

Our reference: COM 01770-2016

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

11 April 2016

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

Dear Ms Linard

Thank you for the opportunity to respond to the further set of submissions received by the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee regarding the Child Protection Reform Amendment Bill 2016 (CPRA Bill).

Please find enclosed for your consideration, the Department of Communities, Child Safety and Disability Services' response to the written submissions to the Committee in relation to the CPRA Bill.

The Department of Justice and Attorney-General will respond separately to the issues raised in relation to the Director of Child Protection Litigation Bill 2016.

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

I trust this information is of assistance.

Yours sincerely



Michael Hogan
Director-General

Enc (1)

Attachment 1

Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

Issues raised in further written submissions regarding the Child Protection Reform Amendment Bill 2016

The Department of Communities, Child Safety and Disability Services was provided with **three further** submissions from:

4. Queensland Law Society
5. Australian Municipal, Administrative, Clerical and Services Union Queensland (Together Union), and
6. Bar Association of Queensland.

This response deals with submissions 4, 5 and 6 and the issues raised regarding the Child Protection Reform Amendment Bill 2016. The Department of Justice and Attorney-General will respond separately to the issues raised with the Director of Child Protection Litigation Bill 2016.

Note: the submission numbering above reflects the numbering on the submissions as provided by the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee.

Key acronyms:

BAQ	Bar Association of Queensland
CPA	<i>Child Protection Act 1999</i>
CPRA	Child Protection Reform Amendment Bill 2016
Criminal Code	<i>Criminal Code Act 1899</i>
CSSC	Child Safety Service Centre
DCCSDS	Department of Communities, Child Safety and Disability Services
DCPL	Director of Child Protection Litigation Bill 2016
DJAG	Department of Justice and Attorney-General
OCFOS	Office of the Child and Family Official Solicitor
QCAT	Queensland Civil and Administrative Tribunal
QCPCOI	Queensland Child Protection Commission of Inquiry
QLS	Queensland Law Society

Issue No.	Submitter No. and Submitter	Clause	Section and Act	Submission Key Points	Department of Community Services, Child Safety and Disability Services response
Clause 2: Commencement					
1.	No. 4 - QLS	2	N/A	The submission notes that certain sections of the CPRA Bill will be commencing on 1 July 2016, however the CPRA Bill is silent about the commencement of the remaining sections and requests further guidance on this.	<p>If the CPRA Bill is passed, the majority of the provisions will commence on assent.</p> <p>Section 15A of the <i>Acts Interpretation Act 1954</i> provides that an "Act commences on the date of assent except so far as the Act otherwise expressly provides".</p> <p>The explanatory notes state: <i>Clause 2 provides that certain provisions commence on 1 July 2016. These are provisions which relate to the DCPL, which will commence on 1 July 2016. All other provisions in the CPRA Bill commence on assent.</i></p>
Clause 5: Amendment of s 51VA (Review of plan – long-term guardian)					
2.	No. 4 - QLS	5	Section 51VA, CPA	The submission asserts that when a case plan is reviewed, the chief executive should be required, at the very least, to formally invite parents to participate in the family group meeting.	<p>There are a number of requirements and mechanisms to ensure a child's parents are informed and provided reasonable opportunity to participate in the development or review of a case plan for a child.</p> <p>A case plan is a written plan for meeting a child's protection and care needs (section 51B). The purpose of a family group meeting is to provide family-based responses to meeting a child's protection and care needs and to ensure an inclusive process for planning and meeting a child's needs (section 51G), including to develop or review a case plan for a child.</p> <p>Under the current section 51VA of the CPA, there is no ability for 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. The CPRA Bill addresses this and enhances section 51VA to allow a parent to request</p>

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					<p>DCCSDS review a case plan when their child is subject to a long-term guardianship order to someone other than the chief executive.</p> <p>The proposed amendment is outside of the scope and intent of the proposed amendment in Clause 5 of the CPRA Bill. However, a comprehensive review of the CPA is currently underway and includes consideration of the legislative mechanisms that could be put in place to ensure the needs of a child in out-of-home care can best be met.</p> <p>It should also be noted that there are a number of relevant existing provisions in the CPA including:</p> <ul style="list-style-type: none"> - Section 51D(c)(ii) of the CPA states that the chief executive must ensure case planning for a child is carried out in a way that encourages and facilitates the participation of the child's parents; - Section 51D(1)(f) requires case planning to be carried out in a way that enables persons involved to understand it. The relevant example in section 51D(f) states the chief executive should tell a child's parents about child protection concerns, and explain steps in the case planning process to them in a way that helps them to understand, ask questions and participate in any discussion; - Section 51L(1)(b) states that the convenor must give the child's parents a reasonable opportunity to attend and participate in the meeting; - Section 51M(1)(c) states that before holding the meeting, the convenor must inform invitees of the details of the proposed meeting. These sections will continue to apply in conjunction with the amendments proposed in Clause 5 of the CPRA Bill; - Section 51W(1)(b) of the CPA requires the

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					<p>chief executive to give a child's parents a reasonable opportunity to participate in a review and preparation of a revised case plan;</p> <ul style="list-style-type: none"> - Section 51W(2) of the CPA provides a family group meeting may be convened to enable participation and section 51W(3) and (4) require a convenor to allow a parent's support person to attend a meeting for a case plan review; - After a revised case plan is prepared, a copy must be given to the child's parents under section 51Y; - If the review of the case plan occurs after a request by a parent under the new section 51VA, the current provisions relating to case plan reviews will continue to apply. <p>The existing sections of the CPA intend to require that all case planning is to be carried out in a way that involves parents and gives them the opportunity for meaningful participation in all case planning for their child. There is no need for a legislative requirement for a formal invitation to parents.</p>
3.	No. 4 - QLS	5	Section 51VA(5A), CPA	It is suggested that in the event of refusing the review of a case plan, the chief executive should be responsible for providing a formal response to parents and detail reasons why. Parents should then be afforded a right of review in the case of a negative response from the chief executive.	<p>The CPRA Bill includes a requirement for a child's parents to be notified in writing if the chief executive refuses to review a case plan for a child.</p> <p>Clause 5 amends section 51VA(5) of the CPRA Bill to allow parents to request a review of a case plan by the chief executive.</p> <p>Clause 5 of the CPRA Bill also makes amendments to section 51VA(6) to clarify that if on request under subsection (4) or (5), the chief executive decides not to review the case plan, the chief executive must give written notice of the decision to the person who made the request, which will include parents.</p> <p>All decisions under section 51VA are reviewable</p>

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					<p>decisions covered by Schedule 2 of the CPA. A parent will be covered by the definition of 'aggrieved person' in the Schedule.</p> <p>The Explanatory Notes for the CPRA Bill State: <i>Decisions of the chief executive to not review a case plan under section 51VA are reviewable decisions under schedule 2 of the CPA. Therefore, if DCCSDS decides not to review the case plan, the parent will be able to apply to QCAT for an administrative review of the refusal decision.</i></p>
Clause 8: Amendment of s 51YB (Evidence of anything recorded in a case plan)					
4.	No. 4 - QLS	8	Section 51YB, CPA	The submission recommends the inclusion of a positive obligation on the chief executive to ensure that parents' and other stakeholders' input during a family group meeting are also recorded in the case plan.	<p>Appropriate records are made of matters discussed at family group meetings, including case planning meetings on DCCSDS' Integrated Client Management System in accordance with the Child Protection Family Group Meeting Convenor Handbook (the Handbook). Information which may be recorded, includes:</p> <ul style="list-style-type: none"> - details of participants - details of other people who were consulted but did not attend, or were excluded from attending, and the reasons for this exclusion - information about the family group meeting process - whether separate family group meetings were held and the reasons for this - important information discussed and who raised particular concerns - views and wishes expressed at the meeting by participants - specific disagreements with elements of the case plan on the actual case plan form. <p>However, the purpose of the case plan is not to record all of the discussions that occurred as part of the family group meeting.</p> <p>Rather section 51B(1) of the CPA states that a case plan for a child is a written plan for meeting the</p>

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					child's protection and care needs. Section 51B(2) provides the plan may include matters such as: living arrangements, services to be provided, arrangements for contact with family members and matters for which a parent carer will be responsible. Under section 51O the convenor of a family group meeting must record a case plan in the approved form and give it to the chief executive. The approved forms cover the matters set out in section 51B(2).
Clause N/A					
5.	No. 5 - Together Union	N/A	N/A	The litigation framework proposed by the nature of the Court Work Reforms is incongruent with the values and tenets of the practice framework.	<p>The Court Work Reforms align with the values of the Framework for Practice.</p> <p>A core element of the Framework is that legal processes should support staff to engage and collaborate with children, families and the community to ensure that the safety, belonging and wellbeing needs of children are met.</p> <p>Current legal processes are confusing and intimidating for children and families and make it harder for child safety practitioners to build collaborative working relationships and exercise authority respectfully and thoughtfully.</p> <p>The new system will encourage appropriate professional separation between the delivery of frontline child protection services that support families to meet the safety, belonging and wellbeing needs of their children, and the provision of legal advice and legal services when statutory intervention is required.</p> <p>The Court Work Reforms will also assist in ensuring Child Safety staff will have access to legal advice early.</p> <p>Families will have access to all information that will be relied upon to support an application for a child protection order. The role of Child Safety in</p>

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					<p>supporting families to meet the safety, belonging and wellbeing needs of their children will be clearer, as will the roles of different parties in court-ordered conferences.</p> <p>The Childrens Court will have supports and resources to reflect that it is a specialist jurisdiction, such as a Bench Book to guide Magistrates and access to expert advice. This will lead to the more efficient resolution of proceedings.</p> <p>The Court Work Reforms, most importantly, are beneficial for children. The Court Work Reforms better enable children's voices to be heard and legal representatives will support children to participate in decision making. Important people in a child's life will be able to participate in Childrens Court proceedings. There will be active management of proceedings by the Childrens Court to prevent and limit delays, to avoid unnecessary disruption to a child's life.</p>
Clause N/A					
6.	No. 5 - Together Union	N/A	N/A	With the creation of the DCPL and OCFOS, and subsequent absorption of existing Court Coordinator and Court Services staff into these structures, CSSC staff are concerned that the level of legal support available to frontline CSSC staff will be lessened and more difficult to obtain.	<p>The Court Work Reforms aim to improve access and timeliness of legal support for frontline Child Safety staff.</p> <p>The advice and support provided to staff by Court Coordinators will now be provided by the OCFOS.</p> <p>Across the OCFOS and the DCPL the Court Work Reforms include an increase of 15 staff to undertake a similar volume of matters. The OCFOS consists of 46 staff, comprising 10 new positions, and 36 existing positions.</p> <p>The Court Work Reforms include increased access to legal expertise by having qualified lawyers (based in the OCFOS) available for frontline CSSC staff, including those based in the regions. If a matter is assessed to require a child protection order to meet a child's protection and care needs, the DCPL will be</p>

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					engaged, to provide additional legal support and to commence and conduct court proceedings.
Clause N/A					
7.	No. 5 - Together Union	N/A	N/A	The disconnect between frontline CSSC staff and DCPL and OCFOS will result in delays, complications and higher workloads, as well as an increasingly litigious relationship between clients and DCCSDS.	<p>Under the proposed model, frontline CSSC staff will not have court work responsibility. The separation of frontline service delivery and court work will allow frontline CSSC staff to work more cooperatively and collaboratively with families in line with the Framework for Practice. For this reason, it is anticipated the changes will facilitate a more positive working relationship between DCCSDS and clients to result in better outcomes for children and families.</p> <p>The in-house legal service (OCFOS) will provide a service-centre based legal service to work between the DCPL and frontline CSSC staff to ensure information relating to Childrens Court matters moves freely and in a timely manner.</p> <p>Both agencies are committed to a productive working relationship between the OCFOS, DCPL and CSSCs.</p> <p>A monitoring framework is being developed to monitor the impact of the Court Work Reforms. This framework will be consistent with the evaluation framework being implemented by the DJAG to evaluate the DCPL model.</p> <p>Frontline CSSC staff will continue to attend court events with the family where this is a current application. The new model provides an opportunity for frontline CSSC staff to step away from the role of litigator in court proceedings, and to undertake greater engagement with families in an effort to divert them from the court system.</p> <p>DCCSDS has an Agency Consultative Framework in place, as required under Part 9 of the State Government Departments Certified Agreement 2009 and has established a joint consultative group</p>

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					<p>specifically to work with the Together Union on the child protection Court Work Reforms which commenced in August 2015. The joint consultative group has scheduled regular meetings to work through the implementation of the Court Work Reforms. The Together Union has been actively engaged in this consultative process.</p> <p>The Agency Consultative Framework informs the operation of the Agency Consultative Committee (ACC) which is the peak consultative forum, as well as Regional Consultative Committees and Local Consultative Committees. Where required, sub-groups can be convened to consult on specific issues, including organisational change.</p> <p>Various forums within the Framework are utilised to monitor the agency level implementation of the Certified Agreement; facilitate the provision of data to unions as required under the Certified Agreement; share and discuss relevant information in relation to whole-of-department policies; consult in relation to industrial and other issues impacting the workforce; ensure legislative obligations are met in regard to advice and consultation about organisational change; and resolve disputes where required.</p> <p>The Child and Family Reform Reference Group (Reference Group) has been created as a sub-group of the ACC to fulfil DCCSDS' obligation to consult with employees and unions with regard to organisational change resulting from the implementation of the recommendations from the QCPCOI. Initial consultation and discussion of the Court Work Reform Work Package occurred at the Reference Group's first meeting on 10 August 2015.</p> <p>To date, there have been eight meetings of the Reference Group where the Court Work Reforms have been discussed. These meetings occurred on:</p> <ul style="list-style-type: none"> • 10 August 2015 • 26 August 2015

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					<ul style="list-style-type: none"> • 21 September 2015 • 2 November 2015 • 13 November 2015 • 3 December 2015 • 26 February 2016 • 18 March 2016 <p>The next scheduled meeting is Friday 8 April 2016.</p> <p>As of the 26 February 2016, DCCSDS and DJAG, have been meeting jointly with Together Queensland, Industrial Union of Employees to ensure consistency of approach and to ensure both departments' consultation commitments are fulfilled.</p> <p>DCCSDS remains committed to continuing to work with the Together Union to implement the Court Work Reforms.</p>
Clause N/A					
8.	No. 5 - Together Union	N/A	N/A	There are key functions currently undertaken by the existing Court Coordinator staff that have not yet been identified as being performed by either OCFOS or DCPL staff.	The functions of the Court Coordinators have been identified and allocated. Local arrangements that are in place are being worked through to ensure there are no gaps and that functions will continue.
Clause N/A					
9.	No. 5 - Together Union	N/A	N/A	The submission recommends that the Queensland Government retain Court Services and Court Coordinator positions as current.	The Court Work Reforms implement recommendations made by the QCPCOI and accepted by the Queensland Government.
Clause N/A					
10.	No. 5 - Together Union	N/A	N/A	The legislation gives magistrates the ability to become significantly more instructive in terms of casework. Members are concerned this will mean that child protection decisions will be made without full access to the history of the case. Furthermore, an order or directive may not be helpful to the family into	<p>DCCSDS notes Together Union's concerns that the legislation gives magistrates the ability to become significantly more instructive in terms of casework. However, Courts have responsibility for managing proceedings before them.</p> <p>The CPRA Bill aims to: provide better outcomes for children and families involved in child protection</p>

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				the future given the dynamic needs of children and families.	proceedings; improve the functioning of the Children's Court; and improve the quality of applications for a child protection order. With regards to Together Union's concerns that decisions are made without full access to the history of the case, the introduction of the disclosure regime mitigates this risk. Briefs of evidence will be prepared by legally qualified officers to ensure all information and evidence that is relevant to the grounds for an application is provided to the court and to the parties in accordance with the Queensland Government's Model Litigant Principles.
Clause N/A					
11.	No. 5 - Together Union	N/A	N/A	The submission recommends that DCCSDS should undertake a full and thorough cost/benefit analysis of the Court Work Reforms.	The QCPCOI recommended child protection Court Work Reforms and these recommendations have been accepted by the Queensland Government. DJAG has established a robust evaluation framework, including a baseline evaluation (to be completed in mid-2016) and a long-term evaluation (to be completed in 2022–2023). The evaluation framework will monitor the outcomes of the Court Work Reforms against the benefits of the Reforms outlined by the QCPCOI. DCCSDS will implement an ongoing monitoring framework that complements the evaluation to ensure a complete understanding of how the Court Work Reforms have been implemented and the impact for children and families.
Clause N/A					
12.	No. 5 - Together Union	N/A	N/A	The submission recommends that more resources be made immediately available to CSSCs, particularly in the form of more funding for Child Safety staff and other CSSC-based positions in order to mitigate the risks and allow the proper implementation of the Child and Family	This issue is about broader impacts of the child and family reforms, rather than the Bill. DCCSDS is committed to the Child and Family Reforms and is closely monitoring the impacts of reform implementation on staff workload. Workload impact is a key consideration in the overall scheduling of the reform rollout and caseloads are

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				Reforms.	<p>being closely monitored. Early evidence is showing the reforms are supporting families earlier and reducing referrals to Child Safety, however to date caseload pressures remain. DCCSDS will continue to work with staff regarding this and will progress work on a number of key reform initiatives in 2016-17 that aim to assist with staff workload.</p> <p>OCFOS will operate a state-wide model with legal officers allocated to every CSSC. The distribution of the OCFOS resources has been developed through consideration of data relating to court applications, numbers of child protection matters managed by each CSSC and geographical location.</p> <p>The resources for the OCFOS model include analysis of travel needs, administrative support needs and senior legal officer support required to effectively implement the Court Work Reforms. The majority of resources allocated to the OCFOS will be located within CSSCs and regional offices.</p> <p>A practice leader position has been funded for twelve months to support the OCFOS to work with CSSC staff to ensure processes designed to implement the Court Work Reforms complement other reforms implemented as part of the broader Child and Family Reforms.</p>
Clause 5: Amendment of s 51VA (Review of plan – long-term guardian)					
13.	No. 6 - BAQ	5	Section 51VA(5A)(a)(i), CPA	<p>Section 51VA(5A)(a)(i) is an unnecessary limitation on the duty of the chief executive to supervise and ensure the best interests of subject children.</p> <p>It is an unnecessary impediment to the ongoing supervision of, and accountability for, a child's best interest to permit the chief executive not to review a child's case plan if the "child's circumstances have not changed significantly".</p>	<p>The chief executive's broad responsibilities to meet the protection and care needs of children the subject of a child protection order is not limited to a legislative requirement to review a case plan for a child.</p> <p>Section 51VA applies to children who are under the guardianship of someone other than the chief executive, and are therefore in a stable and secure placement that the court is satisfied meets their care and protective needs.</p>

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					<p>Currently, a child or their guardian may ask the chief executive at any time to review the case plan. In addition, the chief executive must contact the child at least every 12 months and provide an opportunity for them to ask for a review of the case plan.</p> <p>The proposed amendments to section 51VA allow parents to also request a review in certain circumstances. Proposed section 51VA(5A)(a)(i) ensure case plans are not reviewed unnecessarily. The provision balances taking into account the wishes of parents and a child's sense of identity and connection to family with the need for stability and to reduce the risk of conflict and confusion for the child's guardian.</p> <p>It should also be noted that under section 51W(1)(b) of the CPA, whenever the chief executive decides to review and prepare a revised case plan, the child's parents must be given a reasonable opportunity to participate.</p>
Clause 18: Amendment of s 99M (When matter before court) – NB not contemplated by current Bill					
14.	No. 6 - BAQ	18	Section 99M(2)(b), CPA	Section 99M(2)(b) should be amended to read "dealt with <u>more</u> quickly".	<p>This point is in relation to the current wording of section 99M(2)(b) that deals with applications for review of administrative decisions by QCAT.</p> <p>It is submitted that timeliness of decision making is not the only consideration relevant to this section. In considering concurrent proceedings in the Childrens Court and QCAT, the QCPCOI was concerned that to the greatest extent possible, decisions regarding a child should be made by the one court.</p>
Clause 25: Replacement of s 113					
15.	No. 6 - BAQ	25	Section 113, CPA	The broadening of section 113 may permit a non-party to do anything allowed to be done by a party. Section 117(2) of the CPA permits a party to a proceeding to appeal against a decision on the application for a temporary assessment order or a temporary	The proposed amendment in the Bill to section 113 of the CPA is intended to give the Childrens Court a broad discretion. This new provision will operate with the existing section 117 of the CPA to provide the appellate court with a broad discretion to hear an appeal lodged by a person who participates in

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				<p>custody order.</p> <p>There is cause for concern in that right being extended to an indeterminate class of potential non-parties. A presumption against affording the rights of a potential non-party to appeal should be specifically expressed in the language of section 113.</p>	<p>proceedings on an application for a child protection order under the amended section 113. The intention is not to limit the court's discretion in this regard.</p> <p>Under section 117(2) of the CPA a party to the proceeding for an application for a child protection order, may appeal to the appellate court (Childrens Court constituted by a judge) against a decision on the application.</p> <p>The new section 113 will allow a person who is not a party to court proceedings to apply to the Court to take part in proceedings. The court may allow the person to take part by doing some of the things a party can normally do. For example call witnesses or make a submission to the Court.</p> <p>If the Court makes an order that someone can participate to the full extent that a party can, it will follow that provisions in the legislation which refer to 'party' will apply to such people. For this reason, people whom the Court has ordered can participate to the full extent of a party, will have the right to appeal under section 117(2) of the CPA.</p>
Clause 32: Replacement of s 191 (Refusal of disclosure of certain information during proceeding)					
16.	No. 6 - BAQ	32	Sections 191(4)(a) and 191(2)(g)(i), CPA	The use of the word "materially" in the proposed sections 191(2)(g)(i) and 191(4)(a).	<p>Recommendation 13.5 of the QCPCOI recommended that the Court Case Management Committee review disclosure obligations under the CPA and propose amendments to introduce a continuing duty of disclosure on DCCSDS with appropriate safeguards.</p> <p>The use of the word "materially" in the proposed section 191 is in the context of the litigation director refusing to disclose a document to a party that contains personal information not materially relevant to the proceeding. This is a safeguard to protect the privacy of a child or anyone else involved in a child protection proceeding.</p> <p>The QCPCOI recommended that the disclosure</p>

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					<p>obligations on DCCSDS should be modelled on those in section 590AB of the Criminal Code. Under section 590AB of the Criminal Code, the prosecution must disclose all evidence on which the prosecution intends to rely in the proceedings and all things in the prosecution's possession that would tend to help the case for the accused person. Section 590AP(2) of the Criminal Code further provides that "the prosecution must give the accused person a witness contact detail that is <u>materially relevant</u> as part of the evidence for the relevant proceeding".</p> <p>It is submitted that the inclusion of the word 'materially' is appropriate.</p>