HEALTH AND AMBULANCE SERVICES COMMITTEE

Members present:

Ms L Linard MP (Chair)
Ms RM Bates MP
Mr SL Dickson MP
Mr AD Harper MP
Dr CAC Rowan MP

Staff present:

Ms D Jeffrey (Research Director)
Ms E Booth (Principal Research Officer)

PUBLIC BRIEFING—INQUIRY INTO THE CHILD PROTECTION REFORM AMENDMENT BILL 2016 AND DIRECTOR OF CHILD PROTECTION LITIGATION BILL 2016

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 24 FEBRUARY 2016

Brisbane

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Committee met at 11.16 am

GILES, Ms Megan, Executive Director, Legislative Reform, Policy and Legislation, Department of Communities, Child Safety and Disability Services

MASOTTI, Ms Susan, Acting Director, Strategic Policy, Department of Justice and Attorney-General

MISSEN, Ms Helen, Acting Director, Child, Family and Community Services Commissioning, Department of Communities, Child Safety and Disability Services

MOY, Ms Angela, Acting Principal Legal Officer, Strategic Policy, Department of Justice and Attorney-General

ROACH, Ms Leigh, Deputy Director-General, Strategy, Engagement and Innovation, Department of Communities, Child Safety and Disability Services

CHAIR: Good morning. Before we start could I request that mobile phones be turned off or switched to silent, please. I now declare this public departmental briefing of the Health, Communities, Disability Services, Domestic and Family Violence Prevention Committee's inquiry into the Child Protection Reform Amendment Bill and Director of Child Protection Litigation Bill open.

I acknowledge the traditional owners of the land upon which we meet and also pay my respects to elders past, present and emerging. I am Leanne Linard, chair of the committee and member for Nudgee. I am joined by the deputy chair and member for Moggill, Dr Christian Rowan; the member for Thuringowa, Mr Aaron Harper; the member for Buderim, Mr Steve Dickson; and I believe the member for Mudgeeraba is apology

Mr DICKSON: She is coming back, I think.

CHAIR: She may join us. The member for Greenslopes is an apology to this briefing. Thank you for your attendance here today. The committee appreciates your assistance. The purpose of this briefing is to receive information from the department about the bills which were referred to the committee on 16 February.

There are a few procedural matters before we begin. The committee is a statutory committee of the Queensland parliament and as such represents the parliament. It is an all-party committee which takes a nonpartisan approach to inquiries. This briefing is a formal proceeding of the parliament and is subject to the Legislative Assembly's standing rules and orders. You have previously been provided with a copy of the instructions for witnesses so we will take those as read. I am sure you are all very experienced in appearing before committees as well. The briefing today will be broadcast.

I remind committee members that officers are here to provide factual or technical information, not to give opinions about the merits or otherwise of the policy behind the bill or alternative approaches. Any questions about the government or opposition policy that the bill seeks to implement should be directed to the responsible minister or shadow minister or left to debate on the floor of the House. I now hand over to you, thank you.

Ms Roach: Thank you very much. Thank you for the opportunity to brief you today on the Child Protection Reform Amendment Bill 2016 and the Director of Child Protection Litigation Bill 2016. I also acknowledge the traditional owners of the land on which we meet today and pay my respects to elders past, present and future.

My name is Leigh Roach. I am the Deputy Director-General of Strategy, Engagement and Innovation in the Department of Communities, Child Safety and Disability Services. I am joined by my departmental colleague, Ms Megan Giles, Executive Director of Legislative Reform, who will provide an overview of the key provisions in the Child Protection Reform Amendment Bill 2016 that propose amendments to the Child Protection Act 1999. I am also joined by another colleague, Ms Helen Missen, Acting Director of the Court Reform Project, who is leading the implementation of the court

reforms within the department. We are also joined by Susan Masotti and Ms Angela Moy of the Department of Justice and Attorney-General who will brief you on the Director of Child Protection Litigation Bill 2016.

I will first provide you with an overview of the reforms in the bill which relate to the amendment of the Act and then Ms Giles will take you through the detail of the respective clauses. Ms Masotti and Ms Moy will then brief the committee in relation to the Director of Child Protection Litigation Bill 2016.

On 1 July 2013 the Queensland Child Protection Commission of Inquiry released its report *Taking responsibility: a roadmap for Queensland child protection*. The Commission of Inquiry confirmed Queensland's child protection system is under immense stress and made 121 recommendations aimed at addressing the risk of systemic failure and building a sustainable and effective child protection system over the next decade. The Queensland government committed to implement the recommendations of the commission of inquiry as part of the child and family reform agenda. Together the bills address 11 specific Childrens Court related recommendations made by the Commission of Inquiry in chapter 13 of its report and one additional recommendation made by the Court Case Management Committee.

The Child Protection Reform Amendment Bill 2016 proposes amendments that aim to improve Childrens Court processes and also supports the administrative establishment of the Office of the Child and Family Official Solicitor within the department. The Director of Child Protection Litigation Bill 2016 establishes the independent statutory body of the Director of Child Protection Litigation, which will be responsible for applying for child protection orders in Queensland on behalf of the state. These amendments are aimed at improving the functioning of the Childrens Court and the quality of proceedings on application for child protection orders. The department and the Department of Justice and Attorney-General have worked collaboratively in developing the two bills.

Considerable consultation has been undertaken to inform the policy options and the development of the bills. I will now outline the consultation process for the committee. In December 2014 the department, together with the Department of Justice and Attorney-General, conducted consultation with key government and non-government child protection and legal stakeholders in developing policy options for the recommendations being implemented in the Child Protection Reform Amendment Bill 2016. In July 2015 the two departments conducted further joint consultation with government and non-government child protection and legal stakeholders in relation to establishing the Office of the Child and Family Official Solicitor within the Department of Communities, Child Safety and Disability Services and the Director of Child Protection Litigation within the Justice portfolio.

Between October and December 2015 the two departments consulted with key child protection and legal stakeholders, the President of the Queensland Civil and Administrative Tribunal, the President of the Childrens Court and the Chief Magistrate as well as the Office of the Public Guardian and the Queensland Family and Child Commission on exposure drafts of the bill. Stakeholders were supportive of the bills and the two departments worked together to refine provisions in the bills to reflect stakeholder feedback. I will now hand over to Ms Giles, who will discuss the amendments in more detail including the Commission of Inquiry recommendations they respond to and the specific clauses in the bill.

Ms Giles: Thank you for the opportunity to brief you today. There is a lot in this bill. It covers a number of recommendations from the Commission of Inquiry report. I will not have time to go into a great deal of detail about each one but I will try to provide you with an overview of the recommendation and the corresponding clauses in the bill.

The amendments in the bill first of all relate to the Child Protection Act 1999. As my colleague Leigh Roach has already outlined, firstly there are some amendments in the bill that deal with enabling the department to establish the Office of the Child and Family Official Solicitor within the department. Recommendation 13.16 from the Commission of Inquiry relates to establishment of an internal office of the Official Solicitor to provide early and more independent legal advice to the department staff and to prepare briefs of evidence where a child protection order should be sought for a child. The Office of the Child and Family Official Solicitor will be established administratively within the department and its role will include providing early legal advice to child safety officers, applying for urgent assessment orders and temporary custody orders and working collaboratively with the Director of Child Protection Litigation when the department has determined that a child protection order is required for a particular child.

Clause 4 of the bill will clarify various entities involved in court applications and who may apply for different orders under the Act. The bill does not create a statutory entity of the Office of the Child

and Family Official Solicitor. That will be an administrative body within the department and we need to make some enabling amendments to the Child Protection Act just to support that to occur.

The second group of amendments then deal with the review of long-term guardianship order case plans for children. Under the Child Protection Act there are a range of different types of child protection orders that a court may make for a child. Those are outlined in section 61 of the Child Protection Act if the court is satisfied of a range of matters that are specified in the Act, and those matters are specified in section 59. The first one of those is that the court needs to be satisfied that the child is, in fact, a child in need of protection, which is also defined in our Act. The kinds of orders include a child protection order granting long-term guardianship of a child to the chief executive of the department. That is a type of child protection order that goes until the child turns 18. Before a long-term guardianship order can be granted, in addition to the matters that the court must be satisfied for other types of child protection orders, a court must be satisfied that either there is no parent able and willing to protect a child within the foreseeable future or the child's need for emotional security or stability will best be met through the making of a long-term order.

The Act also requires that in every case where the department is of the view that any ongoing intervention with a child's family is required to meet the child's protective needs the department must ensure there is a case plan in place for the child. That is also provided for in the Child Protection Act, which sets out the types of things that a case plan must include, one of the most important of which is setting out what the goals of the department's intervention with the family are—what we are trying to achieve in order to help the family to meet the child's protective needs.

Recommendation 13.25 of the Commission of Inquiry report suggested amendments to the Act to include a reviewable decision where the department refuses a request to review a long-term guardianship order by the child's parent or their child—so where the parent of a child requests that the department review the fact that the child is the subject of a long-term guardianship order. Currently, a parent or a child may apply to the court if they wish to seek a variation or revocation of a long-term guardianship order. Where a child is the subject of a long-term guardianship order to someone other than the chief executive—to another suitable person—the child or their guardian may ask the department to review the child's case plan at any time. However, there is no ability for a parent to request a review of a case plan where the child is subject to an order granting long-term guardianship to someone other than the chief executive. The bill will address this issue. In clause 5 it proposes amendments to section 51VA of the Act to allow a parent of a child to request a review of a case plan for a child who is the subject of a long-term guardianship order to someone other than the chief executive, ensuring there is that ability of a parent to ask that the case plan be reviewed, irrespective of whether the long-term guardianship order grants guardianship of the child to the chief executive or another person.

The amendments place some restrictions on when a parent may apply for such a review by stating that parents may only request a review if a case plan has not been reviewed in the previous 12 months. That safeguard is important to ensure children on these types of long-term orders can have some stability and prevent ongoing disruption in the child's life. These are often children who have settled with carers, for example. They are the subject of a long-term order and they often tell us that they want their lives to progress in a normal way, as if they were a normal family.

The next group of amendments that I will talk to you about are around attendance at family group meetings and agreements to case plans. The second element of recommendation 13.20 from the Commission of Inquiry relates to amendments to the Act to provide that participation by a parent in a family group meeting and their agreement to a case plan cannot be used as evidence of an admission by them of any matters alleged against them. Family group meetings are provided for in the Child Protection Act. That is the way the department prepares a case plan—by having a meeting with all of the people who are relevant in the child's life, including their parents, and through that process the case plan is often developed. The Commission of Inquiry identified that families may be reluctant to attend family group meetings or agree to case plans for fear that doing so may be used as an admission of allegations raised by the department against them.

Family group meetings play a valuable role facilitating family based responses to a child's protection and care needs and ensuring an inclusive process for planning and making decisions, including developing a case plan. As I have already said, a case plan will set out a child's protection and care needs and the needs of the child's family members, including what will be done to help the child and the family to meet the child's protective needs.

Clause 7 of the bill amends section 51YA of the Act to provide that a person's mere attendance at or participation in a family group meeting cannot be used as evidence in a child protection proceedings of any allegations about them. However, as family group meetings are a means of

assessing and monitoring risk factors, the actual information related in the meetings may be used as evidence in a child protection proceedings. This is clearly outlined in section 51YA(3). Clause 8 of the bill amends section 51YB of the Act to provide that a person's participation in the development of or agreement to a case plan must not be taken as an admission by them of any allegations about them for child protection proceedings.

The next group of amendments that I will talk to you about are about withdrawing an application for a child protection order. The Court Case Management Committee, which is a committee that was established through another recommendation from the Commission of Inquiry, identified that there are currently no specific legislation, rules or practice directions about the process for withdrawing an application for a child protection order that has been filed in the Childrens Court. The Court Case Management Committee recommended that the leave of the court should be granted before an application for an order can be withdrawn.

There are some occasions where the department forms the view that a child protection order is required to meet the child's protective needs and an application is filed with the court. There might be other ongoing work with the child's family, who may demonstrate some capacity to meet the child's protective needs, participate in programs and address identified protective issues for the child. The department's view may be that there are other mechanisms for Child Safety to meet that child's protective needs and an order is no longer required.

The amendment will require the department or the Director of Child Protection Litigation, as you will hear in a moment, to seek the leave of the court before that application can be withdrawn. This is implemented through clause 10, which inserts into the Act a new section 57A to require the litigation director to obtain leave of the court to withdraw an application. The director must provide the court with reasons as to why the child protection order is no longer required to meet the protective needs. This is thought to be important because the child protection jurisdiction is a protective jurisdiction. Once an application has been made to the court, this will require the court to turn its mind to whether or not the new arrangements will actually meet the protective needs of the child.

The next group of amendments deals with court ordered conferencing. The Commission of Inquiry recommended, at recommendation 13.1, that the Court Case Management Committee be established, as I have already said, to oversee the development of a case management framework for courts hearing child protection matters. Recommendation 13.6 is that the Court Case Management Committee suggest amendments to the Act to provide a legislative framework for court ordered conferencing at critical and optimal stages during child protection proceedings.

Court ordered conferences, under the Act, assist parties to child protection court proceedings to determine matters in dispute and to resolve those matters. That is critical during child protection proceedings, because if we do not need to go to a contested hearing then we should not take proceedings all the way to a hearing, if there are ways and mechanisms for alternative dispute resolution processes to sort out the matters between the family and the department. Currently, prior to making an order in contested proceedings the court must be satisfied a conference has been held between the parties or reasonable attempts to hold a conference have been made. When a court ordered conference should be held is a procedural matter more appropriately dealt with in the court case management framework. The Court Case Management Committee identified there may be circumstances where it would not be appropriate for a conference to be ordered. Accordingly, the Court Case Management Committee recommended the court have the discretion to dispense with the requirement to order a conference in contested proceedings.

The bill implements this recommendation in clause 11. This clause amends section 59 of the Act by inserting a new subsection (1)(c), allowing the court to dispense with the requirement for a court ordered conference in contested proceedings in exceptional circumstances. An exceptional circumstance may be where there are concerns about the safety of a party if a conference were held and the court is satisfied that this outweighs the potential benefit of holding a conference. Given the important role of court ordered conferences in facilitating resolution of cases and preventing the need to proceed to a full court hearing, the presumption will be that a conference be ordered in contested proceedings. The remaining issues identified by the Commission of Inquiry about identifying critical and optimal times when a conference should be held will then be dealt with in the court case management framework as a procedural matter.

The next group of amendments deals with contact and living arrangements for children under long-term guardianship orders. In recommendation 13.24, the Commission of Inquiry recommended that the Court Case Management Committee examine whether the Childrens Court, in making a child protection order that grants long-term guardianship of a child, can feasibly include in that order an order about placement and contact arrangements for the child. The Court Case Management

Committee considered this issue in detail and concluded that it is not feasible for the Childrens Court to make orders for contact and placement when making an order for long-term guardianship. This is because decisions around contact and placement may need be to be altered promptly by the department in order to protect the safety and wellbeing of a child when circumstances change throughout the life of a long-term guardianship order.

In acknowledgement of the important role contact and placement arrangements play for children in out-of-home care, the Court Case Management Committee recommended amendments to the Act to make it clear that, when considering the appropriateness of the case plan before making a long-term guardianship order, the court must be satisfied it includes appropriate placement and contact arrangements. The Act already includes a requirement in section 59 that whenever a court makes a child protection order they must take into consideration that a case plan has been made for the child. During consultation it was identified that if a court had to make decisions about the appropriateness of contact and living arrangements this could impact on QCAT's ability to review the contact and placement decision as a reviewable decision under section 2 of the Act if such a decision is made throughout the life of the long-term order. Clause 11 of the bill amends section 59 of the Act requiring the court, prior to making a long-term guardianship order, to be satisfied that living and contact arrangements for the child have been included in the case plan.

The next group of amendments that I will talk about relates to the review function of the Queensland Civil and Administrative Tribunal. In recommendation 13.28, the Commission of Inquiry recommended amendments to the Act to allow the Childrens Court to deal with an application made to QCAT for a review of a contact or placement decision when the application is made while there are still proceedings before the Childrens Court about the making of a child protection order. Certain decisions that the department makes—administrative decisions—are reviewable decisions to the Queensland Civil and Administrative Tribunal. Those are set out in a schedule in the back of the Child Protection Act, which also clarifies what the reviewable decision is and who the parties are that can apply for that decision to be reviewed.

Clause 19 of the bill implements this recommendation by inserting into the Act a new section 99MA, which requires QCAT to suspend a review of a contact decision made by the chief executive if there is also a proceeding for a child protection order on foot in the Childrens Court and the applicant for the review in QCAT is also a party to the children's proceeding. That means that, while there are still child proceedings on foot in the Childrens Court, before a court has even made a decision that a child protection order is required for a child, the department might make one of those administrative reviewable decisions under our Act. If that happens and one of the people who can apply for a review applies for a review, we are trying to streamline the process so that there is one jurisdiction that is dealing with the matter together.

Subsection (2) of that new provision requires the chief executive of the department to notify the registrar of QCAT if a review application has been made for a contact decision and there are relevant concurrent proceedings in the Childrens Court. If there is an application for the review of a contact decision, the department notifies QCAT that there are proceedings on foot and QCAT must then suspend the review proceedings and notify the parties and the court that the review proceedings have been suspended. Once the court has been notified of the suspension, the court may choose to deal with the contact matter under the proposed new section 99MA, in clause 19 of the bill, and may make interim orders about contact arrangements for the child under the current sections 67(1)(b) or 68(1)(c) in the Child Protection Act. However, there may be circumstances where the court considers QCAT is actually better placed to deal with the contact matter and, in this situation, the court may order that the matter be returned to QCAT.

The amendment facilitates a more efficient process by avoiding concurrent proceedings, where appropriate, about the same matter being dealt with in two separate jurisdictions. The amendments only relate to the review of contact decisions and do not apply to the review of placement decisions. This is because the Childrens Court does not have a jurisdiction to make placement decisions for a child. As the Court Case Management Committee noted in its consideration of recommendation 13.24, it is important that placement decisions remain an administrative decision of the department to ensure they may be altered promptly in response to a change in circumstances to secure the safety and wellbeing of a child, and changes to placement decisions are already a reviewable decision to QCAT.

The next group of amendments I will talk to you about relates to separate legal representation of children in child protection proceedings. Recommendation 13.14 of the Commission of Inquiry relates to amendments to the Act to provide clarity about when the Childrens Court should exercise its jurisdiction to appoint a separate legal representative for a child and also about what the separate

legal representative is required to do. The recommendation is addressed in clauses 21 and 24 of the bill. Clause 21 amends existing section 108 of the Act to clarify that in a child protection proceeding a child may appear in person without legal representation or may have a legal representative to act on their instructions, that is, a direct representative. They may also have a separate representative appointed by the court under section 110 to act in the child's best interests in the proceedings. Clause 24 replaces section 110 of the Act and outlines a minimum set of duties for separate representatives.

The next group of amendments deals with participation of significant parties in proceedings. In recommendation 13.19, the Commission of Inquiry recommended amendments to the Act to enable people who have significant relationships with a child to be joined as parties to the proceedings. The Commission of Inquiry also recommended that these parties should have the right to be legally represented. Clause 25 implements this recommendation. This clause replaces section 113 of the Act and allows people who are significant to the child to apply to the court to participate in proceedings. The court may order that the person may participate by doing all or some of the things that a party can do.

The next amendment deals with joining child protection proceedings. In the second element of recommendation 13.4 the Commission of Inquiry recommended amendments to the Act to allow the court to transfer and join proceedings relating to siblings if the court considers that having the matters dealt with together will be in the best interests of justice. Clause 26 replaces section 115 of the Child Protection Act to allow the court, on its own initiative, to join and hear two or more proceedings together if the court considers it necessary and in the best interests of justice to do so.

The next matter is to do with the duty of disclosure. In recommendation 13.5, the Commission of Inquiry recommended the Court Case Management Committee propose amendments to the Act to introduce a continuing duty of disclosure on a department. The committee considered this issue and recommended amendments to the Act to impose a duty of disclosure on the department in child protection proceedings. This recommendation is implemented through clauses 31 and 32. Clause 31 inserts into the Act new sections 189C to 189E. Section 189C will impose a duty on a litigation director to disclose to all parties in child protection proceedings all relevant documents in the Director of Child Protection Litigation's possession or control. The duty of disclosure plays an important role in ensuring all parties to proceedings are aware of all of the relevant information for the proceedings. The new disclosure obligation will mean parties will not have to rely on the subpoena process to access information relevant to their case. The majority of documents that the Director of Child Protection Litigation will be required to disclose will have been provided to the litigation director by the department. To ensure the litigation director is able to fulfil its duty of disclosure, there is a corresponding duty to disclose information to the litigation director in the Director of Child Protection Litigation Bill, which my colleagues from Justice will talk to you about in a moment. New section 189D will clarify that if the litigation director does not disclose a document it cannot rely on the document except with the leave of the court.

There are also a number of transitional provisions in the bill. Clause 33 inserts transitional provisions by inserting new sections 272 and 273 in the Act. New section 272 clarifies that section 99MA will only apply to a review proceedings started in QCAT after the commencement of section 99MA and new section 273 states that the disclosure obligation under section 189C will apply to all current proceedings for child protection orders, even if the proceedings were initiated before the commencement of the new provision, that is, the duty of disclosure requirement. The disclosure provisions are intended to commence by 1 July 2016, subject to the passage of the bill.

I am happy to take any questions that you may have and I will now hand over to my colleagues from the department of justice.

CHAIR: I am just wondering how you got all of that in this small bill. Thank you.

Mr DICKSON: Just quickly, my brief is nowhere near as good as yours. I would love to have a copy of your brief so that I can refer to those topics to understand them.

CHAIR: Our secretariat have kindly done that for us, so we have not received their brief, just so you know.

Mr DICKSON: Fantastic. I just feel inept for the amount of information that you have just disclosed.

CHAIR: I would say on behalf of the committee, as you would be aware, that we have been focusing exclusively on health legislation for the past 12 months and as of last Thursday we now take your significant area of responsibility, which is a very complex area. I hope you will forgive us, at this first hearing, because we do not have the depth of understanding nor really the context around the

Commission of Inquiry recommendations, which we will all have to read. I thank you for that initial briefing, but we may ask you to come back when we have had the benefit of additional context. We will move now to the next briefing and come back to questions.

Ms Masotti: Thank you for the opportunity to provide information about the Director of Child Protection Litigation Bill. I also want to respectfully acknowledge the traditional owners of the land on which we are meeting and also pay my respects to elders past, present and future. Assisting me today with the briefing on the Director of Child Protection Litigation Bill is Angela Moy, Acting Principal Legal Officer of Strategic Policy in the department. My overview will cover the recommendations and findings of the Queensland Child Protection Commission of Inquiry relevant to the bill and I will then discuss the main provisions of the bill.

The Commission of Inquiry identified concerns about the conduct of child protection order proceedings by the Department of Communities, Child Safety and Disability Services, the department of child safety, including the quality of material and evidence presented in support of applications, lack of compliance with model litigant principles, a need for separation between front-line case management and legal work, and that there is no independent legal assessment made of the strength or suitability of an application at an early stage. The Commission of Inquiry formed the view that there needed to be a two-pronged approach to address the concerns. This would initially involve child safety officers having access to the provision of early, more independent legal advice. This will be achieved through the establishment of the office of the Child and Family Solicitor as detailed by my Child Safety colleague Ms Megan Giles.

Recommendation 13.17 of the Commission of Inquiry report proposes the second approach, which is the establishment of an independent statutory agency, the Director of Child Protection, within the Justice portfolio to make decisions as to which matters will be the subject of a child protection application and what type of child protection order will be sought, as well as litigate the application. However, the department of child safety would retain responsibility in respect of certain interim and emergent orders. The policy rationale for an independent statutory agency is to establish greater accountability and oversight for applications that are being proposed by the department of child safety. The proposed reform will improve outcomes for children and their families by ensuring that any applications filed in court are supported by good-quality evidence, promoting efficiency and evidence based decision-making, and improving litigation. Also removing the responsibility of litigating child protection orders from key Child Safety staff will allow those front-line officers to focus on their core work with children and families.

I will now turn to the key provisions of the Director of Child Protection Litigation Bill 2016. It is proposed that the bill will commence on 1 July 2016. At commencement the DCPL will be the applicant in all child protection order applications that are not finalised. Traditional provisions in the bill will ensure that that occurs. The bill establishes the DCPL as a new independent statutory officer who is appointed by Governor in Council. The DCPL will be required to provide an annual report to the Attorney-General and Minister for Justice about the performance of the office. The staff in the Office of the DCPL will be public servants. Clause 9 of the bill outlines the functions of the DCPL which are to prepare and apply for child protection orders and to conduct proceedings in the Childrens Court. This includes transfers of child protection proceedings to another state and also appeals in relation to child protection orders or decisions about the transfer of child protection orders.

Under clause 9 the DCPL will also be able to provide advice and appear in proceedings on request and under the instruction of the department of child safety for other matters such as urgent orders, family law, adoption, QCAT reviews and Hague Convention matters. This work that is usually performed by Crown law at the moment will now be undertaken by the DCPL and will be on a fee-for-service basis which is similar to the existing arrangement with Crown Law.

Clause 15 of the bill explains when child protection order matters are to be referred to the DCPL. The bill provides that the chief executive of the department of child safety must refer a matter to the DCPL if the chief executive is satisfied that a child is a child in need of protection and a child protection order is the most desirable and appropriate order to protect the child. The chief executive must also refer a matter where a child protection order is already in force and the chief executive is satisfied that the order is no longer appropriate and desirable. The referral will be in the form of a brief of evidence and be supported by the information and documents that are listed in clause 16 of the bill.

Clauses 17 and 18 then provide for how the DCPL is to deal with the referral from the department of child safety. The DCPL is to decide whether or not an application for a child protection order should be made. The DCPL must consult with the chief executive of Child Safety and if the

DCPL disagrees with the recommendations made by the chief executive of Child Safety—and that could be whether to make the child protection order application or the type of order to be applied for—the DCPL must provide written reasons for that decision. When a matter is referred to the DCPL by the chief executive of the department of child safety, this will not discharge the chief executive's duty of care to that child. The chief executive will continue to maintain responsibility for making case management decisions for the child while the litigation process is underway.

The bill includes consequential amendments to the Child Protection Act 1999 to ensure that the chief executive is able to have ongoing participation in the litigation process, including attendance at court ordered conferences. These are required because the applicant in the proceeding now will be the DCPL and not the chief executive, so those amendments are made to ensure the continuing participation of the chief executive during the court process. The department of child safety will retain responsibility for applications related to urgent orders so that children can be placed in appropriate care as a matter of priority where necessary and that the urgent assessments and investigations can occur.

Like most other legislation, the bill in clauses 5 and 6 prescribes the guiding principles for the administration of the Act by the DCPL and staff. For example, the main principle is that the safety, wellbeing and best interests of the child are paramount, which is also consistent with the Child Protection Act 1999. Other principles in the bill aim to ensure the DCPL and staff work collaboratively with the department of child safety and take action that is relevant and appropriate in the circumstances and in a way that is consistent with the Child Protection Act 1999.

Clause 39 gives the DCPL the ability to issue guidelines which apply to all staff of the DCPL, lawyers engaged by the DCPL, the chief executive of the department of child safety and relevant staff within the department of child safety. The guidelines will include information outlining the roles and responsibilities of the two agencies during the court proceeding and a process for reviewing decisions made by the DCPL about whether or not to apply for a child protection order.

Clauses 19 to 21 include the necessary protections to maintain confidentiality of information about children and families and to prescribe how and in what circumstances that information may be used or disclosed. The bill also provides a number of ways for the DCPL to obtain information to ensure the DCPL has all of the information necessary to make decisions and is able to discharge the DCPL's duty of disclosure to the parties as described by my Child Safety colleague Ms Giles earlier in this briefing. These provisions are set out in clauses 23 and 24 of the bill.

The bill at clauses 67 to 87 amends the Child Protection Act to provide an oversight mechanism for the DCPL by expanding the scope of the Child Death and Serious Injuries Review Panel, or review panel, which currently reviews the department of child safety's involvement with particular children who have since died or suffered serious physical injuries. The DCPL will be required to provide a report of its involvement with the child to the review panel after completing its internal review and the review panel will consider both the reports from the DCPL and the department of child safety at the same time.

Clause 101 amends the Family and Child Commission Act 2014 to ensure the DCPL is considered as part of the child protection system and within the oversight functions of the Queensland Family and Child Commission. Clause 41 of the bill requires the minister to review the effectiveness of the Act and the operations of the office as soon as practicable after the end of five years after the commencement of the bill.

As my colleague Ms Leigh Roach has indicated, extensive consultation with government and non-government stakeholders has occurred in the development of the two bills. In addition to that that was outlined previously, the Department of Justice and Attorney-General also established an expert advisory group of legal stakeholders on 1 July 2015 to assist with the development of the models for the DCPL and the Office of the Child and Family Official Solicitor within the department of child safety. All views of stakeholders, including the expert advisory group, were considered in finalising this bill and, where appropriate, amendments to the bill based on the consultation were made. Thank you. I am happy to take questions.

CHAIR: Thank you very much. For the benefit of the committee, can I ask that the submission that you provide to the committee include some form of flow chart which outlines for us how communication will operate between the Office of the Child and Family Official Solicitor, the Office of the Director of Child Protection Litigation, the chief executive and your child safety officers who are working on the ground? I think that would be highly beneficial for us so that we have that in visual form as well as your advice. Is it fair to say that, prima facie, the tone of many of these amendments

is about more information of a higher quality at an earlier stage to result in better outcomes for children at risk?

Ms Roach: Yes.

CHAIR: Thank you. With regard to the Child Protection Reform Amendment Bill and withdrawing applications for a child protection order, how often in practice would that occur and why would it occur?

Ms Giles: Thank you for the question. I do not have any data with me now around how often that occurs, but some of the circumstances that I have already outlined when I spoke about those amendments might include, for example, where a child's family takes an action that starts to address some of the child protection concerns that have been assessed and identified by the department of child safety to an extent where the department is of the view that the safety of the child does not require an order to be in place to meet the child's protective needs. There might be other circumstances like where, for example, a member of the child's family in a domestic violence situation is no longer on the scene—they may have deceased, for example—and that might mean that the remaining parent is able to protect the child protectively and meet the child's protective needs. Other than that, I am really just trying to think of examples of when that kind of a thing might occur.

CHAIR: Often? Very common? Sometimes?

Ms Giles: Sometimes, yes.

CHAIR: So this is about making sure there is a sufficiently high threshold of assessment. You have deemed that there is a risk here. It is not okay that you just say that there is not anymore; you really want to assess it?

Ms Giles: Absolutely.

CHAIR: And that would not in any way give rise to an unintended consequence of, 'I don't want to go through that process so I may be more reticent to bring such an order'? That is not a concern?

Ms Giles: The way the Child Protection Act works at the moment is even if a child's parents consent to the making of a child protection order it is considered so serious the state intervening in a normal private matter of a family's care for their child that the court still needs to be required of certain matters that are set out in section 59 of the Act. This provision then sits with that requirement to say that once you have made an application for a child protection order the court should also have to turn its mind to whether or not the circumstances that are now said to be in place actually do meet those protective needs for the child. It may be that a child's family have agreed to an intervention being put in place through a care agreement, which is another thing that we can do under our Act—that is, have an agreement for a very limited period of time where the child may as part of that agreement remain in out-of-home care and the parents agree to do certain things as part of a case plan. That is another example. It would not require, for example, a child's family to even attend court to seek the leave of the court to withdraw the application.

CHAIR: Thank you. I will have very many more questions when I have had time to read the bills, but I will hand over to the deputy chair, the member for Moggill.

Dr ROWAN: Thanks to both departments for your submissions today. I guess all Queenslanders really want an effective child protection system. In 2004 there was a highly critical report on Queensland's failed system of child safety and the then Labor premier, Peter Beattie, went to an election and said it would be fixed. We are now 12 years on. There has been a Commission of Inquiry with some strong recommendations. I take the point from the chair around having a flow chart. How will this legislation practically enhance the coordination of case management and child protection plans for vulnerable children? In simple laymen's terms, is there a way that that can be outlined?

Ms Giles: As I have already outlined, this bill focuses on those recommendations from the Queensland Child Protection Commission of Inquiry report that specifically talked about proceedings on an application for a child protection order in the Childrens Court. They aim to ensure the best evidence is put before the court when it is required to make those very important decisions about how a child's protective needs can best be met and to enable the court to discharge its obligation to consider the paramount consideration for any court making a decision in this jurisdiction, which is about the welfare and best interests of a child. To do that it requires all the information that it needs. It needs the people that have a significant interest in the matter to be able to appear before it and it needs that evidence and information presented to the court in a way that is relevant and meaningful. That is how it will deliver better outcomes for children and families.

Dr ROWAN: In relation to the independent statutory bodies the Director of Child Protection and the DCPL, is there any idea on the type of data that the body will be required to capture and report on at this stage?

CHAIR: You can take a question on notice if you want time to consider it.

Ms Moy: We are in the process of building some systems and looking at how we can make sure we are continually monitoring the progress of the DCPL and comparing it to the current system. We are developing an evaluation framework and working out what data we actually do need and building that into the systems from the start. We are in the process of building the systems as we speak. We are just in the early stages of working it out. We do have some information that we can provide. We can take that on notice.

Dr ROWAN: In terms of the new system compared to the current system, what current mechanisms exist in the department to really drive quality improvement in the current child protection system in Queensland?

Ms Giles: That is probably a more lengthy answer than I can give orally today. We would be happy to take that on notice from the Department of Communities, Child Safety and Disability Services and provide a more fulsome answer.

Dr ROWAN: That would be great. Also, is there any idea yet of the anticipated costs associated with the newly implemented statutory body, the DCPL, and how many staff will be in it?

Ms Masotti: As I said, the staff of the office will be public servants. The office will be made up of 35 staff, 29 of whom will be lawyers, and the remainder will be administrative support staff. I can give you some details about the make-up within the office. There will be an intake team that will be responsible for receiving briefs of evidence from the department and to make assessments about whether an application for a child protection order should be made and the type of order. That team will also draft the child protection order applications and settle affidavits that are coming in from the department of child safety. Having that intake team solely focused on receiving briefs of evidence and not appearing in court ensures there are always officers on hand to receive briefs and to respond to those in an urgent way.

There will also be two advocacy teams that will be responsible for the litigation of child protection order proceedings across Queensland, one focused on the north and one focused in the south. It is envisioned that the staff will have opportunities to work on all three teams on a rotational basis for professional development. The DCPL will leverage off Crown Law administrative support services such as IT, HR and financial services.

I might just point out that that might be a bit confusing, but what I did not state in my initial brief to you was that the office of the Director Of Child Protection will be located in Brisbane and staff from the office will be required to travel across Queensland to attend child protection proceedings in the Childrens Court across the state. The Brisbane based model has been adopted and it has been designed in that way to ensure that there is appropriate professional supervision and support for staff and to promote consistency of approach. This is also important to establish and embed a new culture and drive practice improvement consistent with the intent of the court reforms.

Dr ROWAN: I have one final question regarding the relationship between DCPL and the Office of the Director of Public Prosecutions. Is there a structure that is in place, a formal relationship or are they completely separate entities?

Ms Masotti: They are completely separate entities. The Office of the Director of Public Prosecutions is responsible for prosecuting criminal matters, which is completely separate to this jurisdiction.

Dr ROWAN: As far as the liaison between those two are concerned, given that there can be not only matters which are about child protection but also matters which require potential prosecution as a result of either breaches of relevant legislation or failure to provide care and those things, will there be a formal relationship or liaison between those? How will those matters be coordinated?

Ms Masotti: Are you talking about if there are ongoing prosecutions in relation to child abuse and so forth?

Dr ROWAN: Child abuse or breaches of child protection orders or other matters which are cross-jurisdictional, for want of a better term—matters which need to be managed by both entities?

Ms Masotti: It would mainly be officers within Child Safety who would be witnesses or provide that information to the Director of Public Prosecutions. If needs be, the Act will allow for exchange of information if it is required, if it is justified and permitted.

Ms Giles: I will add there that the department of child safety has ongoing obligations in our legislation and capacity to share information with police. We quite actively and often work in joint investigation work with our police colleagues, and those relationships exist and will continue to exist. As my colleague from Justice has already outlined, Child Safety staff may appear as witnesses in criminal matters. There is a statutory obligation in section 14(2) of the Child Protection Act that requires the department to disclose any allegations of harm against a child that may also constitute a criminal offence to police. There are a number of ways that that relationship is supported through the legislative framework at the moment and that will continue.

Dr ROWAN: One final thing about cost, when we were talking about the number of FTE—and I think it was 35 FTE. Can I get an idea of anticipated cost? If you need to take that on notice, that is fine.

Ms Masotti: I need to take that on notice.

CHAIR: I notice in the explanatory notes it says that full implementation of the bill will be funded in part through the reallocation of existing government resources and associated funding and additional government approved funding. It seems that at this point it is still being worked through. As the member asked, anything that can be provided to the committee would be of benefit. I appreciate you taking that on notice.

Mr HARPER: Thank you all very much for your very comprehensive briefing this morning. I like to get the facts. I do not know whether you can comment in terms of numbers of child protection orders historically over the years. What are we dealing with? Obviously, we will be forming this department with 35 staff. I would imagine it is up there. I would like to just get a grounding of what kinds of numbers exist in child protection orders. Whether you can comment on that or not; I do not know. The second thing is—I have not read the 121 recommendations from the 2013 review.

CHAIR: You can do that this week.

Mr HARPER: I will do that this week, thank you very much—on a plane. I would imagine it looked at some weaknesses historically that occurred between departments. I am surmising out of all this that there needs to be a tighter collaboration between all departments, parents, children, courts and agencies to get it right, to get the best outcome in terms of looking after the safety of children under child protection orders. What processes will be put in place to ensure that agencies are always involved at the appropriate times during these cases?

CHAIR: That is a big question.

Mr HARPER: I know. There are a few questions there.

Ms Giles: In terms of your first question, I understand the question was: how many child protection orders are made?

Mr HARPER: Yes. What are we dealing with?

Ms Giles: At any one time the numbers of children in out-of-home care fluctuates from year to year. Generally, there are over 8,000 children in Queensland who are the subject of a child protection order. That is a very general number. The Department of Communities, Child Safety and Disability Services publishes quarterly data on our website. I will be able to take on notice the exact numbers and provide to you some more comprehensive data around the numbers of children at this present moment who are in out-of-home care and how many orders are made if the committee requires that.

Mr HARPER: I was just getting a grounding. Has that historically increased over the last few years or has it been around that 8,000?

Ms Giles: Again, I do not have that at the moment. I am happy to provide that on notice. Your second question then is about what processes will be put in place to ensure appropriate services are provided at the appropriate time; is that correct?

Mr HARPER: To make sure all agencies are involved. I see this as a collaboration from the review—are involved at the appropriate time.

Ms Giles: In terms of the provisions that are in the bills, there are provisions that specifically talk about the need for the Department of Communities, Child Safety and Disability Services to work collaboratively with the Director of Child Protection Litigation. There is also the requirement for both of us to have as the paramount consideration the welfare and best interests of the child. So we have a shared goal in terms of achieving the best interests of children. The Director of Child Protection Litigation will also be required, under that bill, to be mindful of all of the principles that are outlined in the Child Protection Act and to take them into consideration whilst they are performing their functions, which parallel with the principles that we must take into consideration within the Department of

Communities, Child Safety and Disability Services. I do not know whether my colleagues from Justice have anything else that they would like to add in relation to that? It is an important question.

Ms Masotti: The DCPL bill will include, as I outlined before, principles and one of those principles is that the director is to work collaboratively with Child Safety. In addition, I mentioned that the director is to issue guidelines. Those guidelines will talk about the relationships between Child Safety and the DCPL and about the exchange of information et cetera. There are also requirements in the DCPL legislation to consult with the department of child safety. There are a number of provisions in the bill that will facilitate that ongoing communication and ongoing strong, collaborative relationship between the two agencies which is vital.

Ms Moy: Between the bill and the guidelines it will give guidance to the different officers in the two agencies about the timing, the touch points of when you should be talking to whom and to whom you should be talking. Between the two it gives trigger points for when to bring in different people as well.

CHAIR: With reference to clause 39 that you just mentioned, will those guidelines be made publicly available?

Ms Masotti: Yes, they will be published.

Ms Moy: The director is required to report on them as a part of the annual reporting.

CHAIR: Thank you very much.

Dr ROWAN: I have listened to that about Child Safety and the DCPL—that clear coordination and transparent communication of relevant information. When we receive back some of those flow charts and diagrams, I think it would be very helpful as a committee member to have a clear understanding of that. Often that is where things can go astray and very complicated systems—and this is obviously a very complicated system trying to achieve multiple end points and manage multiple issues when it comes to legal compliance as well as child safety and welfare outcomes. It would be very helpful if there is a simple and straightforward way of seeing how that clear coordination and transparent communication of information between the various entities involved in this extensive legislative framework—if we are able to get that, as an individual committee member, that would be extremely helpful.

CHAIR: That comes back to clause 39 obviously. It would provide a lot of information in that regard—the guidelines. The time allocated for the public departmental briefing has expired. Thank you very much for coming before the committee. I am sure that we will get to know you very well, particularly Leigh, Megan and Helen, at these sorts of inquiries. A number of matters have been taken on notice. The secretariat will be in contact with you regarding those matters with your response due by 2 March. We look forward to receiving the written brief also from both departments in regard to this bill. I thank you for your attendance here. The committee certainly appreciates your expertise. I declare the briefing closed.

Committee adjourned at 12.15 pm