



Speech By
Hon. Shannon Fentiman

MEMBER FOR WATERFORD

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CHILD PROTECTION REFORM AMENDMENT BILL; DIRECTOR OF CHILD PROTECTION LITIGATION BILL

Second Reading (Cognate Debate)

 **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) (4.02 pm): I move—

That the bills be now read a second time.

I introduced the Child Protection Reform Amendment Bill 2016 into parliament on 16 February 2016. On the same day the Attorney-General and Minister for Justice and Minister for Training and Skills introduced the Director of Child Protection Litigation Bill 2016 into parliament. The bills were referred to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee and the committee tabled its reports on both bills on 28 April 2016. I want to thank members of the committee for their examination of the bills. I table copies of the Queensland government's separate responses to the committee's reports on the Child Protection Reform Amendment Bill 2016 and the Director of Child Protection Litigation Bill 2016.

Tabled paper: Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee: Report No. 16—Child Protection Reform Amendment Bill 2016, government response [\[667\]](#).

Tabled paper: Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee: Report No. 17—Director of Child Protection Litigation Bill 2016, government response [\[668\]](#).

The Child Protection Reform Amendment Bill 2016 amends the Child Protection Act 1999 to strengthen child protection court processes and encourage the voices of children and families in child protection proceedings. The bills support the establishment of a new court work model for the Queensland child protection system which will comprise the Office of the Child and Family Official Solicitor within my department and the Director of Child Protection Litigation as an independent statutory body within the Justice portfolio. The committee made four recommendations in relation to the Child Protection Reform Amendment Bill 2016 and 10 recommendations in relation to the Director of Child Protection Litigation Bill 2016. I will address each of the committee's recommendations specific to each bill in turn. First I will address the committee's recommendations in relation to the Child Protection Reform Amendment Bill 2016.

The committee's first recommendation is that the bill be passed, and I thank the committee for this recommendation. The second recommendation is that the minister consider whether the bill needs to be amended to remove the word 'significantly' from proposed section 51VA and advise any decision in the House. The government has considered this matter in detail. The word 'significantly' will be retained in clause 5 of the bill as it currently informs the interpretation of section 51VA(5). Section 51VA of the Child Protection Act 1999 applies to children who are subject to long-term guardianship orders made by the Childrens Court. For these children, the Childrens Court has made the finding that there is no parent willing or able to protect the child within the foreseeable future and that the child's need for

emotional security will be best met in the long term by making the order. Currently, this section of the Child Protection Act 1999 allows a child or the child's long-term guardian to request that their case plan be reviewed. This will not change. The proposed amendments will additionally allow a child's parent to request that the child's case plan be reviewed if it has not been reviewed in the previous 12 months.

Currently, the Child Protection Act 1999 provides the chief executive with a broad discretion to refuse such a request if satisfied that it would not be appropriate in all the circumstances. The bill proposes to insert a new subsection 51VA(5A) into the act to provide additional guidance that the chief executive may exercise this discretion on the basis that the child's circumstances have not changed significantly since the plan was finalised or previously reviewed or if, for another reason, it would not be appropriate in all the circumstances. The use of the word 'significantly' in this provision recognises that there may be minor changes in an individual child's circumstances and arrangements from time to time that do not warrant the review of the child's case plan. Under schedule 2 of the Child Protection Act 1999, if the chief executive decides not to review the case plan, the person requesting the review may apply to the Queensland Civil and Administrative Tribunal for an administrative review of the refusal decision.

The third recommendation is that, given the concerns raised, the minister responds in the House to the issue raised by the Bar Association of Queensland that the term 'materially' is not necessary in clause 32. Clause 32 of the bill replaces section 191 of the Child Protection Act 1999 allowing the Director of Child Protection Litigation or another person to refuse to disclose personal information that is not materially relevant to the proceeding. The wording of this section is consistent with the current section 191 in the Child Protection Act 1999 as well as the disclosure obligation in the Criminal Code Act 1899 which the Queensland Child Protection Commission of Inquiry proposed as a model for the recommended duty of disclosure under the Child Protection Act 1999. Requiring information to be materially relevant to the proceeding effectively balances the need to protect the privacy of a child or anyone else involved in a child protection proceeding with the need to ensure the parties have access to information that is relevant to the grounds upon which the application is made. I have therefore made the decision to retain the word 'materially' in proposed section 191. The fourth recommendation is that the minister considers the protection afforded to children in court as part of the Child Protection Act 1999 review process. The government accepts this recommendation and protections afforded to children, including throughout Childrens Court proceedings, will be considered as part of the comprehensive review of the Child Protection Act currently being conducted by my department.

I will now address the committee's recommendations in relation to the Director of Child Protection Litigation Bill 2016. The committee's first recommendation is that the bill be passed, and I thank the committee for this recommendation. The committee's second recommendation seeks clarification about how the Brisbane based director's office will work across Queensland. There are a number of benefits in having a Brisbane based model. It will ensure appropriate professional supervision and support for the director's staff, promote consistency of approach and drive practice improvement. This will help to embed a new culture, particularly in the early stages of the new office. Personal appearances at mentions, trials and court ordered conferences will be the preferred mode of attendance and the director's lawyers will travel across the state when required. In the event that a personal appearance is not possible, video and telelink facilities will be used by the director's lawyers to remotely attend child protection proceedings. The director may also engage agents to attend matters or instruct counsel to attend at court. The Queensland government will closely monitor the effectiveness of this model, particularly in the first 12 months, so that improvements can be made in response to any issues that arise.

The committee's third recommendation noted stakeholder concerns that clause 6 may result in short-term orders being favoured over a long-term order and sought clarification about how clause 5 and clause 6 of the bill ensure the best outcomes for children. The director will be required to take into consideration the existing principles for the administration of the Child Protection Act 1999. These are the same principles that the court must take into consideration during a child protection proceeding.

The principles in the Child Protection Act 1999 include that the safety, wellbeing and best interests of the child are paramount. The director's lawyers will at all times be guided by the paramount principle that the safety, wellbeing and best interests of the child are paramount when deciding which actions are warranted in the circumstances of the case. The example given of least intrusive order in clause 6(1)(b) applies as far as it is consistent with this principle.

The fourth recommendation of the committee report was that the Attorney-General assess whether clause 13 of the bill, which states that, in performing its functions and exercising its powers, the director is not under the control or direction of the minister, strikes the right balance. Clause 13 of the bill makes it clear that, in performing their functions and exercising their powers, the Director of Child Protection Litigation is not subject to the direction of the minister. This provision makes it clear

that the Director of Child Protection Litigation is an independent statutory office. This approach is also consistent with the chief executive functions and responsibilities under the Child Protection Act 1999. The government considers that there are appropriate safeguards in place to ensure proper oversight of the director and the director's staff.

The director will be accountable to parliament through the minister, who is required to table the director's annual report, which is to include details of the administration of the director's functions and powers during that year. The Queensland Family and Child Commission will have oversight of the director's functions as part of the child protection system. The bill also amends the Child Protection Act 1999 to expand the jurisdiction of the Child Death and Serious Injury Review Panel to include the director.

The committee's fifth recommendation is that the Attorney-General consider the appropriate mechanism to ensure that the director has experience in child protection. Although the bill provides the general eligibility requirements for appointment as the director, it is more appropriate that the specific qualities being sought for the director be set out in the role description. This has occurred in the current recruitment process for the director, which has stated that the ideal applicant will possess qualities of integrity, independence and fairness and have high-level management experience in managing a complex service provider organisation within an evidence based management approach. They should also possess a comprehensive understanding and knowledge of the law and professional practice relevant to child protection and other welfare matters and significant litigation experience in a protective jurisdiction.

The sixth recommendation of the committee report requests that the Attorney-General consider reducing the term of office for the director from five years to three years. The government does not accept this recommendation and considers that the period of five years is appropriate. This approach is consistent with the position of many other statutory officers within the Justice portfolio who may also be appointed for a term of up to five years, such as the Public Guardian, the Public Trustee, the Public Advocate, the Ombudsman and Chair of the Crime and Corruption Commission. However, in acknowledgement of the concerns raised by the committee, the government will consider a shorter term for the first appointment to the directorship.

The government accepts the committee's seventh recommendation that the Director of Child Protection Litigation Act be reviewed after three years, rather than five. An amendment will be made during the consideration in detail stage of the bill's progression through the Legislative Assembly to amend clause 41 to provide for that.

The committee's eighth recommendation requests that the director publish the director's guidelines. The government does not accept this recommendation, as the bill already provides for a process for the publication of the director's guidelines through the tabling of the annual report.

The ninth recommendation of the committee seeks advice about why the department's right of review of decisions made by the director do not have an external right of review. It is unusual for a government agency to be given the ability to apply to an external body, such as QCAT, seeking a review of a decision made by another government agency as this is usually preserved for non-government entities. There are other mechanisms to review decisions, including an internal review, the process that is intended to be included in the director's guidelines. The Department of Justice and Attorney-General is working closely with the Department of Communities, Child Safety and Disability Services in the development of these guidelines.

The committee's final recommendation seeks clarification on the grounds on which a request from the department to the director to apply for a child protection order can be refused. Section 59 of the Child Protection Act sets out the matters that the Childrens Court must be satisfied of before making a child protection order. The director will have regard to the provisions of section 59 in determining whether there is sufficient, relevant and appropriate evidence available to make an application for a child protection order to the Childrens Court.

In conclusion, these bills form an important step in our ongoing reforms to Queensland's child protection and family support services. Through *Supporting families changing futures* we are delivering on a wideranging reform agenda that will transform the way Queensland keeps children safe and promotes their wellbeing and best interests. These bills will make important changes to the way in which child protection proceedings are conducted in the Childrens Court. These changes will better enable the voices of children and their families to be heard when decisions that affect them are made and improve the quality of information and evidence before the court.

The establishment of the Office of the Child and Family Official Solicitor within my department will ensure that Child Safety staff have access to accurate legal advice when they need it to help them make the best decisions for children and families. The establishment of the Director for Child Protection

Litigation within the Justice portfolio will improve the quality of evidence brought before the court. It will create an important separation between litigation and child safety casework so that our Child Safety staff can focus clearly on the work of supporting families and meeting the needs of children.

These are important reforms that will drive improvements for Queensland children and families. It is also important to acknowledge that these reforms and their implementation will change many roles at the front line of child protection in Queensland. We are committed to supporting our staff through this transition period. Importantly, no positions will be lost as a result of the implementation of these reforms.

I would like to acknowledge the contribution of the Together union in working with my department on these reforms and its representation on behalf of its members through the committee process. At the end of the day, we all want families to be better supported and children to be safe. These reforms are squarely aimed at making that happen. The Palaszczuk government is committed to continuing to work with the Together union to implement our child and family reforms, including these important court work reforms.

Again, I would like to extend my thanks to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee for its examination of the bills. I would also like to thank the research staff of the committee for their work in assisting the committee in its consideration of both the Child Protection Reform Amendment Bill 2016 and the Director of Child Protection Litigation Bill 2016. The bills continue the Queensland government's significant *Supporting families changing futures* child and family reform efforts. They will ensure that court processes are enhanced to enable better decision-making and outcomes for children and families involved in the statutory child protection system. I commend the bills to the House.