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Office of the
Director-General

Ms Leanne Linard MP
Chair
Health, Communities, Disability Services and
Domestic and Family Violence Prevention Committee
Parliament House
BRISBANE QLD 4000

Department of
**Communities, Child Safety
and Disability Services**

Dear Ms Linard

Thank you for your letter of 19 February 2016 regarding the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee's examination of the Child Protection Reform Amendment Bill 2016 (the CPRA Bill). Thank you for the opportunity for the Department of Communities, Child Safety and Disability Services to brief the Committee on 24 February 2016.

The CPRA Bill and the Director of Child Protection Litigation Bill 2016 implement 11 recommendations made by the Queensland Child Protection Commission of Inquiry in its 2013 final report, *Taking Responsibility: A Roadmap for Queensland Child Protection*, and an additional recommendation of the Court Case Management Committee which was established under recommendation 13.1 of the Commission of Inquiry.

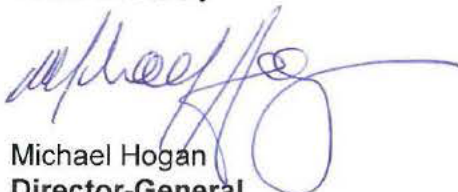
Please find enclosed the Department of Communities, Child Safety and Disability Services' written briefing on the CPRA Bill. It contains an overview of the CPRA Bill, a summary of the consultation that was undertaken as well as an explanation of the key amendments which are included in the Bill. Attached to the written briefing are two flowcharts of the operational interface between the proposed Office of the Child and Family Official Solicitor and the Director of Child Protection Litigation as requested by the Committee on 24 February 2016.

I can also inform you that I nominate Ms Megan Giles, Executive Director, Legislative Reform as the departmental officer who will serve as your primary point of contact for the remainder of the inquiry.

If you require any further information or assistance in relation to this matter, please do not hesitate to contact Ms Giles on [REDACTED].

I trust this information is of assistance.

Yours sincerely


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BRIEFING FOR THE HEALTH, COMMUNITIES, DISABILITY SERVICES AND DOMESTIC AND FAMILY VIOLENCE PREVENTION COMMITTEE

Examination of the Child Protection Reform Amendment Bill 2016

Department of Communities, Child Safety and Disability Services

1. Background

This brief is in response to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee's consideration of the Child Protection Reform Amendment Bill 2016.

This brief will detail:

- an overview of the role of the Department of Communities, Child Safety and Disability Services
- an overview of the Queensland Child Protection Commission of Inquiry (Commission of Inquiry) and its recommendations related to court processes;
- the process for implementing the recommendations of the Commission of Inquiry, consultation and outcomes; and
- an overview of the Child Protection Reform Amendment Bill 2016 (CPRA Bill) and proposed amendments.

2. Role of the Department of Communities, Child Safety and Disability Services

The Department of Communities, Child Safety and Disability Services (DCCSDS) plays a key role in protecting children and young people who have been harmed or are at risk of harm, and to supporting families with the upbringing, protection and development of their children. The *Child Protection Act 1999* (the CPA) provides the legislative framework for the child protection system in Queensland. The CPA includes a number of principles that apply to its administration. The main principle is that the safety, wellbeing and best interests of a child are paramount. A child's family has the primary responsibility for the child's upbringing, protection and development.

The CPA places a statutory obligation on the chief executive of the DCCSDS to have an authorised officer of investigate an allegation of harm or risk of harm to a child and assess the child's protection needs, or to take other action considered necessary, if the chief executive becomes aware of alleged harm or risk of harm to a child and reasonably suspects the child is in need of protection. A child is a child in need of protection if they have suffered, are suffering, or are at an unacceptable risk of suffering harm and do not have a parent who is able and willing to protect the child from the harm.

If a child is assessed to be in need of protection and ongoing intervention is required to meet the child's protective needs, there are a range of options to support a child's family to meet the child's needs. These include DCCSDS providing short-term assistance with the agreement of a child's family, which may include a period of out-of-home care for the child, or, the DCCSDS making an application to the Childrens Court for a child protection order for the child.

3. The Commission of Inquiry

On 1 July 2012, the Commission of Inquiry was established to review the child protection system and to chart a road map for the state's child protection system for the next decade. The Commission of Inquiry provided its final report – *Taking Responsibility: A Road Map for Queensland Child Protection* to the Queensland Government on 1 July 2013. 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.

On 16 December 2013, the Queensland Government committed to implement the recommendations of the Commission of Inquiry as part of the child and family reform agenda.

Chapter 13 of the Commission of Inquiry's final report explores how the functions of the Childrens Court of Queensland and the Queensland Civil and Administrative Tribunal can be improved to better meet the needs of children and families.

One of the recommendations (recommendation 13.1) was to establish the Court Case Management Committee (CCMC). The CCMC chaired by the President of the Childrens Court, was tasked with developing a court case management framework for child protection proceedings in the Childrens Court, in addition to reviewing disclosure obligations of DCCSDS in child protection litigation matters, timing and frequency of court-ordered conferencing and the powers of the court when making long-term guardianship orders.

4. Child Protection Reform Amendment Bill 2016

The CPRA Bill implements ten specific court-related recommendations of the Commission of Inquiry and one recommendation of the CCMC. The CPRA Bill contains amendments to the CPA to reform court processes to help ensure the voices of children and their families are heard in decisions that impact on them, minimise delay, improve the quality of evidence for child protection court proceedings and improve decision making as amendments will ensure the court will have all the relevant material it needs to make a decision. The amendments to the CPA will also provide additional functions for the chief executive of DCCSDS to discharge responsibilities related to appearing in the Childrens Court for assessment orders and temporary custody orders; and to prepare and provide briefs of evidence to the Director of Child Protection Litigation (the Director).

The CPRA Bill is complemented by the Director of Child Protection Litigation Bill 2016 (DCPL Bill) which implements the Commission of Inquiry's recommendation to establish an independent statutory agency within the Justice Portfolio, to make decisions about which matters will be the subject of an application for a child protection order and what type of child protection order will be sought, as well as litigate the applications in the Childrens Court.

Proposed amendments

The table below summarises the recommendations of the Commission of Inquiry which are proposed to be implemented by the CPRA Bill:

Recommendation	Commission of Inquiry Rationale	Proposed approach
13.4(2) Minister for Communities, Child Safety and Disability Services propose amendments to the CPA to allow the Court, on its own initiative, 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.	Needs of siblings and half-siblings determined by different courts on separate occasions and in different locations, even though the needs of children can be interrelated and competing – and sometimes contradict the principles of the legislation.	Amend the CPA to provide court with the discretion to transfer or join child protection proceedings on its own initiative where this would be in the interests of justice.
13.5 The CCMC reviewed the disclosure obligations on the DCCSDS and propose amendments to the CPA to introduce a continuing duty of disclosure on the DCCSDS with appropriate safeguards.	A broader disclosure regime would provide a clear statutory power to disclose information and documents without the need for subpoenas.	Amend the CPA to provide a general and enduring duty of disclosure on the applicant during child protection court proceedings. (note the applicant will be the Director, Child Protection Litigation).
13.6 The CCMC proposed to the Minister for Communities, Child Safety and Disability Services amendments to the CPA to provide a legislative framework for court-ordered conferencing at critical and optimal stages during child protection proceedings.	Clarity needed around the legislation and administration of the conferencing scheme.	Amend the CPA to allow the Childrens Court to dispense with the requirement to hold a court-ordered conference prior to making a child protection order in contested proceedings in circumstances where the Court considers that dispensation is appropriate.
13.16 DCCSDS enhance its in-house legal service provision by creating an internal Office of the Child and Family Official Solicitor within DCCSDS which shall have responsibility for: <ul style="list-style-type: none"> - providing early, more independent legal advice to departmental officers in the conduct of the alternative dispute resolution processes and preparation of applications for child protection orders; - working closely with the proposed specialist investigation teams so that legal advice is provided at the earliest opportunity; and - preparing briefs of evidence to be provided to the Director in matters where the department considers a child protection order should be sought. 	Officers within DCCSDS who are responsible for providing frontline service delivery to children and families may also be responsible for undertaking child protection court work. In particular, non-legally qualified child safety officers may be responsible for drafting court documents, gathering evidence and appearing in court. This impacts on the quality of material and evidence presented and there is a need for professional separation between the delivery of frontline child protection services and the provision of legal advice in relation to child protection proceedings.	<p>Establish the Office of the Child and Family Official Solicitor administratively within DCCSDS.</p> <p>Amend the CPA to ensure the chief executive is able to perform its functions and address the issues identified by the Commission of Inquiry, i.e. collecting and preparing evidence to support applications for child protection orders.</p> <p>Amend the CPA to make clear that the Office of the Child and Family Official Solicitor will work collaboratively with the Director to prepare applications and obtain evidence.</p>
13.19 Minister for Communities, Child Safety and Disability Services propose amendments to the CPA to permit the Childrens Court discretion to allow members of the child's family or another significant person in the child's life to be joined as a party to the proceedings where the court agrees the person has a sufficient interest in the outcome of the proceedings. These parties should also have the right to be legally represented.	Important family members and individuals in a child's life are often excluded from, or marginalised in child protection processes and proceedings sometimes do not take into account the importance of kinship relationships in Aboriginal and Torres Strait Islander families (and also culturally and linguistically diverse communities).	Amend the CPA to facilitate significant people in a child's life making submissions and taking other steps to allow the court to make more informed decisions.
13.20(2) The CPA be amended to provide that the 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 of the matters alleged against them.	Parents are reluctant to participate in case-planning meetings or to agree to a case plan where an application for a child protection order has commenced because they are concerned that their participation or agreement may be taken as an admission to matter related to the application. This can delay work towards reunification and the time for departmental intervention.	Amend the CPA to state that a party's mere attendance at a family group meeting or agreement to a case plan cannot be used as an admission by them of any of the allegations raised against them by DCCSDS.

Recommendation	Commission of Inquiry Rationale	Proposed approach
13.24 The CCMC examined whether the Childrens Court, in making a long-term guardianship order, can feasibly make an order for the placement and contact arrangements for the child. It further recommended that the CCMC should take account of the impact of such a proposal on the court case management system and the departmental case management process.	Consideration needs to be given to whether decisions about where a child should be placed and the contact arrangements with parents or family should be decided by a court or determined administratively by the chief executive of DCCSDS.	Amend the CPA to make it clear that the Childrens Court must be satisfied before granting an order for long-term guardianship of a child that there is a case plan for meeting the child's assessed protection and care needs, including that the case plan include proposed placement and contact arrangements that the Court considers appropriate for the child at the time of making the order.
13.25 Minister for Communities, Child Safety and Disability Services propose an amendment to Schedule 2 of the CPA to include a reviewable decision where DCCSDS refuses a request to review a long-term guardianship order by a child's parent or the child.	DCCSDS has obligation to ensure that children and young people do not stay in out-of-home care for any longer than their ongoing protective needs require. If long-term care is not providing a net benefit the child, then some other less-intrusive intervention should be considered.	Amend the CPA to provide parents with the right to request a review of a long-term guardianship case plan in certain circumstances.
13.28 Minister for Communities, Child Safety and Disability Services propose amendments to the CPA to allow the Childrens Court to deal with an application for a review of a contact or placement decision made to the Queensland Civil and Administrative Tribunal (QCAT) if it relates to a proceeding before the Childrens Court.	In concurrent proceedings, a decision may be made by QCAT without the knowledge of the Childrens Court or all parties.	Amend the CPA to provide that the president of QCAT must suspend an application for administrative review of a contact decision by the chief executive and notify the Childrens Court and all parties of this, where the parties to the review proceeding are also parties to the current proceedings in the Childrens Court.
CCMC recommendation The CCMC identified as an issue that there is currently no guidance provided in legislation, rules or practice directions concerning when or how an application for a child protection order may be withdrawn from the Childrens Court.	Not applicable.	Amend the CPA to require leave of the Court to withdraw an application for a child protection order.

Consultation on the Bill

As part of the Commission of Inquiry, extensive community consultation was undertaken in forming recommendations, including those which are being implemented by the CPRA Bill. In developing policy options for the legislative amendments, DCCSDS and the Department of Justice and Attorney-General (DJAG) conducted targeted consultation with key child protection and legal stakeholders.

Individual meetings and separate workshops for child protection and legal stakeholders were conducted in December 2014 in relation to proposed approaches for recommendations being implemented through the CPRA Bill.

This targeted consultation identified broad support for the policy intent of reforms proposed and also helped identify practical implementation issues with some of the proposed approaches. Early identification of issues allowed drafting instructions to be refined and informed implementation planning.

In July 2015 DCCSDS and DJAG conducted targeted consultation with child protection and legal stakeholders to inform the development of the new court work model involving the Office of the Child and Family Official Solicitor (Official Solicitor) within DCCSDS and the Director within the Justice Portfolio.

Between October and December 2015, DCCSDS and DJAG conducted targeted consultation on an exposure draft of the CPRA Bill and the DCPL Bill with key child protection and legal stakeholders, the President of the QCAT, 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.

The Bills received support from stakeholders. Stakeholders' comments were considered and where appropriate, amendments were made to the Bill during the drafting process.

4. Overview of the CPRA Bill and proposed amendments

The CPRA Bill proposes to amend the CPA to implement legislative changes recommended by the Commission of Inquiry, and support the administrative establishment of the Official Solicitor within DCCSDS. The key amendments are set out below.

The reforms are targeted at increasing and supporting the participation of families and children in child protection proceedings before the Childrens Court and increasing the information available to the court in deciding child protection matters so as to achieve better outcomes.

Office of the Child and Family Official Solicitor

Currently, the majority of court-related work is completed by DCCSDS staff, predominantly by child safety officers (CSOs). CSOs are frontline workers who generally have a tertiary background in social work, psychology or social sciences. Most CSOs are not legally qualified but are undertaking legal work, including drafting legal documents and appearing in court. While CSOs may sometimes have support from qualified lawyers in DCCSDS in doing this work, this is not always the case.

CSOs are also the officers who conduct investigations and work with families to address risk factors in the home (e.g. domestic violence or mental health issues) to ultimately ensure the safety and wellbeing of a child. It can be challenging for CSOs to build rapport and supportive relationships with families when they are also responsible for applying to the court to remove the children from the home.

The Commission of Inquiry recommended that DCCSDS establish an internal office of the Official Solicitor to provide early and more independent legal advice to DCCSDS staff, to apply for assessment and temporary custody orders, and prepare briefs of evidence to give to the Director where DCCSDS considers a child protection order should be sought (recommendation 13.16).

In response to this recommendation, DCCSDS is establishing the administrative internal body of the Official Solicitor. While the CPRA Bill does not establish the Official Solicitor as a statutory body, there are certain provisions in the CPRA Bill which support its role and function. In particular, the CPRA Bill includes a new section 7A of the CPA to clarify the role of various entities that may be involved in applying for different orders under the CPA. This provision explains that DCCSDS will retain responsibility for applying for assessment orders and temporary custody orders, and the Director (established under the DCPL Bill) will have responsibility for applying for child protection orders. The new section 7A and a new section 53A clarify that the chief executive, DCCSDS will work collaboratively with the Director in relation to applications for child protection orders.

The primary clauses under the Bill that give effect to this recommendation are clauses 4 and 9.

Review of long-term guardianship case plans

When DCCSDS determines that a child must be removed from the home in order to meet their protective needs, consideration is given to the type of order required. The CPA provides for a range of different orders the court may make. Generally, when DCCSDS is satisfied that if it works with the family to address the risk factors the child may be able to return home, DCCSDS will apply for a short-term order granting custody of the child to the chief executive. However, for some families, the risk factors are so serious and extensive that the court has granted long-term guardianship of the child to the chief executive. This means DCCSDS will be guardian of the child until the child's eighteenth birthday.

The Commission of Inquiry recommended when a child is subject to a long-term guardianship order, the child or the child's parents should be able to request DCCSDS review the need for the order (recommendation 13.25).

Currently, parents or children may apply directly to the court if they wish to seek a variation or revocation of a long-term guardianship order.

Under section 51VA of the CPA, where a child is subject to a long-term guardianship order to someone other than the chief executive, for example, to another suitable person such as a kinship or foster carer, the child or their guardian may ask DCCSDS to review the child's case plan at any time. However, there is no ability for a parent to request DCCSDS to review a case plan where their child is subject to an order granting long-term guardianship to someone other than the chief executive.

The proposed amendments to section 51VA of the CPA will address this by allowing a parent to request DCCSDS review a case plan when their child is subject to a long-term guardianship order to someone other than the chief executive.

In order to ensure the best interests of the child are met, the amendments place restrictions on when the parents may apply for a review, by stating that the parents may only request a review if the case plan has not been reviewed in the previous 12 months. This is an important safeguard to ensure stability in a child's life and prevent disruption. In addition, if a request is received, DCCSDS may decide not to review a case plan on the basis that the child's circumstances have not changed significantly since the plan was finalised or last reviewed or, if for another reason, DCCSDS considers it would not be appropriate.

Currently there are certain administrative decisions of the chief executive, such as decisions relating to a child's contact arrangements or placement, where a person affected by the decision, can make an application to QCAT to have the decision reviewed. These decisions are outlined in schedule 2 of the CPA as a reviewable decision. DCCSDS' decision to not review a case plan falls within the current definition of a reviewable decision. Therefore, if DCCSDS decides not to review the case plan, the parent may apply to QCAT for an administrative review of the refusal decision.

The primary clause under the Bill that gives effect to this amendment is clause 5.

Attendance at family group meetings and agreement to case plans

Family group meetings are attended by DCCSDS staff and the people who play the most important role in the child's life, such as their parents, extended family members and often their kinship or foster carers. The purpose of a family group meeting is to provide family-based responses to a child's protection and care needs, and to ensure an inclusive process for planning and making decisions relating to a child's wellbeing,

including developing a case plan. The CPA includes provisions providing for how family group meetings are to be conducted and provisions relating to how DCCSDS prepares a case plan. Typically, a case plan will set out a child's protection and care needs, the needs of the child's family, what will be done to help the child and the family, who will be helping them and when they will receive help.

The Commission of Inquiry recommended that the CPA be amended to provide that the 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 of the matters alleged against them (recommendation 13.20(2)).

The amendments to sections 51YA and 51YB of the CPA in the CPRA Bill make it clear that a person's mere attendance at a family group meeting and participation in the development of, or agreement to, a case plan, cannot be used as an admission of anything alleged against them in child protection proceedings.

As family group meetings are a means of assessing and monitoring family risk factors, it is important that the actual information relayed in family group meetings may be used as evidence in child protection proceedings where it has informed an assessment that a child is in need of protection. For example, if a parent makes a disclosure in a family group meeting that they have a history of physically abusing their children, this information would need to be considered by the court. For this reason, the amendments state that anything said or done in a family group meeting can still be used as evidence.

The primary clauses under the CPRA Bill that give effect to these amendments are clauses 7 and 8.

Withdrawing application for a child protection order

As noted above, DCCSDS applies for a child protection order when it has determined that a child is in need of protection. There may be times when the family's situation has changed and DCCSDS determines a child protection order is no longer required. If DCCSDS has already filed an application for a child protection order in the Childrens Court, the application will need to be withdrawn.

There is currently no specific legislation, rule or practice direction for courts about the process for withdrawing an application for a child protection order. The CCMC considered this issue and recommended amendments to make it clear that the withdrawal of a child protection application requires the leave of the court. As the Director will now be the applicant in child protection court proceedings, the Director will need to seek leave of the court before an application is withdrawn.

The CPRA Bill includes a new section 57A of the CPA which provides that the Director may only withdraw an application for a child protection order with the leave of the court. When submitting an application for leave to withdraw, the Director will be required to give the court reasons why the order is no longer required. This provides an additional safety mechanism as the court will need to be satisfied that the child protection order is not required to ensure the child's safety.

The primary clause under the Bill that gives effect to this amendment is clause 10.

Court-ordered conferencing

The purpose of court-ordered conferencing is to decide the matters in dispute in the Childrens Court child protection proceedings between the parties, or try to resolve the matters in dispute.

The Commission of Inquiry recommended that the CCMC propose amendments to the CPA to provide a legislative framework for court-ordered conferencing at critical and optimal stages during child protection proceedings (recommendation 13.6).

Under section 59 of the CPA, before making a child protection order in contested proceedings, the Childrens Court must be satisfied that a conference has already been held between the parties or reasonable attempts to hold a conference have been made.

The CCMC found that there may be some circumstances where the ordering of a court-ordered conference is not appropriate, and considered the court should have the discretion to dispense with the requirement to order a conference in contested proceedings.

The CPRA Bill amends section 59 of the CPA to allow the court to dispense with the requirement to hold a conference in exceptional circumstances, for example, where there are concerns about the safety of a party if a conference were held and the court is satisfied this outweighs the potential benefit of holding the conference. However, it is recognised court-ordered conferences play an important role in facilitating the resolution of cases and preventing the need to proceed to a full court hearing. For this reason, the presumption will always be that a conference be held.

The primary clause under the Bill that gives effect to this amendment is clause 11.

Contact and living arrangements for children under long-term guardianship orders

When a child is under a child protection order and living in out-of-home care, DCCSDS must make decisions regarding with whom the child should live and the contact that the child will have with their family. These are administrative decisions of the chief executive, DCCSDS.

The Commission of Inquiry recommended that the CCMC examine whether the Childrens Court, in making a long-term guardianship order, can feasibly make an order for the placement and contact arrangements for the child (recommendation 13.24). The CCMC considered the issues and concluded it is not feasible to propose amendments that would allow the Childrens Court to make orders for placement and contact when making an order for the long-term guardianship of a child to the chief executive. In order to protect the safety and wellbeing of a child, it is important that contact and placement decisions can be altered promptly by DCCSDS in response to a change in circumstances. This would not be possible if the matter had to return to court for a new order each time new arrangements were required.

In its consideration of this recommendation the CCMC recognised the important role that placement and contact arrangements play for children in out-of-home care and their families, and recommended amending the CPA to make it clear that when considering the appropriateness of a case plan, the court must be satisfied the placement and contact arrangements, outlined in the case plan, are appropriate for the child at the time of making the order.

Currently, if a person (e.g. a parent) is not satisfied with DCCSDS' decision regarding the child's contact or placement arrangements, the parent may apply to QCAT to review the decision, as a reviewable decision under schedule 2 of the CPA. During consultation on the CPRA Bill, it was identified that if the court had to make decisions about the appropriateness of contact and living arrangements, this could impact on QCAT's ability to review the contact or placement decision as a reviewable decision. This could have the unintended consequence of removing an aggrieved person's right to request a review of a departmental decision by QCAT.

As a result, the CPRA Bill amends section 59 of the CPA to clarify that when making an order for long-term guardianship, the Childrens Court must merely be satisfied that living and contact arrangements are included in the child's case plan. As with any child protection order, the Childrens Court must be satisfied there is a case plan for the child that is appropriate for meeting the child's assessed protection and care needs.

The primary clause under the Bill that gives effect to this amendment is clause 11.

Transfer of proceedings from QCAT to the Childrens Court

The Commission of Inquiry identified that if child protection proceedings are underway in the Childrens Court and at the same time QCAT is dealing with an application to review a decision about contact or placement arrangements for the child, this can lead to confusion for the parties and cause delay.

The Commission of Inquiry recommended amendments to the CPA to allow the Childrens Court to deal with the application for a review of a contact or placement decision made to QCAT if it relates to a current proceeding before the Childrens Court (recommendation 13.28).

The Bill includes a new section 99MA of the CPA that will require QCAT to suspend its review of a contact decision by the chief executive if there are child protection proceedings before the Childrens Court.

The new section 99MA allows the Childrens Court to deal with the matter by making an interim contact order; or order that the matter be dealt with by QCAT; or not deal with the matter prior to making its final decision regarding the application for a child protection order. This allows the court the flexibility to deal with the matter in the most appropriate way, based on the circumstances of the individual case. This amendment facilitates a more efficient process by avoiding concurrent proceedings 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 generally does not have jurisdiction to make placement decisions. For the reasons noted by the CCMC in its consideration of recommendation 13.24, it is important that placement decisions remain an administrative decision of DCCSDS to ensure they may be altered promptly in response to a change in circumstances to uphold the safety and wellbeing of the child.

The primary clause under the Bill that gives effect to this amendment is clause 19.

Separate legal representation

In a child protection proceeding, the child may appear in person or be represented by either, or both, a direct legal representative (which is a lawyer who acts on the child's instructions) or a separate legal representative appointed by the court under section 110 of the CPA, to act in the best interests of the child. In addition, the Public Guardian may also be involved in the proceeding. The various roles of the direct representative and separate representative have previously caused confusion.

The Commission of Inquiry recommended amendments to the CPA to provide clarity about when the Childrens Court should exercise its discretion to appoint a separate legal representative and also about what the separate legal representative is required to do (recommendation 13.14).

The CPRA Bill amends section 108 of the CPA to clarify the roles of the direct representative and separate representative. Amendments to section 108C acknowledge that the role of the Public Guardian is not diminished even if the child has both a direct representative and a separate representative.

The existing section 110 of the CPA is also replaced by the Bill and includes guidance about the role of the separate representative and sets out a minimum set of duties. The new section 110 requires a separate representative to meet with the child, explain their role to the child, and help the child take part in proceedings. As far as possible, the separate representative is to present the child's views and wishes to the court. However, the separate representative must act in the child's best interests, regardless of any instructions from the child. These amendments aim to strengthen the representation of children and young people in proceedings for a child protection order by ensuring a separate representative has comprehensive knowledge of the child's case.

The primary clauses under the Bill that give effect to these amendments are clause 21, 23 and 24.

Participation of significant parties in proceedings

Currently, parties to child protection court proceedings are limited to the child, their parents and DCCSDS. The Commission of Inquiry recognised there are other significant people in a child's life who may be able to assist the court in determining what is in the best interests of a child.

The Commission of Inquiry recommended amendments to the CPA to permit the Childrens Court discretion to allow members of the child's family or another significant person in the child's life to be joined as a party to the proceedings where the court agrees the person has sufficient interest in the outcome of the proceedings. The Commission also recommended that these parties should have the right to be legally represented (recommendation 13.19).

Section 113 of the CPA currently allows the Childrens Court to hear submissions from a person who is not a party (a non-party) to a child protection proceeding, including a member of the child's family or anyone else the court considers is able to inform it on any matter relevant to the proceeding.

The proposed amendments expand the extent to which the court may allow an individual to take part in proceedings under section 113. The amendments clarify that upon application by the person, the court has full discretion to allow a person to do all or some of the things a party to proceedings can do. The extent of the person's

participation in proceedings will be determined by the court on a case-by-case basis. The court will be required to make orders about the way and extent to which the individual can take part in proceedings, for example, whether the participation is only for part of the proceedings or for the entire proceedings. The person will be able to be represented by a lawyer.

In deciding whether a non-party may participate, and also determining the extent to which they may participate, the court may consider the extent to which the person may be able to inform the court about a matter that is relevant to the proceedings, and the person's relationship with the child. To support the court's consideration as to whether and how a person can participate in proceedings, the amendments provide for other parties to be given reasonably opportunity to make submissions about the person's participation.

The primary clause under the Bill that gives effect to these amendments is clause 25.

Joining of child protection proceedings

The Commission of Inquiry recommended amendments to the CPA 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 (recommendation 13.4(2)).

Currently, under section 114 of the CPA, the court may transfer proceedings to a court at another place on the court's own initiative or upon application by a party to the proceedings. Section 115 of the CPA allows the court to hear two or more applications for child protection orders together on the request of a party to proceedings. However, the court does not have the ability to join and hear applications for two or more orders on its own initiative.

The CPRA Bill amends section 115 of the CPA to allow the Childrens Court to join and hear two or more applications on its own initiative, if it is in the best interests of justice to do so. The amendment is not specifically limited to siblings to provide the court with maximum flexibility to deal with diverse family structures.

The primary clause under the Bill that gives effect to these amendments is clause 26.

Duty of disclosure in proceedings for a child protection order

The requirement of one party to provide a copy of all of the evidence it has in its possession to another party in a court proceeding is called 'disclosure'. Currently in a child protection court proceeding, there is no disclosure requirement on any of the parties.

The Commission of Inquiry recommended that the CCMC review the disclosure obligations and propose amendments to the CPA to introduce a continuing duty of disclosure on DCCSDS with appropriate safeguards (recommendation 13.5).

The CCMC considered this recommendation and recommended amendments to the CPA to impose a duty of disclosure in proceedings for a child protection order.

As the Director will be the applicant in the child protection court proceeding, the duty of disclosure will fall on the Director rather than DCCSDS. The CPRA Bill inserts new sections 189C to 189E to the CPA to address these recommendations. The proposed new section 189C imposes a continuing duty on the Director to disclose all documents relevant to the proceedings to the other parties. As the Director will obtain most of its

evidence from DCCSDS, the chief executive of DCCSDS will have a corresponding duty to provide all information relevant to a proceeding to the Director under the DCPL Bill.

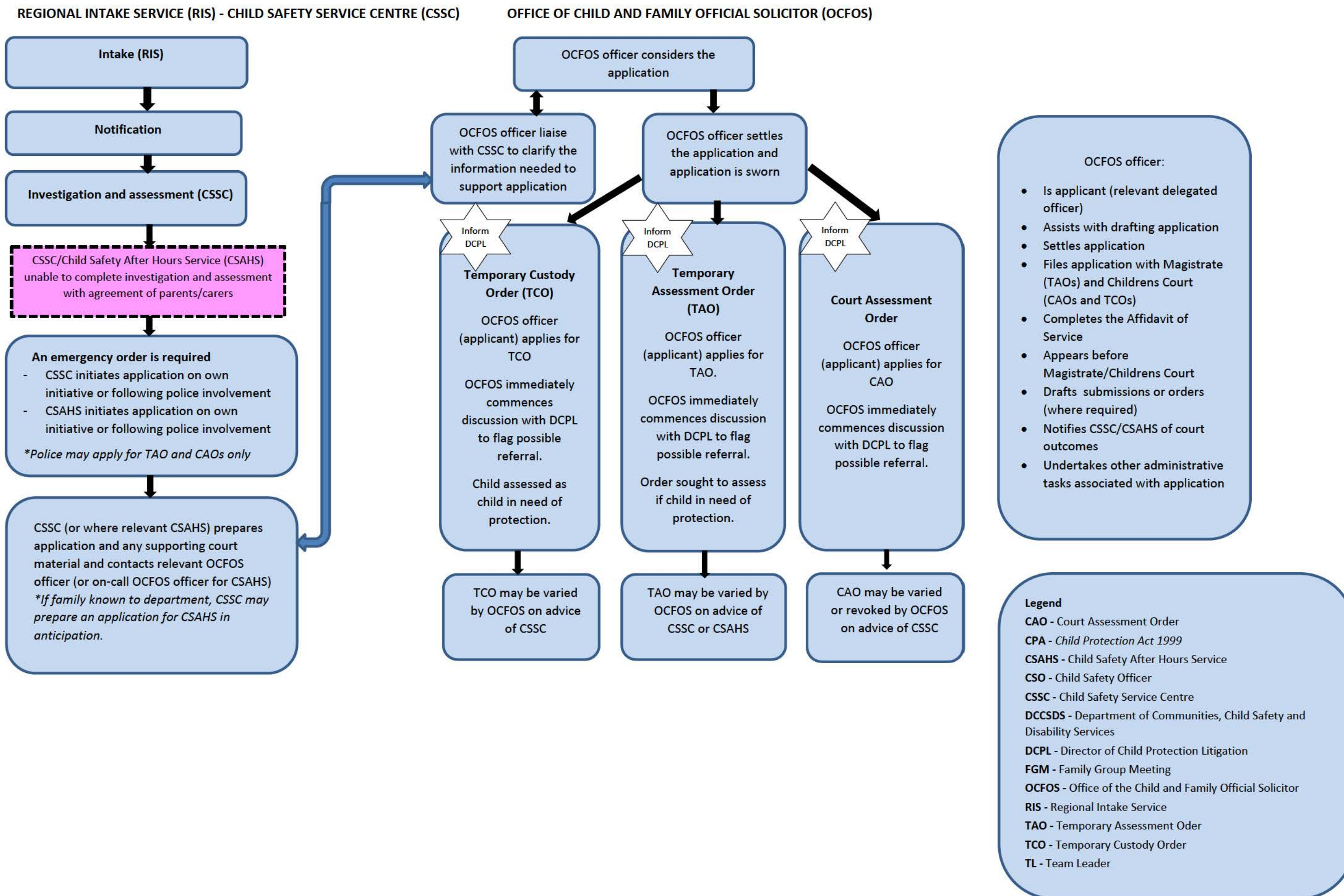
It is acknowledged that a lot of the information about the child and their family is highly sensitive. For this reason, a new section 189E of the CPA makes it an offence for a party to directly or indirectly disclose or make use of a document other than for a purpose connected to the proceeding. This means the person cannot give the document to anyone else and cannot use it in other proceedings, such as Family Law Court proceedings. The maximum penalty for this offence is 100 penalty units or two years imprisonment.

There are grounds upon which the Director may refuse to disclose documents, such as where disclosure is subject to legal professional privilege, is likely to endanger a person's safety or psychological health, or where disclosure could reasonably be expected to prejudice an investigation. These are outlined in the amended section 191 of the CPA.

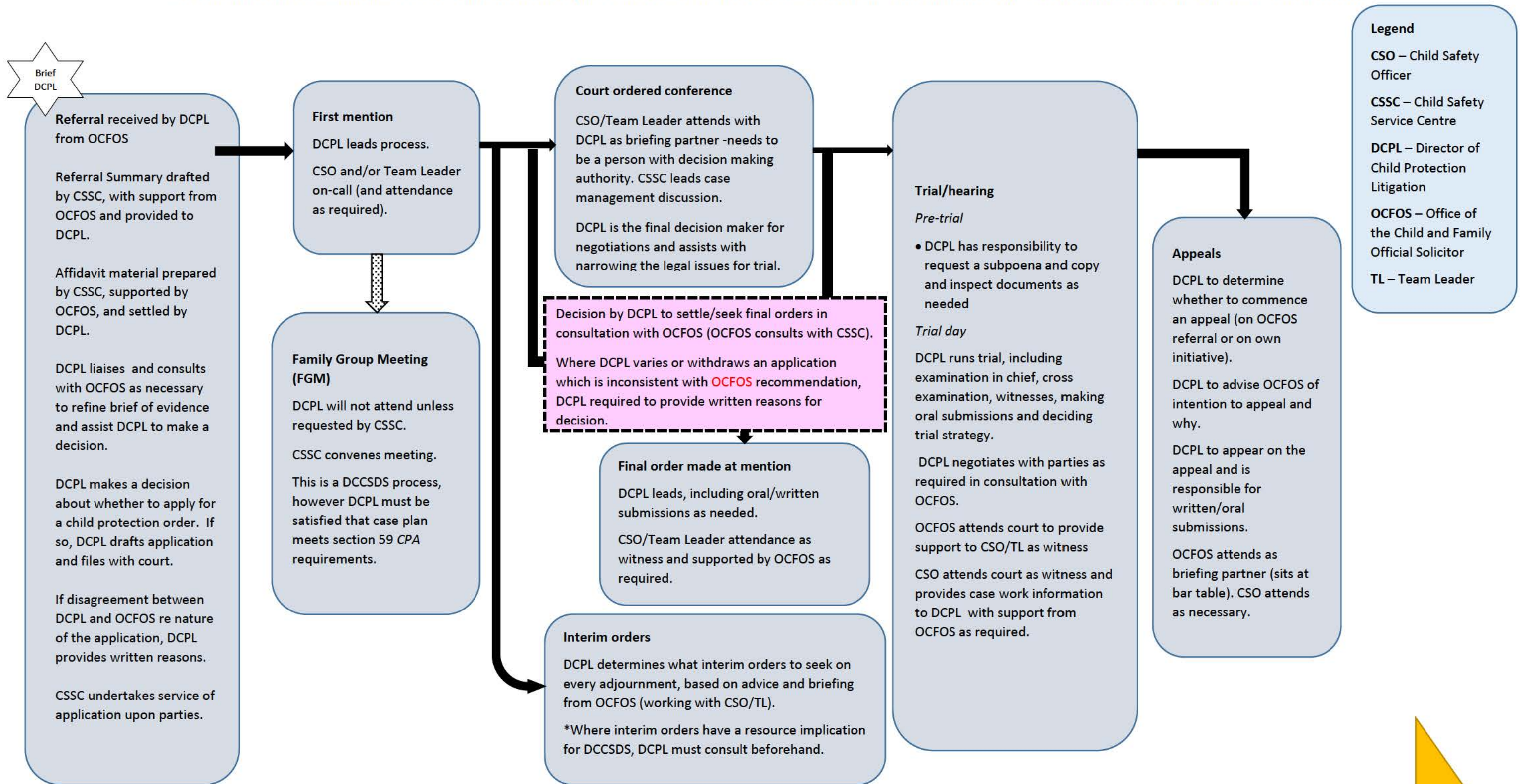
The duty of disclosure will facilitate a fairer process in proceedings for a child protection order, by allowing parties to be aware of all the evidence the Director will rely on to support its application for a child protection order.

The primary clause under the Bill that gives effect to these amendments is clause 31.

Litigation flowchart – emergency applications (temporary assessment orders, court assessment orders, and temporary custody orders)



Litigation flowchart - child protection applications (application for child protection order, extension, variation, revocation, revoke and make another order)



Continuing stages and responsibilities throughout the litigation process

Collaborative partnership

DCPL will lead the litigation process. The views, advice and expertise of DCCSDS is highly significant and essential to successful outcomes for children and families.

Filing material

Ongoing - CSSC drafts material. OCFOS reviews material. DCPL settles material. DCPL files application and supporting material. CSSC/DCPL undertake service.

Disclosure

Ongoing duty of disclosure triggered when child protection application filed, and concludes when application is finalised. DCPL legislative obligation that is supported by provision of information by OCFOS. OCFOS gives DCPL brief including document list and any objections. DCPL and OCFOS liaise to settle document list. DCPL gives initial documents to parties. OCFOS gives updated document list to DCPL and DCPL approves provides additional documents to parties. If DCPL seeks to withhold documents, the court determines whether it is withheld or not – DCPL to make argument to court.