



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

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

Dear Ms Linard

The Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (the Committee) has requested a written briefing on the submissions received regarding the Director of Child Protection Litigation Bill 2016 (DCPL Bill) and the Child Protection Reform Amendment Bill 2016.

Please find enclosed a table setting out the response from the Department of Justice and Attorney-General to the submissions in relation to the DCPL Bill. The Department of Communities, Child Safety and Disability Services will respond to the remaining matters.

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

Yours sincerely

A large, stylized handwritten signature in black ink, appearing to read "David Mackie".

David Mackie
Director-General

Encl.

Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee
Issues raised in written submissions on the
Director of Child Protection Litigation Bill 2016

The Department of Justice and Attorney-General was provided with 4 submissions received from:

- 001. Queensland Alliance for Kids (QAK)
- 002. PACT (Protect All Children Today Inc)
- 003. Name Suppressed
- 004. Queensland Family and Child Commission (QFCC)

This response deals with the issues raised with the Director of Child Protection Litigation Bill 2016 (the Bill). The Department of Communities, Child Safety and Disability Services (DCCSDS) will respond separately to the issues raised regarding the Child Protection Reform Amendment Bill 2016.

Support for the Bill

001 QAK; 002 PACT and 004 QFCC - Support the Bill.

003 Name Suppressed –The Bill implements a report recommendation without any evidence base.

Issue no.	Submitter No and Submitter	Clause and new section	Submission Key Points	Department of Justice and Attorney-General Response
Principles for the administration of the Act				
1	001 QAK	Clause 6 (Other general principles)	QAK submits that the best interests of the child be considered before applying the 'least intrusive child protection order' principle to ensure children in the care of the chief executive (DCCSDS) are afforded stability by permanent placement with kin, guardianship or open	Clause 5 of the Bill provides that the main principle for administering the Act is that the safety, wellbeing and best interests of a child are paramount (the paramount principle). The Bill then provides in clause 6 other general principles that apply for administering the Act. Clause 6(1)(b) states the

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2			adoption instead of two year short term orders, where appropriate.	principle that in protecting a child, the DCPL should only take the action that is warranted in the circumstances. The “the least intrusive order” is an example of this principle.
	003 Name Supressed	Clause 6 (Other general principles)	<p>Name Supressed raises concerns that the Bill might inadvertently support interpretations that obstruct the best interests of the child and recommends the Bill be amended so that:</p> <ul style="list-style-type: none"> the Director of Child Protection Litigation (DCPL) is required to consider the legitimate goals of permanency and stability, and realistic prospects of reunification when deciding which order is appropriate; and the emphasis on the least intrusive order be removed or reframed as it is out of step with contemporary understandings of child development and needs and could be used to justify consenting to short term orders despite the best interests of the child requiring a contested hearing of an application for a long term order. 	<p>Clause 6(1)(d) provides that each principle stated in the <i>Child Protection Act 1999</i>, section 5B for ensuring the safety, wellbeing and the best interests of a child, is applicable, to the extent the principle is capable of being applied. Section 5B of the <i>Child Protection Act 1999</i> includes general principles such as, if a child does not have a parent able and willing to give the child ongoing protection in the foreseeable future, the child should have long-term alternative care; and a delay in making a decision in relation to a child should be avoided, unless appropriate for the child.</p> <p>The DCPL will need to consider, in the context of the paramount principle, actions that are warranted in the circumstances of the case, which may include long-term placement of a child.</p>
Appointment of DCPL				
3	003 Name Supressed	Clause 25 (Appointment)	Name Supressed submits that the qualities the person must demonstrate to satisfy the Minister to be appointed as DCPL should be aligned with the functions of the DCPL and reflect community expectations, such as, an understanding of contemporary child protection practice; commitment to the rights and interests of children and young people, the principles of the	The DCPL is an independent statutory officer appointed by the Governor in Council on the recommendation of the Minister. The Minister may only recommend a person for appointment if the person is a lawyer who has been admitted to practice for at least ten years and the Minister is satisfied the person demonstrates qualities of leadership,

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			Act and the <i>Child Protection Act 1999</i> ; and integrity.	management and innovation in a senior government or private sector role.
4	001 QAK	Clause 25, (Appointment) and clause 27 (term of office)	QAK recommends that during the first year of the DCPL's appointment, the role be highly supervised and supported, especially when the person holding the DCPL's position will be new to child protection as outlined in the Bill and that the appointment be reviewed yearly or every 2.5 years by the Minister, to ensure child focused decisions are being made.	<p>While the provisions of the Bill provide the eligibility requirements for appointment as DCPL, it is more appropriate the qualities for the position be set out in the position description for the position.</p> <p>While the DCPL is not subject to ministerial direction in relation to the performance of his or her statutory functions under the Act, the DCPL will be accountable to Parliament through the Minister. Clause 40 of the Bill requires the DCPL to give to the Minister an annual report on the administration of the Act during that year. The Minister must table a copy of the annual report in the Legislative Assembly.</p> <p>The Bill at clause 32(3) provides that the DCPL may be removed from office by the Governor in Council upon the recommendation of the Minister. Clause 32(4) allows the Minister to recommend the DCPL's removal if the Minister is satisfied that the DCPL:</p> <ul style="list-style-type: none"> • has been guilty of misconduct; • is incapable of performing his or her duties; or • has neglected his or her duties or performed them incompetently. <p>The Minister may suspend the DCPL for up to 60 days if there is an allegation of misconduct or the Minister is satisfied that a ground for removal has arisen in relation to the DCPL. In these circumstances, the Minister may appoint a person to act as the DCPL for a period of up to 6 months.</p>
5	003 Name Supressed	Clause 13 (Not under Ministerial control)	Name Supressed submits that in order to improve accountability clause 13 should be amended so that the DCPL is subject to ministerial oversight.	

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6	003 Name Suppressed	Clause 39 (DCPL may make guidelines)	Name Supressed submits that in order to improve accountability, the guidelines issued under clause 39 should be approved by the Minister or the Governor, not the DCPL.	As stated above, the DCPL is accountable to the Minister and must produce an annual report on the administration of the Act during that year. The annual report must include a copy of each guideline made under clause 39 during the financial year. The Minister must then table a copy of the annual report in Parliament within 14 sitting days after the Minister receives it.
7	003 Name Suppressed	Clause 39 (DCPL may make guidelines)	Name Supressed is concerned that the guidelines may create a power imbalance between chief executive (DCCSDS) and DCPL and recommends the guidelines be made by the Minister or the Governor, tabled in Parliament, made publicly available and reviewed from time to time.	
Functions of the DCPL				
8	003 Name Suppressed	Clause 9 (Functions)	Name Supressed submits that the existence of the DCPL as a gatekeeper to long term orders will inherently incentivise lighter interventions, the applications for which will remain within the power of chief executive (DCCSDS).	<p>The chief executive (DCCSDS) retains its responsibility to apply for short-term or urgent orders, so that children can be placed in appropriate care are a matter of priority where necessary and urgent assessments and investigations can occur. The decision to apply for a child protection orders will be the responsibility of the DCPL.</p> <p>The Bill at clause 15 provides that chief executive (DCCSDS) must refer a matter to the DCPL if satisfied a child is a child in need of protection and a child protection order is appropriate and desirable for the child’s protection.</p>
9	003 Name Suppressed	Clause 17 (How DCPL may deal with referral of child	Name Supressed submits that the Bill should explicitly state the grounds on which the DCPL may legitimately refuse a request from the chief executive (DCCSDS) to make an application.	The grounds on which the DCPL may refer a matter back to the chief executive (DCCSDS) are contained in clause 17(2) and the example provided and outlined in the Explanatory Notes to the Bill.

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		protection matter)		
Accountability and oversight				
10	004 QFCC	Clause 68, new section 245 (Purpose) and clause 101, new schedule 1 (definition <i>relevant agency</i>)	QFCC strongly support the provisions in the Bill in relation to oversight of the DCPL.	Noted.
External review of DCPL decisions				
11	003 Name Supressed	N/A	Name Suppressed submits that consideration should be given to providing the chief executive (DCCSDS) an avenue to appeal adverse decisions of the DCPL.	The DCPL may issue guidelines under clause 39 of the Bill which may include an internal review process for the chief executive (DCCSDS) to seek internal review of a decision of the DCPL.
12	004 QFCC	N/A	QFCC recommends prescribing an external review or appeal mechanism for matters where the chief executive (DCCSDS) does not agree with the DCPL's decision and the reasons given for that decision.	Both the chief executive (DCCSDS) and the DCPL represent the State. External review provisions are generally put in place for persons to seek review of administrative decisions of the State. Clause 6 of the Bill provides that the DCPL and chief executive (DCCSDS) must act collaboratively to achieve fair, timely and consistent outcomes for children. Clauses 17 and 18 of the Bill also facilitate consultation and information sharing between the DCPL and chief executive (DCCSDS) when the DCPL is making a decision about whether to make a child protection order application. The DCPL must also

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				<p>apply similar principles as the chief executive (DCCSDS) when undertaking its functions, including whether to apply for a child protection order.</p> <p>In addition, the decision of the DCPL is a decision subject to the provisions of the <i>Judicial Review Act 1991</i>.</p> <p>Also, the Legal Services Commissioner may, in some circumstances, consider a complaint about a DCPL lawyer.</p> <p>DCPL employees will be employed under the <i>Public Service Act 2008</i> and therefore subject to the oversight and disciplinary measures applicable to all public servants.</p>
Duty of care				
13	003 Name Supressed	N/A	<p>Name Supressed submits that the effect of the Bill to transfer the function of the chief executive (DCCSDS) to make a child protection order application to the DCPL results in some uncertainty about the duty of care owed to a child by the chief executive (DCCSDS) and the DCPL, and in particular:</p> <ul style="list-style-type: none"> • who owes a duty of care to a child in circumstances where a child is injured in a failed reunification brought about because the DCPL refused to apply for a long term order, despite the evidence at the time indicating that a long term order would have been in the child's best interests; and • suggests that the chief executive (DCCSDS) be held vicariously liable for the acts and 	<p>The DCPL could be held liable at law for negligence for any acts or omissions of individual officers. As stated above, both the chief executive (DCCSDS) and the DCPL will represent the State. Therefore the State responds to all claims of negligence. If the individual officer's conduct was not done in good faith and was done in gross negligence, the State can recover a contribution from the employee under section 26C of the <i>Public Service Act 2008</i>.</p> <p>The Bill at clauses 67 to 87 amends the <i>Child Protection Act 1999</i> to expand the scope of the Child Death and Serious Injury Review Panel (review panel) which currently reviews the chief executive (DCCSDS's) involvement with particular children who have since died or suffered serious physical injury. The DCPL will be required to provide a report on its involvement with a child to the review panel after completing the internal review and the review panel will consider both</p>

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			omission of the DCPL so that a child who is injured due to a collective failure of the system is not forced to litigate against multiple entities and there can be no passing the buck between the two.	<p>the reports from the DCPL and the chief executive (DCCSDS) at the same time.</p> <p>QFCC has a range of functions about providing oversight of the child protection system. The Bill will amend the <i>Family and Child Commission Act 2014</i> to ensure the DCPL is considered part of the child protection system and within the oversight functions of the QFCC.</p>
Review of the Act				
14	003 Name Supressed	Clause 41 (Review of Act and operations of office)	Name Supressed submits that the Act be reviewed two to three years from commencement by an appropriately qualified, independent person.	<p>Clause 41 of the Bill provides for the review of the effectiveness of the Act and operations of the office of the DCPL being undertaken as soon as practicable after the end of five years after commencement.</p> <p>However, the review provision in the Bill does not prevent other reviews being performed on the operations of the office of the DCPL, if required.</p> <p>In addition, as part of the Government's commitment to implement the recommendations of the final report by the Child Protection Commission of Inquiry, the Department of Justice and Attorney-General is required to evaluate the court related child protection reforms, which include the DCPL. This will occur in addition to the statutory review of the DCPL.</p>