



Department of Justice and Attorney-General
Office of the Director-General

In reply please quote: 565572/9, 3222053

19 APR 2016

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

State Law Building
50 Ann Street Brisbane
Queensland 4001 Australia
Telephone (07) 3239 3520
Facsimile (07) 3239 3474
www.justice.qld.gov.au

ABN 13 846 673 994

Dear Ms Linard

In an email dated 19 April 2016, the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (the Committee) has requested a response to additional questions regarding the Director of Child Protection Litigation Bill 2016 and the Child Protection Reform Amendment Bill 2016.

The Committee has asked what practical processes the Department of Justice and Attorney-General (the department) has in place to ensure children are in a protected environment when giving evidence and if this issue will be considered as part of the review process.

It is important to note that child protection order proceedings can be distinguished from criminal proceedings. In child protection order proceedings, the alleged harm or risk of harm to a child is generally provided to the court through means other than direct evidence of the child. The *Child Protection Act 1999* (CPA) also contains safeguards to ensure children are protected in a court proceeding. Under section 112 of the CPA, a child cannot be compelled to give evidence and the court's leave is required before a child can give evidence and be cross-examined. In addition, the court may only grant leave if the child is at least 12 years, is represented by a lawyer and the child agrees to give evidence. Prior to granting leave, the court is to apply the principles of the CPA, including the paramount principle; that is, the giving of evidence is not inconsistent with the safety, well-being and best interests of the child. If a court does grant leave to a child to give evidence, the *Evidence Act 1977* applies to the child giving evidence, including the affected child witness provisions if the child protection order proceedings relate to the commission of a relevant offence, as defined in section 21AC of the *Evidence Act 1977*.

The CPA also provides a role for the Public Guardian in child protection order proceedings to: support the child by presenting the child's views and wishes; and make submissions, call witnesses and test the evidence. The child may also have a direct representative during the child protection order proceeding. The CPA also includes provisions that allow the views and wishes of the child to be provided to the court through a separate representative appointed for the child or an expert preparing a report for the court.

The department is also progressing the remake of the Childrens Court Rules (Rules) that is proposed to commence on 1 July 2016 and which forms part of the child protection court reforms. Based on consultation to date on the remake, the new Rules are also expected to make provision for the court's ability to make an order or issue directions in relation to the giving of a child's evidence and the way a child may participate in a hearing, other than when giving evidence, for example, the provision of a written statement to the court.

Consistent with the recommendations of the Queensland Child Protection Commission of Inquiry, the court reforms are designed to ensure the voices of children are heard during child protection order proceedings in a safe and protective way and that are consistent with the child's safety, well-being and best interests.

As I noted in my previous letter to the Committee on 2 March 2016, the department will be undertaking an evaluation of the court reforms in 2017-18 and 2022-23. The evaluation framework will include a focus on how, and if, the voices of children are heard in child protection order proceedings. The evaluation framework proposes that agencies directly supporting children will be consulted during the evaluation and any issues will be identified.

In response to the Committee's query about the role of court coordinators in the current system and under the proposed court work reforms, I have been informed by the Department of Communities, Child Safety and Disability Services (DCCSDS), that court coordinators are employed within each Child Safety Service Centre (CSSC) to represent the Director-General in child safety court matters, provide advice and act as a consultant to other departmental staff. Through the court work reforms, some of the functions undertaken by court coordinators will transfer to the Director of Child Protection Litigation (DCPL). Those functions relating to the making of applications for child protection orders, with the exception of urgent orders, and representation in court proceedings will be the responsibility of the DCPL following commencement. Resources for those functions will also be transferred from DCCSDS to the DCPL.

The majority of the remaining court coordinator functions will be undertaken by the Office of the Child and Family Official Solicitor (OCFOS) within DCCSDS. The OCFOS is established by the realignment of court coordinators to within the OCFOS structure. Within each CSSC, local arrangements have resulted in a slight variation in the activities undertaken by court coordinators in order to respond to local needs. DCCSDS is currently working to ensure that arrangements are in place within each CSSC to respond to the impacts of the introduction of the OCFOS and DCPL on these local arrangements. OCFOS officers will have a regional presence and remain located within CSSCs.

I trust this information will assist the Committee in its consideration of the Bill.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Mackie', with a long horizontal line extending to the right.

David Mackie
Director-General