




Speech By
Hon. Shannon Fentiman
MEMBER FOR WATERFORD

Record of Proceedings, 16 February 2016

CHILD PROTECTION REFORM AMENDMENT BILL

Introduction

 **Hon. SM FENTIMAN** (Waterford—ALP) (Minister for Communities, Women and Youth, Minister for Child Safety and Minister for the Prevention of Domestic and Family Violence) (2.38 pm): I present a bill for an act to amend the Child Protection Act 1999 for particular purposes. I table the bill and explanatory notes. I nominate the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee to consider the bill.

Tabled paper: Child Protection Reform Amendment Bill 2016 [\[157\]](#).

Tabled paper: Child Protection Reform Amendment Bill 2016, explanatory notes [\[158\]](#).

The Child Protection Reform Amendment Bill 2016 proposes to amend the Child Protection Act 1999 to strengthen court processes in child protection proceedings as recommended by the Queensland Child Protection Commission of Inquiry. The Palaszczuk government is progressing wide-ranging reforms to Queensland's child protection and family support system. This bill, along with the Director of Child Protection Litigation Bill 2016, aims to reform the way that child protection proceedings are conducted in the Childrens Court. These court reforms will ensure that the voices of children and their families are heard on decisions that affect them, minimise delay and improve the quality of information and evidence before the court.

The Queensland government's child and family reforms are aimed at providing meaningful support to families when they need it to help them in their important role of keeping their children safe. To achieve this we are rolling out new services and new ways of working with families. We are working with families and communities to address issues of need or dysfunction so that these issues do not impact on children's safety or wellbeing. However, we know that sometimes intervention by child protection authorities is needed to keep children safe, and the Childrens Court plays an important role in this work. The Childrens Court makes decisions that can have far-reaching implications for families and children, and so we want to make sure that children and their families have every opportunity to have their say on decisions that affect them. This bill will promote improvements in the quality of information available to the Childrens Court so that decisions are made on the basis of sound understanding of the issues at hand.

The Queensland Child Protection Commission of Inquiry made 28 recommendations to improve the way child protection proceedings are conducted in the Childrens Court. The Child Protection Reform Amendment Bill 2016 implements 11 of these recommendations. The commission of inquiry also recommended the establishment of a Court Case Management Committee to broadly oversee the development of a Childrens Court case management framework. The committee, which is chaired by His Honour Judge Michael Shanahan, the President of the Childrens Court of Queensland, has been established and made recommendations that relate to amendments in this bill.

In collaboration with the Department of Justice and Attorney-General, my department undertook targeted consultation with key child protection and legal stakeholders to consider the recommendations implemented by this bill and to identify and resolve any issues. I would like to thank everyone who took part. Your input has been invaluable and helped us to develop a bill that I am confident will achieve its purpose of improving court processes and outcomes for children and families involved in proceedings for child protection orders.

The commission of inquiry recommended that the department establish an internal Office of the Official Solicitor to provide early and more independent legal advice to departmental staff. Clause 4 of the bill implements this recommendation by supporting the establishment of the Office of the Child and Family Official Solicitor within the Department of Communities, Child Safety and Disability Services. The role of this office will include providing early legal advice to child safety officers, applying for urgent assessment orders and temporary custody orders and working collaboratively with the Director of Child Protection Litigation when the department has determined that a child protection order is required. The Director of Child Protection Litigation will have responsibility for deciding whether an application for a child protection order should be made, the type of order that should be applied for and for progressing the application in court. The department will retain responsibility for applying for urgent short-term orders and so can continue to respond quickly in urgent circumstances.

The commission of inquiry found that when a child is on a long-term guardianship order changes in the child's or the family's circumstances may mean that the child is better off returning home. It recommended that the Child Protection Act be amended to include a reviewable decision where the department refuses a request to review a long-term guardianship order by a child's parent or the child. Clause 5 of the bill provides parents with the right to request the department to review a case plan for their child who is subject to a long-term guardianship order to someone other than the chief executive as long as the case plan has not been reviewed in the previous 12 months.

Children need stability and security, and so the department may refuse a review if there has been no significant change in a child's circumstances since the last review. Family group meetings bring together the child, their family and those who know the child and their family best as well as other relevant persons and agencies to develop a case plan to support them. The commission of inquiry reported concerns by some parents that their attendance at a family group meeting or agreement to a case plan may be used against them in court proceedings and recommended that the act should prevent this. Clauses 7 and 8 of the bill implement this recommendation by clarifying that a person's mere attendance at a family group meeting or agreement to a case plan cannot be used as an admission of anything against them in proceedings for a child protection order. Importantly, anything said or done at a family group meeting can still be used as evidence against a person. Obviously the court needs to be aware if someone discloses harm or actually makes an admission about having perpetrated abuse during a family group meeting.

The Court Case Management Committee identified that there is currently no specific legislation, rules or practice direction about the process for withdrawing an application for a child protection order that has been filed with the Childrens Court. Clause 10 of the bill addresses this by providing that the Director of Child Protection Litigation may only withdraw an application for a child protection order with the leave of the court. Currently, before a court can grant a child protection order in contested proceedings it must be satisfied that a conference between the parties has been held or that reasonable attempts to convene a conference have been made.

The commission of inquiry recommended that the Court Case Management Committee propose amendments to the Child Protection Act to provide a clear legislative framework for court ordered conferencing at critical and optimal stages during child protection proceedings. Clause 11 of this bill implements the committee's recommendation by allowing the court to dispense with the requirement for a court ordered conference in exceptional circumstances; for example, where the court considers that a conference would pose a risk to the safety of a party.

The commission of inquiry recommended that the Court Case Management Committee examine whether the Childrens Court, in making a long-term guardianship order, can feasibly make an order for placement and contact arrangements for the child. The committee found that it would not be feasible for the Childrens Court to make these orders. It instead recommended amendments to require the Childrens Court to be satisfied that, prior to granting a long-term guardianship order, living and contact arrangements for the child have been included in the child's case plan. This amendment in clause 11 will mean that before granting an order for long-term guardianship of the child the court must be satisfied that the case plan for the child is appropriate for meeting the child's assessed protection and care needs and includes contact and living arrangements.

Because a child's needs and their family's circumstances may change throughout their life, this amendment will not prevent the department or a child's guardian from changing their arrangements during the child's life as circumstances change. If child protection proceedings are underway in the Childrens Court and at the same time the Queensland Civil and Administrative Tribunal is dealing with an application to review a decision about the child, this can lead to confusion for the Childrens Court and other parties and cause delay. As recommended by the commission of inquiry, clause 19 of the bill implements the requirement for the president of the tribunal to suspend a review and transfer the matter if there are related child protection proceedings on foot in the Childrens Court. This amendment promotes efficiency by avoiding concurrent proceedings relating to the same matter being dealt with in two separate jurisdictions.

The commission of inquiry found that the views of children and young people are not always sought or well presented to the court, and this is despite the court being able to appoint a separate legal representative to act in the child's best interests and the child being able to have a direct legal representative to act on the instructions of the child. The Public Guardian may also be involved in a proceeding, and their role includes presenting the views and wishes of the child. The commission of inquiry recommended amendments to clarify the role and to provide clarity about when the Childrens Court should exercise its discretion to appoint a separate legal representative. The bill implements this recommendation in clause 24 by clarifying the distinction between a separate representative and a direct representative who acts on the instructions of the child.

The amendments also clarify that the role of the Public Guardian is not diminished, even if the child has been appointed a separate representative or has engaged a direct representative. The amendments clarify that a separate representative's role requires them to meet with the child, explain their role and help the child to take part in the proceedings, taking into account the child's age and ability to understand. The amendment will strengthen the options available to assist a child to take part in legal proceedings that affect them.

The commission of inquiry found that important family members and individuals in a child's life are often excluded from or marginalised in child protection proceedings. This is particularly concerning if kinship relationships for Aboriginal and Torres Strait Islander children and families and other cultural family arrangements are not taken into account. The commission of inquiry recommended that amendments be made to the Child Protection Act to give the court discretion to allow a significant person in a child's life to be joined as a party to the proceedings. Clause 25 of the bill implements this recommendation by giving the court the discretion to allow a person to participate in court proceedings by doing some or all of the things that a party may do.

The commission of inquiry found that the needs of siblings and half-siblings are sometimes determined by different courts on separate occasions and in different locations, even though the needs of children can be interrelated and competing, and recommended amendments to enable the court to transfer and join proceedings. Clause 26 of the bill implements this recommendation by giving the court discretion to hear two or more applications together on its own initiative if it is in the best interests of justice to do so. This can occur even if all the parties are not the same. The amendment is not specifically limited to siblings, to provide the court with flexibility to deal with the diversity of family relationships.

The commission of inquiry noted that there is currently no legislative duty of disclosure on parties to child protection proceedings. Instead, parties must rely on the subpoena process to obtain documents, including from the department. This means that child protection proceedings are conducted largely on the basis of affidavit evidence that often relies on hearsay. The commission of inquiry recommended that the Court Case Management Committee review the disclosure obligations. The committee recommended amendments to the Child Protection Act to impose a duty of disclosure in proceedings for a child protection order.

The bill implements this recommendation in clause 31 by requiring the Director of Child Protection Litigation, as the applicant in child protection proceedings, to disclose to the other parties all of the documents relevant to the issues in the proceedings. The department will have a corresponding duty to provide all relevant information to the Director of Child Protection Litigation. This amendment will facilitate a more equitable process by enabling parties to be aware of the evidence which will be relied upon during court proceedings. Given the sensitive nature of the information being disclosed, it will be an offence for a party to directly or indirectly disclose or make use of a document other than for the purpose connected to the proceeding.

In conclusion, this bill reflects the importance of child protection court work in supporting families and protecting vulnerable children. The proposed amendments aim to improve court processes and ensure courts have the evidence and information they need to make good decisions that achieve the

best possible outcomes for children and families. I encourage all interested parties to consider the provisions of the Child Protection Reform Amendment Bill and share their views on the bill by making a submission to the committee. I commend the bill to the House.

First Reading

Hon. SM FENTIMAN (Waterford—ALP) (Minister for Communities, Women and Youth, Minister for Child Safety and Minister for the Prevention of Domestic and Family Violence) (2.53 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

Mr DEPUTY SPEAKER (Mr Furner): Order! In accordance with standing order 131, the bill is now referred to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee.