

Good practice for lawyers

Meeting with children via technology

The outbreak of COVID-19 across Australia has created risks related to in-person contact that could potentially have serious consequences. However, even when you can't meet a child in person you can and should communicate with them.

Many children are very familiar and comfortable with technology with much of their education and communication taking place online. Many older children have access to their own devices.

There are various platforms available to lawyers to facilitate communication with a child via technology.

Meeting high school aged children via technology may be appropriate in a significant proportion of cases. Dependent on the maturity of the child, their familiarity with technology and current home situation, there may be upper primary children who it would also be appropriate to meet remotely. While there may be some exceptions, there will generally be some major limitations and risks incurred when conducting meetings via technology with younger children, and considerable caution needs to be exercised when this is undertaken.

The terms lawyer and representative are used interchangeably. Where not specified or made clear from context, this should be taken to mean a lawyer acting either as independent children's lawyer or separate representative (best interests advocate) or direct representative (direct instructions advocate).

Direct representative is used to describe a lawyer acting on instructions of a client who is a child and the subject of intervention pursuant to the *Child Protection Act 1999*. While an independent children's lawyer refers to a lawyer appointed pursuant to s 68L of the *Family Law Act 1975* and a separate representative refers to a lawyer appointed under s 110 of the *Child Protection Act 1999*.

Both the *Family Law Act 1975* and the *Child Protection Act 1999* define a child as a person/an individual under 18 years. As such, the term child is used in this guide to refer to any person under 18. It is acknowledged that older children may identify as a young person rather than a child, however child is used consistently for readability and to remove confusion.

This guide sets out some tips and traps for representatives when communicating with a child via technology. Every case should be assessed on its merits based on the issues, complexity and practical realities of communicating with

children. The aim of this guide is to encourage lawyers to consider the option of ruling in rather than ruling out alternative forms of communication.

Before deciding to meet with a child you should seek relevant information to help you in deciding whether it might be possible and/or appropriate to meet the child via technology. The factors that should be explored/considered include the:

- child's age, stage of development and maturity
- family's/child's access to technology
- level of parental support for the remote process (both parents)
- child's access to a private environment
- nature of the issues in dispute
- potential risks to the child
- potential value of the information the child may provide.

Decisions on the location and technology platform to be used for your meeting with children should be assessed on a case by case basis. How we set the meeting up will influence how comfortable the child feels and how willing they are to share with you.

Without the opportunities available in a waiting room before a face-to-face meeting to prepare parents/carers and the child for the meeting, you can still create a virtual waiting room environment. You can do this by sending the parents/carers and the child resources about your role.

Meeting with children remotely, may mean they are not in 'neutral' territory. For example, they may be in a parent/carer's home. It also means you will not have as much control over the environment the child is in and this includes being less able to support the child.

Ensure you are available to answer questions and address concerns about the process.

Representatives need to pre-empt concerns that may arise from the selection of location for their meeting and any concerns about the technology platform being proposed for the meeting. To avoid exposure to criticism from the parties, to structure the meeting and support the child as much as possible, it might be useful to consider the following things.

1. Planning for the meeting

Video technology is the preferable platform when meeting a child. It can be a useful tool for you for many reasons:

- It allows the child to see your face.
- It means you and the child are on an equal footing as both have environments you can share with each other.
- Depending on the location, it allows you to get a better sense of the environment the child is in.
- Setting the meeting up can provide you with some information about the adults in the child's life.
- It provides visual cues not available on the phone.
- The visual aspect can make it easier to engage with the child.
- It has novelty value which a child might enjoy.
- A video meeting may enable you to see if there is a parent or another person (a sibling) in the background.
- It can provide a sense of safety for the child, because they know you can see them.
- You can see the interaction between siblings, parents/carers and the child.

When choosing the intended location of the meeting consider:

- Are there any risks to the child?
- Does the child have a disability that needs to be considered?
- Are there ways for you and/or the parent/carer to minimise distractions for the child?
- For a younger child, can you ask that there be crayons and paper or other simple tools in the room to engage the child?
- How will the child be set up with the technology? For example, can they interact with you if they are at a desk in front of a desk top computer?
- If there is a sibling group how does that work in the environment the child is in?

If the child's school is raised as an option, whether for an in person or via technology meeting, you will first need to speak with the principal to ask whether they would be willing to facilitate the meeting and whether they have the facilities and equipment required for the meeting to take place.

2. Deciding on the platform

Video technology such as Skype, Facetime (on compatible devices) and software apps such as Microsoft Teams are all options. Microsoft Teams allows the child to attend the meeting using a computer, tablet or smart phone.

Where possible, the child should be facilitated to use their own device and the meeting link and instructions should be provided to the child directly if they have their own email address. This reduces the likelihood of parental interference. In many matters, this will not be possible, and parents will need to play a role in receiving the meeting invitation and setting up the meeting.

If the child is not able to manage the technology platform and if a parent/carer is required to help the child during the meeting, how might this work? For example, is it possible to reach agreement beforehand about what you would like the parent/carer to do once they have set up the technology and checked it is working, connected head phones to the device for the child to listen through etc? It is important parents/carers know they will need to leave the room and allow the child to speak privately with you.

You can communicate directly with older child to gauge the best options for them and ensure they have the support of an adult if they need help.

Some things to consider:

- What options are available to the child at the proposed location?
- Can the responsible parent/carer use the technology platform you propose using for that meeting?
- Is it possible for the child to have a test run using the platform?

As you plan out the platform, this is also a good time to explain to parents and children the confidential nature of the meeting and the lawyer's need to see the child alone and in private.

Should any of the parties object to the location or technology platform proposed for the meeting, where reasonable and practicable, an alternative meeting location or technology could be proposed and agreed to by the parties.

Warning: Be aware that some videoconferencing technology may be able to be used to record without your consent. Familiarise yourself with the user guidelines and privacy terms of the technology platform before proposing or agreeing to it.

3. Advance preparation for the meeting

- Make sure you have a mobile number for the parent/ carer or other adult responsible for the child's welfare at the location where the meeting is to take place. Having a mobile or other way of communicating can provide more control, such as if the child is being distracted by noisy siblings outside the door you can get help. You may also need this in case the technology fails, the meeting needs to be terminated or a child is distressed and needs to be attended to.
- You should agree on some protocols or rules for how and when the meeting starts, is conducted and finishes to ensure a safe and co-operative process and hand-over experience for the child. For instance, if there is a sibling group you may initially ask that all the children be present so you can introduce yourself and then advise you will need to speak to the children individually and in private at which time the rest of the siblings will need to leave the room until it is their turn for a private meeting.
- If you are meeting with a child who is in foster care, you will need to make sure information about how the meeting will run has been communicated to the carers. You will need to liaise with the Department of Children, Youth Justice and Multicultural Affairs to create a plan for this communication. For these children it may be that you will speak with them while they are at home with their carers or at a Child Safety Service Centre. You will need to consider which is a more appropriate location (and also the willingness of the carers to facilitate a meeting in their home). There will likely be advantages and disadvantages to each choice.
- Make sure you communicate to the parents, older children and/or the person who is facilitating the meeting for the child that you do not consent to the meeting being recorded and that it is prohibited by law.

4. Setting up and starting the meeting

Before the meeting starts:

- Set your camera up so the child gets a close and clear image of you and experiences you making eye contact with them.
- Have a practice run with a friend or colleague to make sure your levels, framing and lighting are satisfactory and to identify any idiosyncrasies in your presentation that may be distracting for the child.

- Ensure the parent/carer has a head set for the child to use during the meeting and can help the child to plug in the headset.

If you are meeting with a sibling group:

- Consider starting your meeting with all of the children together to introduce yourself.
- Discuss the rules of the meeting with all of the children together and let them know all of the adults support and are going to help with the rules.
- Discuss the order of who you will speak to first and the importance of allowing that meeting to be a private meeting between yourself and each child.
- Then ask the remaining siblings to leave the room and speak to one child at a time in private.

At the start of each individual meetings:

- Check with the child they can see and hear you well. Before you discuss confidential information check you can hear the child without the need for the child to speak loudly or yell.
- Put your Microsoft Teams window to full screen to maximise the size the child appears, and ask the child to do the same.
- If the child is using a computer or tablet, ask them if they have a mobile phone and if so ask them to turn it off. This will prevent them receiving calls and text messages (possibly from parents) during the meeting.
- Consider agreeing to a non-verbal signal they can give you if they begin feeling uncomfortable or wish to end the meeting but are not comfortable telling you with words.
- Ask the child to switch off any other devices around them to avoid distractions. Asking them to do this may help minimise the risk of having meetings audio recorded from a separate device.

Remember to regularly:

- Reassure the child you can hear them clearly and you are paying attention to what they are saying and check they can still hear you well.
- Reflect and check you understand what they are saying/feeling.
- Check in with the child about whether they are still feeling comfortable.

Be conscious of how the child is coping with the meeting. When you meet a child in person, you can get cues from their body language which can indicate if they are uncomfortable. You may need instead to ask the child how they are feeling throughout the meeting and tell them they can leave the meeting if they wish to or need to.

5. Tips on building rapport via technology

Your body language and tone might not translate the same way as it does in an in-person meeting, but it is just as important in a videoconference meeting and is part of how you build rapport.

Here are some suggestions on building rapport via technology:

- You can adjust your screen backgrounds on software apps such as Microsoft Teams and engage the child to try this on their end and chat about their choices. Or you may want to have interesting pictures up in your background. If you want the child to let you in to their world you should consider the benefit of sharing something from your world.
- Ask the child to show you their own environment/the room. Be aware younger children may be distracted by noises from beyond the room such as siblings or parents/carers behind the door. Understanding the environment not only helps with rapport building but it also allows you to be satisfied as best you can there is no other person in the room. See more tips on this later.
- Ask them what their experience has been with attending school remotely using technology and reciprocate with your own experiences.
- You may pick up from their environment topics to engage in and discuss with each child to help with rapport building. For instance, a musical instrument, games they like to play or sport memorabilia and what their sporting interest may be.
- You need to have a range of interesting things that you can show for the different age ranges. For example, ask a younger child to bring pencils and draw during the meeting.

Warning: If you are concerned about what may happen to the drawing after your meeting then perhaps avoid this or discuss with the child whether they have a way of privately disposing of it.

6. Tips on ensuring the confidentiality of the meeting

- Make sure you ask about the room the child is in and, where possible, have the child show you around it first. In a worst-case scenario, a parent/carer or siblings may remain in the room during a private

meeting. You may not always be able to convince the child to show you around the room, however you may notice the child looking away in a certain direction during the meeting which together with other cues may alert you the child is not alone in the room.

- In sibling groups, you may find it hard to ensure the children aren't being mischievous by staying in the room or coming in and out of the room during your private meeting. You may even be alerted to it by the child you are meeting with who may tell you there are siblings in the room.

Warning: Make sure all confidential information is hidden from view and your background is clear of files and folders with client case details or whiteboards with confidential information. Some videoconferencing apps like Microsoft Teams allows you to blur your screen background.

7. Wrapping up the meeting

Most meetings will end naturally. You should discuss with a parent/carer in advance what will happen when the meeting ends.

Make sure you discuss whether another meeting will take place and set out the rules for the next meeting when communicating with the parents.

If you are terminating a meeting because of a privacy concern:

- Tell the parent or carer and the child you will need to arrange a follow up meeting at another time. Avoid making the child feel uncomfortable or feel they have done something wrong.
- Don't question or confront the child about your suspicions. Sometimes by letting the child have their say without interruption allows them to feel heard which may make it easier for them to tell you what they want you to know next time.
- You may need to find an excuse to conclude the meeting (eg saying there is someone knocking at your door and you need to go).
- Explain you may need to arrange another follow up meeting with them before ending the meeting.
- Be prepared to address your concerns with the parents/carers or the court.

8. Will we meet again?

One meeting may not be enough when meeting via technology. Be careful not to put too much pressure on yourself and the child to cover everything in one meeting. It may be unrealistic to expect a child will share openly with you on your first meeting and this may be more so if they are meeting you for the first time via video.

Consider having ongoing shorter meetings to check in with the child instead of having one long meeting to cover everything, especially if:

- you need more time to work on building rapport and trust
- because of distractions or concerns about lack of privacy
- the child may not have felt like talking to you on the first occasion
- the child gets distressed during a meeting. Normally we would take them back to their parent or carer. We need to have put in place a contingency plan before the meeting for these situations. Get the parent's or carer's mobile number so you can contact the parent or carer to alert them the child is distressed so they can attend to the child.

9. Deciding whether to meet via technology or in person

Explore all viable meeting options (for example, meeting in person at the child's school or meeting via technology).

It is generally good practice to meet in person with the child, especially for the first meeting.

However, there are circumstances (for example, large geographical distance, COVID-19 lockdown) where it is reasonable for a lawyer to prefer a meeting via technology.

There is no expectation that an in-person meeting take place if the representative feels uncomfortable due to personal health and safety concerns.

If a lawyer decides they want to meet a child via technology and a party or child insists on an in person meeting, it is not unreasonable to ask they articulate the reasons for an in-person meeting and why a meeting via technology would not be appropriate.

If agreement about how the meeting should occur cannot be reached, you may need to apply to the court to seek an order about this issue. In doing so you need to be able to articulate to the court, the parties and legal representatives a sound basis for your preferred method of meeting. Communication is key.

Remember, if a face-to-face meeting occurs, as required:

- take steps to ensure personal health and safety
- be aware of the current health and COVID-19 quarantine status of the family
- be aware of current [Queensland Health COVID-19 advice](#)
- maintain recommended social distancing.

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