

**Child Safe Organisations Bill 2024**

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# **Child Safe Organisations Bill 2024**

Submission by Legal Aid Queensland

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# Child Safe Organisations Bill 2024

## Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission in relation to the *Child Safe Organisations Bill 2024*.

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of “giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way” and is required to give this “legal assistance at a reasonable cost to the community and on an equitable basis throughout the State”. Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ’s services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ’s lawyers in the day-to-day application of the law in courts and tribunals. LAQ believes that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

## Submissions

### Definition of “child safe entity” and “reporting entity”

The Bill requires certain “child safe entities” to implement and comply with the child safe standards and universal principle. Likewise, “reporting entities” are required to put into place a reporting system for dealing with a reportable allegation or reportable conviction relating to a worker of the entity.

Section 10 defines a *child safe entity* as an entity that provides:

- Services specifically for children; or
- Facilities specifically for use by children who are under the supervision of the entity;

and that is either:

- Mentioned in schedule 1; or
- Prescribed by regulation.

A *reporting entity* is defined in section 29 of the Bill as an entity:

- That cares for, supervises or exercises authority over children, whether as a primary function or otherwise; and
- That is mentioned in schedule 2 or prescribed by regulation.

The entities mentioned in schedules 1 and 2 are:

- Accommodation or residential services



- Religious bodies
- Early childhood education and care services
- Child protection services (being a departmental care service or licensed care service under the *Child Protection Act*; or another entity that provides services relating to child protection or support services for parents and families relating to child protection)
- Services for children with disability
- Education services
- Health services
- Justice or detention services (being an entity that provides programs and services mentioned in the *Youth Justice Act 1992*, section 302; an entity that provides legal or other advocacy services; and an entity that provides diversionary, interventionist and rehabilitation activities)
- Services or activities provided primarily for children
- Commercial services for children
- Transport or transport-related services
- Community services
- Government entities (being a public sector entity under s8 of the *Public Sector Act 2022*; the police service; and a local government).

#### **Legal practitioners acting in a best interests role**

It is clear from the Explanatory Notes that the intention of the Bill is for organisations who work directly with children to be subject to the child safe standards and universal principle. However, it is unclear whether the provisions are intended to apply to lawyers who act as Independent Childrens Lawyers (ICLs) in the Federal Circuit and Family Court of Australia, or as Separate Representatives in the Childrens Court.

Lawyers in these roles are appointed by the court to independently represent the interests of a child. ICLs and Separate Representatives present evidence to the court about the child, the child's views and the issues and matters relevant to the child's best interests. It is mandatory for the ICL to meet with children unless a relevant exception applies.<sup>1</sup> It is expected that ICLs will meet with children in nearly every case, at least once but potentially numerous times. Similarly, a Separate Representative must, to the extent that it is appropriate taking into account the child's age and ability to understand, meet with the child, explain the role of the Separate Representative, and help the child take part in the proceedings.<sup>2</sup>

However, ICLs and Separate Representatives are not the child's legal representative and do not act on the child's instructions. They cannot offer the child a confidential relationship in the sense of a traditional solicitor/client relationship.

Legal practitioners who are appointed to act at ICLs and Separate Representatives are certainly "an entity that provides legal or other advocacy services" and thus satisfy the definition of *justice and detention services*. However, it is unclear whether they would be considered an entity that provides "services specifically for children" in order to satisfy section 10 of the Bill. Although the ICL/Separate Representative role is one that acts in the best interests of a child, arguably it primarily provides a service to the respective courts rather than to the child directly.

LAQ suggests that this ambiguity could cause confusion for the legal practitioners who work as ICLs and Separate Representatives as to whether they are subject to the child safe standards and universal principle. If it is the intention of the Bill that legal practitioners acting

<sup>1</sup> Section 68LA(5A), *Family Law Act 1975 (Cth)*

<sup>2</sup> Section 110, *Child Protection Act 1999 (Qld)*



in a best interests role should be a *child safe entity*, LAQ proposes that the Bill make this clear via the insertion of an example or by specifically excluding ICLs and Separate Representatives.

**Legal practitioners acting as direct representatives in child protection matters**

Under the heading “child protection services”, schedule 1 provides that each of the following entities (that also satisfies section 10) is a *child safe entity*:

- (a) A departmental care service or licensed care service under the *Child Protection Act 1999*;
- (b) Another entity that provides services relating to child protection or support services for parents and families relating to child protection.

Similarly, schedule 2 provides that each of the following “child protection services” entities (that also satisfies section 29) is a *reporting entity*:

- (a) A departmental care service or licensed care service under the *Child Protection Act 1999*;
- (b) Another entity that provides services relating to child protection or support services for parents and families relating to child protection.

LAQ and preferred supplier law firms who provide legal advice and advocacy on a direct representation basis to children and young people in child protection matters fall within the definition of “an entity that provides services relating to child protection”. As lawyers in direct representation matters act on behalf of children and young people, they constitute “an entity that provides services relating to child protection” and therefore meet the definition of a *child safe entity*.

Whether or not legal practitioners acting as direct representatives for children and young people in child protection matters meet the definition of a *reporting entity* is less clear. Legal practitioners in these matters clearly provide services relating to child protection (in accordance with the definition in schedule 2). However, there is uncertainty as to whether a lawyer acting on behalf of a child or young person could be said to be an entity that “cares for, supervises or exercises authority over children, whether as a primary function or otherwise”. Acting as a direct representative for children and young people requires the legal practitioner to meet with the child in a setting that respects the confidential nature of the solicitor/client relationship (i.e., an office or a private meeting room). It is unclear, from the language of the Bill, whether this would constitute caring for or supervising the child and therefore trigger the definition of *reporting entity*. The Explanatory Notes unfortunately do not illuminate this matter further.

It is LAQ’s view that it would be overly onerous to place the obligations of a reporting entity on legal practitioners acting as direct representatives for children and young people in child protection matters. When legal practitioners meet with children in a private setting, they are seeking to take instructions rather than to care for, supervise or exercise authority over their client.

Child protection matters in which legal practitioners act as a direct representative for children and young people are highly complex and specialised. There are relatively few legal practitioners who act as a direct representative. There is a possibility that a requirement to implement a system for preventing, reporting, investigating and responding to a reportable allegation or conviction would prove a disincentive for practitioners to take on these matters, and place increased organisational pressures on LAQ and preferred supplier law firms.

LAQ suggests that legal practitioners providing direct representative services to children in child protection matters should be excluded from being designated as a *reporting entity*, particularly given the existing suitability requirements for legal practitioners to obtain a practising certificate in Queensland.

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