware of any application the SR intends to make to the Court.

### **19 Practice Standard: Where parents do not oppose or are not participating**

19.1 In preparing for Court where parents do not oppose the application or are not participating in the proceedings, the SR must:

- inform the Court of the child's views about the application as well as access and living arrangements
- inform the Court of the views they (the SR) have formed about the child's best interests and addressing s 10E of the *Children, Young Persons and Their Families Act 1997*
- make submissions about orders that would best respect the child's views and meet their best interests
- make submissions about whether their (the SR's) role should be extended for monitoring/support purposes.

### **20 Practice Standard: At the first mention**

20.1 At the first mention, the SR must:

- provide the Court with the case plan, a summary of what they have done as the SR, and their assessment of the issues to be determined
- inform the Court of the child's views
- inform the Court of any views they have formed supporting the child's best interests and addressing s 10E of the *Children, Young Persons and Their Families Act 1997*
- outline what future directions will be required and be prepared to tell the Court about witnesses and an estimate of the time required for the final hearing
- make submissions to the Court about what conferencing is appropriate, including a SR conference, family group conference or a s 52 conference
- provide the Court with a summary of any agreements that have already been reached, outlined in a Minute of Order
- make their submissions, drawing together the evidence and the law as they relate to issues to be determined (the SR is not an expert and cannot express an opinion). The SR's submission or argument must be supported by admissible evidence and/or law
- provide the Court with an assessment of the evidence of each party and explain how this supports or does not support the interim view of the SR
- make the Court aware of the need for any expert evidence and seek orders/directions to support that evidence being filed in a timely manner
- if relevant, tell the Court that Part 4 s 8A of the *Evidence (Children and Special Witnesses) Act 2001* applies.

### **21 Practice Standard: After the first mention**

21.1 Following the making of interim orders, the SR must:

- tell the child about any interim orders that have been made and what that means for the child
- if there is a breakdown in arrangements for the child, or a significant or sudden change, take steps to minimise the impact on the child, including arranging appropriate support for the child
- consider how to keep the child engaged and informed
- consider if the child needs counselling or therapy and advocate for that
- consider the ongoing relationships between the child and others.

21.2 The SR must review and update their case plan.

21.3 The SR must tell their witnesses that they may be required for cross-examination.

21.4 The SR must give their witnesses notice of the final hearing date; if there are issues with their availability, the SR must notify all parties and the Court, and seek directions in relation to that evidence.

21.5 The SR must consider:

- relisting the case (if issues arise)
- the ongoing relationships and access between the child and others
- organising a SR conference
- any further reports or information to assist in negotiations.

## **22 Practice Standard: Negotiations and conferences**

22.1 In preparing for a conference, the SR must:

- have read the CSS file
- met with the child
- gathered the child's views
- spoken to the child about the conference and identified whether the child wants to attend
- spoken with independent witnesses about the child and the child's needs
- have made a list of issues
- come to a view about the best interests of the child and have communicated this to the child
- formed a view about risks and best interests of the child
- considered whether expert evidence is required
- made a safety plan.

22.2 At a conference, the SR must:

- ensure that all parties understand any limits on confidentiality and admissibility
- give the participants a summary of what they (the SR) have done so far
- outline a list of issues
- outline the child's views
- outline their views and any factors which could impact those views
- engage in negotiations about the child's arrangements and the management of risks
- if agreement is reached, consider whether the child's views align with this or whether more input from the child is needed
- if it looks like the case will not resolve –
  - help narrow the issues and identify the evidence which will need to be tested to achieve this
  - actively contribute to a final hearing plan, including identifying how much hearing time is required, what evidence each party will call and who will cross-examine those witnesses.

## **23 Practice Standard: Before the final hearing**

### 23.1 The SR must:

- meet with the child and have an up-to-date understanding of their views
- tell the child their (the SR's) views and, if they are different to the child's views, explain why and understand and be able to convey the child's response
- start the process of preparing the child for the end of the proceedings and the SR-child relationship, approaching the conversation in the way that best reflects the SR's knowledge of and existing relationship with the child
- consider how the child's views will be put before the Court
- find out if the child wants to attend the hearing and/or give evidence.

### 23.2 The SR must:

- apply for a grant of aid for final hearing preparation
- read all affidavits, case outlines and summonsed material from the parties
- file affidavits from any independent witnesses being called by the SR and confirm their availability for cross-examination.

### 23.3 The SR must:

- consider calling a SR conference to explore a full settlement or settlement of discrete issues
- form and express a view about the current issues and communicate this to the parties; where the SR's view is contingent on certain evidence or findings, make this clear.

### 23.4 The SR must:

- prepare a case outline document
- prepare draft orders and circulate to all parties.

### 23.5 The SR must:

- prepare evidence-in-chief and cross-examination that tests the evidence on the issues and law that the Court will need to determine
- in preparing evidence and cross-examination, avoid causing unnecessary damage to the child's relationships and to the family's relationships. Where evidence or cross-examination is likely to damage relationships, seriously consider whether the evidence is relevant and necessary to the case and whether there are other options which may avoid negative outcomes
- if intending to object to any evidence, communicate this in writing to the party and attempt to reach agreements about the evidence
- where there are self-represented parties, consider whether to call or test evidence which would normally be called or tested by a party
- make a final hearing plan outlining the witnesses to be called and a time estimate of each, and circulate this to all parties
- assist the parties in reaching an agreement about the final hearing plan
- give witnesses written notice that they will be required to give evidence, providing as much information as possible about when and for how long they will be required

- where required, file a summons requiring a witness to give evidence (e.g. for reluctant witnesses or where an employer requires a summons for an employee)
- give all parties written notice of which of their witnesses the SR requires for cross-examination, for approximately how long they will be needed, and what documents each witness must bring with them – this may require the SR to summons hospital records, or the child's school file.

23.6 The SR must prepare opening and closing statements which link the evidence the SR will be calling to the issues and law.

## **24 Practice Standard: At the final hearing**

24.1 The SR must:

- inform the Court of their views on the first day of hearing and, where appropriate, provide details of draft orders.

24.2 The SR must:

- make a brief opening statement, outlining their views and how the evidence they submit will support those views
- address the Court on the views of the child and what evidence supports and does not support those views
- in eliciting evidence and in cross examining, avoid causing unnecessary damage to the child's relationships and to the family's relationships. Where evidence or cross examination is likely to damage relationships, seriously consider whether the evidence is relevant and necessary to the case and whether there are other options which may avoid negative outcomes
- in cross examination, make sure that all questions relate to the issues to be determined – questions must test the evidence to elicit evidence that both supports and does not support the SR's views
- keep notes on the evidence and identify the evidence they will use in closing submissions
- update closing submissions at the end of each day to include the evidence identified during each day of the hearing
- keep the parties and the Court updated regarding any changes to witness availability or changes to time estimates.

24.3 The SR must:

- make the Court aware of any significant events coming up for the child, particularly where there will be an adjustment or transition
- make the Court aware if either interim or restraint orders or other orders will be required to support the child.

24.4 The SR must consider settlement opportunities and seek leave of the Court to negotiate wherever appropriate – this may involve a request to stand the matter down to allow negotiations, or to allow negotiations to occur while a witness is under cross examination.

24.5 The SR must make closing submissions which draw together all the evidence relevant to the issues and express a final view based on that evidence.

24.6 The SR must, if their view has changed, immediately inform the parties. In informing the Court, the SR must outline the basis for the change in view.

24.7 The SR must have a final meeting with the child and, if necessary, ask the Court to extend their appointment to allow for this.

### **25 Practice Standard: Extensions**

25.1 In seeking an extension of the SR's appointment, the SR must:

- make submissions to the Court about how the SR can add value to the child's representation during any extension of appointment
- ensure that there is a clear outline of the tasks the SR will perform during the extended appointment
- make sure that details of these tasks are communicated to the child, the Court, and to the parties; this will clearly identify the SR's responsibilities and enable the management of expectations

### **26 Practice Standard: Final meeting and explaining orders**

26.1 When the case concludes, the SR must:

- have a final meeting with the child
- explain the final orders to the child
- seek support from an independent party to explain the orders to the child if needed.

### **27 Practice Standard: Services and support for the child**

27.1 The SR must advocate and seek orders for relevant and appropriate services and supports for the child, including, if necessary, an extended period of support from the SR in a monitoring role.

### **28 Practice Standard: Reviews and appeals**

28.1 Before applying for aid to review a CSS decision, the SR must consider whether:

- the application serves the best interests of the child
- the child wants to apply for a review
- there are no other means to achieve the desired outcome
- the process is likely to deliver an outcome that addresses the issues in the review
- by the time the review is determined, the issue will no longer be relevant
- the application is a good use of public funds
- there will be a prospect of success.

28.2 In applying for aid to review the Court's decision, the SR must address:

- if the decision is contrary to the views of the child and the Court has not given reasons for the decision, or has given inadequate reasons
- if the decision is contrary to, or inconsistent with, evidence about risk
- if the decision is contrary to, or inconsistent with, evidence about the best interests of the child
- if there has been an error of law which has led to a decision inconsistent with the child's clearly expressed views or best interests
- if the decision is inconsistent with the facts that were before the Court



- that the application serves the best interests of the child
- that there are no other means to achieve the desired outcome
- that the process is likely to deliver an outcome that addresses the issues in the appeal
- whether, by the time the appeal is determined, the issues will still be relevant
- that the application is a good use of public funds
- if there will be a prospect of success.

### **29 Practice Standard: Potential conflicts**

- 29.1 The SR must actively consider, throughout the proceedings, whether there is a conflict in representing a sibling group.
- 29.2 If the SR believes that a conflict may have arisen, they should speak to the children about it and bring it to the Court's attention. If appropriate, they (the SR) should make an application for another SR or a direct representative.

### **30 Practice Standard: Criticism of the SR**

- 30.1 Where a SR receives criticism, they must provide a response.
- 30.2 If the SR accepts the criticism and forms a view they cannot independently and impartially represent the child, they must raise this with the Court and seek to be discharged.
- 30.3 If the SR rejects the criticism, this must be clearly communicated to all parties.

### **31 Practice Standard: Child-SR relationship – contact, complaints and termination**

- 31.1 The SR must maintain regular contact with the child during the course of their appointment.
- 31.2 If the child chooses to make a complaint about the SR, the SR must direct the child to the Associate Director of Legal Services at Tasmania Legal Aid.
- 31.3 If the relationship between the child and the SR breaks down, the SR must consider if the child's interest would be served by the appointment of a different SR and, if so, raise this with the Court.

### **32 Practice Standard: Reporting and record keeping requirements**

- 32.1 If requested, the SR must provide a report to the Tasmania Legal Aid Grants Officer that contains a summary of their views and the evidence both supporting and not supporting those views.
- 32.2 The SR's file must be well organised, well documented, labelled, and satisfy legal professional requirements.
- 32.3 The SR file must be retained as per legislative requirements.
- 32.4 The SR must keep all files and records until 2029 (the disposal freeze).
- 32.5 After the disposal freeze has ended, the SR must keep all files and records until seven (7) years after the child has reached 18 years of age.