Parliamentary Committees

Child Protection Reform Amendment Bill 2016

Report No. 16

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

April 2016

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

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[1] Dr Rowan was appointed Deputy Chair on 24 February 2016. Ms Bates was Deputy Chair from 1 April 2015 to 24 February 2016

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Abbreviations

the Bill	Child Protection Reform Amendment Bill 2016
CCMC	Court Case Management Committee
Chief Executive	the Chief Executive of the Department of Communities, Child Safety and Disability Services
the Commission	Queensland Child Protection Commission of Inquiry
the Committee	Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee
CPA	Child Protection Act 1999
DCPL	Director of Child Protection Litigation
the Department	Department of Communities, Child Safety and Disability Services
DJAG	Department of Justice and Attorney-General
FGM	Family group meetings
FLP	Fundamental legislative principles
OCFOS	Office of the Child and Family Official Solicitor
PACT	Protect All Children Today Inc.
POQA	Parliament of Queensland Act 2001
QAK	Queensland Alliance for Kids
QCAT	Queensland Civil and Administrative Tribunal
QFCC	Queensland Family and Child Commission
QLS	Queensland Law Society

Chair's foreword

This Report presents a summary of the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee's examination of the *Child Protection Reform Amendment Bill 2016*.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

The purpose of the amendments is to achieve better outcomes for families and children involved in child protection court proceedings, generally improve the functioning of the Childrens Court and the quality of applications for a child protection order and clarify the role of various entities in applying for orders under the Child Protection Act.

The Committee sought written submissions, held a public departmental briefing and a public hearing. The Committee received six submissions.

The Committee has made four recommendations, including that the Bill be passed. The Committee has requested the Minister respond to a number of issues raised by stakeholders during the course of the inquiry.

On behalf of the Committee, I would like to thank those individuals and organisations who lodged written submissions and appeared at the Committee's public hearings. The Committee also wishes to acknowledge the assistance provided by the Department of Communities, Child Safety and Disability Services, the Department of Justice and Attorney-General, Scrutiny of Legislation secretariat staff, Hansard and the Committee Secretariat.

Finally, I would like to thank my fellow Committee Members for their active contributions during examination of the Bill.

I commend this report to the House.

Leanne Linard MP
Chair

Recommendations

Recommendation 1 **3**

The Committee recommends that the Child Protection Reform Amendment Bill 2016 be passed.

Recommendation 2 **10**

The Committee recommends the Minister consider whether the Bill needs to be amended to remove the word 'significantly' from proposed section 51VA, and advise of any decision in the House.

Recommendation 3 **13**

The Committee recommends that, given the concerns raised, the Minister responds in the House to the issues raised by the Bar Association of Queensland in relation to clauses 31 and 32.

Recommendation 4 **15**

The Committee recommends that the Minister considers the protection afforded to children in court as part of the *Child Protection Act 1999* review process.

1. Introduction

1.1 Role of the Committee

The Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (the Committee) is a portfolio committee of the Legislative Assembly. The Committee was formerly known as the Health and Ambulance Services Committee which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* (Qld) (POQA) and the Standing Rules and Orders of the Legislative Assembly.[2] On 16 February 2016, the Parliament agreed to amend Standing Orders, renaming the Committee and expanding its area of responsibility.[3]

The Committee's primary areas of responsibility include:

- Health and Ambulance Services
- Communities, Women, Youth and Child Safety
- Domestic and Family Violence Prevention
- Disability Services and Seniors.

Section 93(1) of the POQA provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- for subordinate legislation – its lawfulness.

Section 92 of the POQA provides that a portfolio committee is to deal with an issue referred to it by the Legislative Assembly or under another Act, whether or not the issue is within its portfolio area.

1.2 Referral

On 16 February 2016, the Minister for Child Safety and Minister for the Prevention of Domestic and Family Violence introduced the Child Protection Reform Amendment Bill 2016 (the Bill) into the Legislative Assembly.

In accordance with Standing Order 131, the House referred the Bill to the Committee to consider. The Committee is required to report to the Legislative Assembly by 28 April 2016.

1.3 Inquiry process

The Committee's consideration of the Bill included calling for public submissions, a public departmental briefing and a public hearing.

The Committee wrote to the Department of Communities, Child Safety and Disability Services (the Department) seeking advice on the Bill. The Committee received this advice on 3 March 2016. The Committee also sought a written briefing from the Department, and a response to issues raised in submissions.

The Committee considered expert advice on the Bill's conformance with fundamental legislative principles (FLP) listed in Section 4 of the *Legislative Standards Act 1992*.

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[2] *Parliament of Queensland Act 2001* (Qld), section 88. Queensland. *Legislative Assembly of Queensland, Standing Rules and Orders of the Legislative Assembly, effective 18 February 2016*, Standing Order 194.

[3] S Hinchliffe, 'Motions: Amendment to Standing Orders', Queensland, *Debates*, 16 February 2016, pp 18-20.

1.4 Submissions

The Committee advertised the inquiry on its website and wrote to stakeholders and subscribers to inform them of the inquiry and invite written submissions by 14 March 2016. The Committee received six submissions.

A list of individuals and organisations who made submissions is contained in Appendix A. The closing date for submissions was 14 March 2016. The Committee granted extensions to a number of submitters. Submissions authorised by the Committee are on the Committee's webpage and available from the committee secretariat.

1.5 Public departmental briefing

The Committee held a public departmental briefing with officers from the Department on 24 February 2016. A list of officers who gave evidence at the public departmental briefing is in Appendix B. The transcript of the briefing is on the Committee's webpage and available from the committee secretariat.

The Committee sought further written advice from the Department in response to matters raised during the briefing.

1.6 Public hearing

On 5 April 2016, the Committee held a public hearing with individuals and representatives from organisations who provided submissions. A list of representatives who gave evidence at the hearing is in Appendix C. A transcript of the hearing is on the Committee's webpage and is available from the committee secretariat.

The Committee also sought additional written information from stakeholders subsequent to the hearing.

1.7 Director of Child Protection Litigation Bill 2016

The Attorney-General and Minister for Justice and Minister for Training and Skills introduced the Director of Child Protection Litigation Bill 2016 on the same day as the subject bill. The Director of Child Protection Litigation Bill 2016 establishes the Director of Child Protection Litigation (DCPL), an independent statutory officer. The DCPL will prepare and apply for child protection orders and conduct child protection order proceedings in the Childrens Court. The DCPL Bill sets out how the responsibilities of the DCPL and the Chief Executive of the Department of Communities, Child Safety and Disability Services and how they will work together.

Both Bills implement the recommendations of the Queensland Child Protection Commission of Inquiry's report, *Taking Responsibility: A Road Map for Queensland Child Protection.*

The Committee considered both bills together, however, has reported separately on the Director of Child Protection Litigation Bill 2016.

1.8 Outcome of Committee Considerations

Standing Order 132(1) requires that the Committee determine whether or not to recommend the Bill be passed.

After examination of the Bill, including the policy objectives it will achieve and consideration of the information provided by the Department and other inquiry participants, the Committee agreed to recommend that the Bill be passed.

The Committee agreed that the area of child protection is complex and can be highly emotive. The Committee acknowledges the challenges faced by the Department in designing a system that is practical, affordable and provides the best outcomes for all involved.

The Committee considers that the highest priority should be afforded to what is in the best interests of the child and this should not be limited by differing objectives. The Committee has recommended a number of amendments which it considers provide clarity to further this endeavour.

Recommendation 1

The Committee recommends that the Child Protection Reform Amendment Bill 2016 be passed.

2. Examination of the Child Protection Reform Amendment Bill 2016 – Preliminary

2.1 Background

2.1.1 Queensland Child Protection Commission of Inquiry

On 1 July 2012, the Government established the Queensland Child Protection Commission of Inquiry (the Inquiry), led by the Honourable Tim Carmody QC. On 28 June 2013, the Commission published its report, *Taking Responsibility: A Road Map for Queensland Child Protection* (the Report).

2.1.2 Outcome of the Inquiry

The Report concluded the child protection system was under stress and made 121 recommendations for improvement. The Palaszczuk Government committed to implement the Commission of Inquiry's recommendations.

The Child Protection Reform Amendment Bill 2016 implements 10 court-related recommendations from the Report and one from the Court Case Management Committee (CCMC). It also facilitates the creation of the Office of the Child and Family Official Solicitor (OCFOS) within the Department. The OCFOS will provide early and independent legal advice to Departmental staff and prepare evidence when a child protection order should be sought.

2.1.3 Policy objectives of the Bill

The Bill aims to achieve better outcomes for families and children involved in child protection court proceedings, and generally improve the functioning of the Childrens Court and the quality of applications for a child protection order.

The Bill will reform court processes to:

- ensure the voices of children and their families are heard in decisions that impact on them
- minimise delay
- improve the quality of evidence presented to support applications for child protection orders
- improve decision-making because the court will have all the relevant information it needs to make a decision.

The Bill also clarifies the role of various entities in applying for orders under the *Child Protection Act 1999* (the CPA).

2.2 Consistency with legislation of other jurisdictions

The explanatory notes state that the Bill is specific to Queensland and is not uniform with or complementary to legislation with the Commonwealth or another state or territory.

However, the explanatory notes also state:

> *While the Bill is not intended to achieve uniformity with laws in other jurisdictions, the Commission of Inquiry, in making its recommendations considered the operation of child protection systems in Australia and international jurisdictions.*[4]

[4] Child Protection Reform Amendment Bill 2016 Explanatory Notes, p 10

2.3 Alternative ways of achieving the policy objectives

The explanatory notes to the Bill state that:

> *The proposed legislation is essential to commence implementation of key recommendations made by the Commission of Inquiry. There are no alternative ways of achieving the reforms.*[5]

2.4 Consultation

The explanatory notes state that the Commission undertook extensive community consultation in forming these recommendations and that the Department and the Department of Justice conducted targeted consultation with key child protection and legal stakeholders.

Exposure drafts of the Bill were released for consultation with key stakeholders, with comments sought and incorporated where appropriate. The explanatory notes state there was general support for the Bill.[6]

2.5 Cost of implementation

The explanatory notes state that implementing the amendments in the Bill will not have any direct financial implications. The explanatory notes state that OCFOS will be established within the Department and is fully funded.[7]

2.6 Commencement

The Queensland Law Society (QLS) notes that while some sections of the Bill are to commence on 1 July 2016, all other provisions will commence on assent. QLS advised that guidance as to when the remaining sections of the Bill will commence would be useful.[8]

The Department responded that:

> *If the CPRA Bill is passed, the majority of the provisions will commence on assent.*
>
> *Section 15A of the Acts Interpretation Act 1954 provides that an "Act commences on the date of assent except so far as the Act otherwise expressly provides".*
>
> *The explanatory notes state: 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.*[9]

2.6.1 Committee comments

The Committee considers that this is sufficiently clear and does not warrant further explanation.

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[5] Child Protection Reform Amendment Bill 2016 Explanatory Notes, p 8
[6] Child Protection Reform Amendment Bill 2016 Explanatory Notes, p 10
[7] Child Protection Reform Amendment Bill 2016 Explanatory Notes, p 8
[8] Submission, Queensland Law Society, p 1
[9] Correspondence from Department of Communities, Child Safety and Disability Services to the Committee, date 11 April 2016, p 2

3. Examination of the Child Protection Reform Amendment Bill 2016 – clauses

The Committee found that there was general support for the Bill, excluding the issues detailed in the following sections.

Protect All Children Today Inc (PACT) advised the Committee:

> *…we express our support of the amendments of the Bill in relation to court processes which aim to: ensure the voices of children and their families are heard in decisions that impact on them, minimise delay, improve the quality of evidence presented to support applications for child protection orders, and improve decision making because the court will have all the relevant information it needs to make a decision.*
>
> *Further, we support the creation of the Office of the Child and Family Official Solicitor (OCFOS) within the Department of Communities, Child Safety and Disability Services (DCCSDS).*[10]

The Bar Association of Queensland (Bar Association) advised that they welcome the introduction of legislation pursuant to the recommendations made by the Child Protection Commission of Inquiry.[11]

They advised:

> *The Association supports the overall effect of the amendments in clarifying and enhancing the supervisory jurisdiction of the Childrens Court and allowing children and parents to remain appropriately engaged with the process irrespective of the type of child protection order imposed.*[12]

3.1 Clause 5 – Amendment of section 51VA (Review of plan – long term guardian)

Existing section 51VA relates to the review of a case plan where the child has a long-term guardian. Sections 51VA(4) allows that the child or the long-term guardian may ask the chief executive to review the case plan. The existing provisions do not allow for a parent to request a review of the case plan.

Clause 5 amends section 51VA(5) to include a provision that enables a parent of the child to request a review of the case plan, if the plan has not been reviewed in the previous 12 months.

Proposed section 51VA(5A) relates to requests made under sections 51VA(4) and 51VA(5). This section gives the chief executive the power to decide not to review the plan if satisfied –

(i) The child's circumstances have not changed significantly since the plan was finalised or, if it has been reviewed, since the most recent review; or

(ii) For another reason, it would not be appropriate in all the circumstances

The explanatory notes state:

> *As reviewing a case plan may impact on the stability of a child, limitations have been included so that the parent can only request a review if the case plan has not already been reviewed within the previous 12 month period.*[13]

[10] Submission, Protect All Children Today Inc, p 1
[11] Submission, Bar Association of Queensland, p 1
[12] Submission, Bar Association of Queensland, p 1
[13] Child Protection Reform Amendment Bill 2016 Explanatory Notes, p 11

The explanatory notes also identify that once the parent has made the request, the chief executive may decide not to review a case plan if the child's circumstances have not significantly changed since the last review or for another reason a review would not be appropriate. The intention of this subsection is to allow the chief executive to consider the value of reviewing the case plan and prevent unnecessary disruption to a child's stability.[14]

The Bar Association supported the concept of providing an avenue for parents to remain engaged in the care and development of their child throughout childhood. However, they were critical of the drafting of the clause.[15] This issue is discussed further in section 3.2 of this report.

QLS have identified two issues with regard to Clause 5 as follows:

> 1) *The Society considers that where Guardianship is granted to the Chief Executive, there should be a positive obligation on the Chief Executive to formally invite parents to attend a FGM no less than once every twelve (12) months. In the experience of our members, FGM's and other conferences are held in the parents' absence and they are not invited to these meetings. Given the difficulties and limitations that many parents present with, we submit that the Chief Executive should be required, at the very least, to formally invite parents to participate in the FGM.*
>
> 2) *If the Chief Executive concludes that a FGM or a review of the case plan is not necessary despite a parents' request for the same, we recommend that the Chief Executive should be responsible for providing a formal response to the parents and detail the reasons why a further FGM should not be held. If the CE provides a negative response to a parent, we then suggest that the parents (and/or stakeholder) are afforded a mechanism of review.*

The QLS advised the Committee:

> *In the experience of our members, where there is a long-term guardianship order in place, the family group meeting and other conferences are often held in the absence of the child's parents and they are not invited to attend the meeting. Given the difficulties and the limitations that parents present with, we submit that the chief executive should be required, at the very least, to formally invite parents to participate in the family group meeting.*[16]

The issue of Family Group Meetings (FGM) is outside the scope of clause 5. The relevant sections of the CPA are:

- *section 51D(1)(c)(ii) states that case planning must be carried out to encourage and facilitate parental participation*[17]
- *section 51L(1)(b) states that a child's parents must be given a reasonable opportunity to attend a meeting*[18]
- *section 51M(1) sets out what invitees to a meeting must be informed of before the meeting. Section 51M(2) defines an invitee as a parent.*[19]

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[14] *Child Protection Reform Amendment Bill 2016 Explanatory Notes*, p 11

[15] Submission, Bar Association of Queensland, p 2

[16] Mr Ward, Queensland Law Society, *Public Hearing – Inquiries into the Child Protection Reform Amendment Bill 2016 and Director of Child Protection Litigation Bill 2016*, 5 April 2016, p 12

[17] *Child Protection Act 1999*, section 51

[18] *Child Protection Act 1999*, section 51

[19] *Child Protection Act 1999*, section 80

However, the Department has provided a response which notes that there are sufficient provisions in the CPA to ensure parents are informed and have reasonable opportunity to take part in developing or reviewing a child's case plan, so the proposal does not need to be legislated.[20] The Department noted that the CPA contains a number of existing provisions to ensure parents' participation in attending family group meetings, including the three sections noted above, and:

- *section 51D(1)(f) requires case planning to be carried out to enable people involved to understand it. The relevant example in section 51D(f) states the chief executive should tell 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 51W(1)(b) of the CPA requires the chief executive to give parents a reasonable opportunity to participate in a review and preparation of a revised case plan*
- *section 51W(2) of the CPA provides that 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 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.*[21]

The Department also noted that it is currently undertaking a comprehensive review of the CPA which includes consideration of legislative mechanisms that could be used to ensure a child's needs are best met.

With regard to affording the parents with a mechanism of review, the Department advised that these provisions exist in the Bill. If the Chief Executive decides not to review a case plan, they must give written notice of the decision to the person who made the decision.[22] The Department also noted that all decisions under section 51VA are reviewable decisions under Schedule 2 of the CPA.[23]

3.1.1 Committee comment

The objective of Clause 5 is to add an avenue for parents to request a case plan review which does not exist in the legislation currently. However, this option needs to be considered in light of what is in the best interests of the child. The Committee's expectation is that the chief executive's decision would be made taking into account all factors.

The Committee agrees with the Department that the Bill provides a sufficient mechanism of review and for disclosure of reasons for rejecting a review. The Committee recommends no changes.

[20] Correspondence from Department of Communities, Child Safety and Disability Services, to HCDSDFVPC dated 11 April 2016, p 5

[21] Correspondence from Department of Communities, Child Safety and Disability Services, to HCDSDFVPC dated 11 April 2016, pp 3-4

[22] Proposed section 51VA(6) of the CPA

[23] Schedule 2 defines an 'aggrieved person' – a parent will be covered by this definition

3.2 Clause 5 – A change in a child's circumstances must be 'significant' for the Chief Executive to revise a case plan

Clause 5 states that the Chief Executive may decide not to review a case plan if they are satisfied that the child's circumstances have not changed significantly.

While supporting the concept of the provision, the Bar Association noted:

> *…it seems an unnecessary impediment to the ongoing supervision of, and accountability for, a child's best interests to permit the chief executive not to review a child's case plan if "the child's circumstances have not changed significantly" (see the proposed section 51 VA(5A)(a)(i)). The use of that adverb is problematic. A significant change in the life of a child is a concept so protean and ambiguous as to risk being meaningless.*[24]

The Bar Association considered that it would have been better to draft the clause with onus on the chief executive to ensure a case plan exists that is appropriate to the child's welfare rather than saying that the case plan is not reviewed if the child's circumstances have not changed significantly. They advised:

> *We say you should start from that and to say once a year the chief executive should ensure that a case plan exists that is appropriate to the child's welfare and development because that is what this bill is all about. That is what everyone working in the system is wanting: to ensure that a case plan is appropriate to the child's welfare and development. Things happen. Sometimes things happen that are clearly significant, but other times things happen that may not on their face be significant but for a child is significant. That is hard to determine so if you can keep an eye on the process, keep an eye on what is going on, the Bar Association submits that would provide a better supervisory process and a more rigorous process because it is the child's welfare that is paramount.*[25]

The Bar Association suggested that the use of the word 'significantly' was problematic, as opinions can differ as to what constitutes a significant change. It also suggested that a 'significant' change in circumstances was too high a threshold before the Chief Executive's statutory obligations can be enforced.[26] It also noted the problem with using adverbs such as 'significant', stating:

> *The best legislation in any legislation is the clearest and the simplest. When you start using adverbs and adjectives, that is when lawyers get hold of those adverbs and adjectives and ask the question: what does that mean? That then becomes a question of fact or perhaps even of law or of fact and law and that then creates less clarity in a system.*[27]

The Department advised that the provisions apply to children who are in a stable and secure placement that the court is satisfied meets their care and protective needs. It noted that a child or their guardian may ask the chief executive to review the case plan at any time and in addition to this 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.[28]

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[24] Submission, Bar Association of Queensland, p 2

[25] Ms Wilson, Bar Association of Queensland, *Public Hearing – Inquiries into the Child Protection Reform Amendment Bill 2016 and Director of Child Protection Litigation Bill 2016*, 5 April 2016, p 10

[26] Submission, Bar Association of Queensland, p 2

[27] Ms Wilson, Bar Association of Queensland, *Public Hearing – Inquiries into the Child Protection Reform Amendment Bill 2016 and Director of Child Protection Litigation Bill 2016*, 5 April 2016, p 15

[28] Correspondence from Department of Communities, Child Safety and Disability Services, to HCDSDFVPC dated 11 April 2016, pp 12-13

It stated that the proposed amendments balance the involvement of parents but ensure case plans are not reviewed unnecessarily. It also noted that section 51W(1)(b) of the CPA also ensures parents are given a reasonable opportunity to participate in the review and preparation of any revised case plan.[29]

3.2.1 Committee comment

The Committee notes that the clause may give rise to unnecessary reviews. However, the clause may also mean that a child who considers their living situation has changed for the worse sees their request for case plan review rejected. Reasonable people can have differing views over what constitutes a 'significant' change, and such debate can divert attention and resources from investigating what is in the child's best interests.

Recommendation 2

The Committee recommends the Minister consider whether the Bill needs to be amended to remove the word 'significantly' from proposed section 51VA, and advise of any decision in the House.

3.3 Clause 8 – Evidence of anything recorded in a case plan

Clause 8 amends section 517B of the CPA to provide that in a child protection proceeding, if a person participates in developing, or agrees to, a case plan, this must not be taken as an admission by them of any allegations made about them.

The QLS agreed with the proposed amendment and suggested including an obligation on the Chief Executive to ensure parents' and other stakeholders' concerns are recorded in the case plan. They noted:

> *Some parents have had concerns about case plans and the processes surrounding them including lack of transparency, failure to disclose information and not being invited. This is not an exhaustive list of those concerns.*[30]

The Department advised that the CPA sets out the purpose of a case plan, which is to meet a child's protection and care needs, not to record everything that was discussed at the family group meeting.[31] It also advised that matters discussed at family group meetings should be recorded in accordance with the Child Protection Family Group Meeting Convenor Handbook. Items that may be recorded include:

- details of participants and people who were consulted but did not attend the meeting, or were excluded from attending and the reasons for exclusion
- information about the family group meeting process
- whether separate family group meetings were held and the reasons for this
- details of important information discussed and who raised particular concerns, participants' views and wishes and disagreements with the case plan form.[32]

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[29] Correspondence from Department of Communities, Child Safety and Disability Services, to HCDSDFVPC dated 11 April 2016, p 13

[30] Mr Ward, Queensland Law Society, *Public Hearing – Inquiries into the Child Protection Reform Amendment Bill 2016 and Director of Child Protection Litigation Bill 2016*, 5 April 2016, p 12

[31] *Child Protection Act 1999*, section 51(B)1

[32] Correspondence from Department of Communities, Child Safety and Disability Services, to HCDSDFVPC dated 11 April 2016, pp 5-6

3.3.1 Committee comment

Given that the main purpose of a case plan is to meet a child's protection needs, and guidelines exist stating that important information and views and disagreements should be recorded, the Committee is not convinced that an absolute requirement for the Chief Executive to ensure parents' and other stakeholders' input is recorded is necessary, given that parents' rights are taken into account elsewhere.

3.4 Clause 25 – defining a non-party to a proceeding

Clause 25 replaces section 113 of the CPA. This clause permits people to apply to the court to participate in a proceeding, allowing the court to be informed by people who are not a party to the proceedings but who are significant in the child's life, such as grandparents or foster carers. The extent of a person's involvement is at the court's discretion. The person may be allowed to make a written statement, or they may participate to the same extent as a party to proceedings. In the latter case, a person would have the same rights and responsibilities as a party to a proceeding under the CPA.

The court will consider the principle that the child's safety, wellbeing and best interests are paramount when deciding if a person can participate in proceedings, and the extent of their involvement. People who are already parties to proceedings must be given the opportunity to make submissions to the court about any other person's participation under this clause.

The Bar Association and Queensland Family and Child Commission (QFCC) supported this provision.[33] However, QFCC suggested that clearly defining a non-party, as section 113 of CPA currently does, would provide clarity.

The Bar Association was concerned that non-parties appeared to have the power under the CPA to appeal a decision on a child protection application. It suggested the Bill should include a presumption against affording such people a right of appeal because:

- the purpose of the amendment is for the court to be able to inform itself as best it can, not for the non-party to dictate the direction of proceedings;
- concluding a child protection proceeding is important, given the trauma created for a child; and
- it is impossible to define all potential non-parties to a proceeding.

The Department advised that clause 25 was drafted to reflect the diversity in family and kin structures and acknowledges that children may have significant relationships with people who they are not related to. It advised that clause 25 ensures the court has substantial control over who can participate in proceedings.[34]

It advised that the proposed amendment is intended to give the Childrens Court a broad discretion and the proposed provisions will operate with the existing section 117 to provide the appellate court with a broad discretion to hear an appeal lodged by a person who participates in proceedings. The Court will need to make an order that someone can participate to the same extent as a party before these appeal provisions apply.[35]

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[33] Submission, Bar Association of Queensland, pp 3-4; Submission, Queensland Family and Child Commission, p 3

[34] Correspondence from Department of Communities, Child Safety and Disability Services, to HCDSDFVPC dated 11 April 2016, pp 13-14

[35] Correspondence from Department of Communities, Child Safety and Disability Services, to HCDSDFVPC dated 11 April 2016, pp 13-14

3.4.1 Committee comment

The Committee noted the concern that defining a non-party may provide clarity. However, the Committee is also of the view that family arrangements vary substantially, and a person who may appear not to be important in a child's life at first glance can actually be an important person in their life. For this reason, the Committee is not convinced that defining all non-parties to a proceeding is necessary and may actually exclude someone important in a child's life from being involved in a proceeding about that child.

The Committee is satisfied with the provisions that allow a non-party to a proceeding to participate to the same extent as a party to proceedings and affording that person a right of appeal. The Committee considers that enabling the court to make the decision as to whether the person can participate to the full extent will safeguard against people with a limited or negative involvement in a child's life from bringing an appeal with limited merit which will only cause disruption to a child's life.

3.5 Clauses 31 and 32 – refusal to disclose documents or information

Clause 32 replaces section 191 and outlines when the Director of Child Protection Litigation (DCPL) or another person may refuse to disclose a document or information containing personal information, to protect the privacy of someone involved in a child protection proceeding. Section 191(2)(g)(i) states that the DCPL or other person may refuse to disclose information if it is not materially relevant. Section 191(4)(a) states that the court or tribunal may order the disclosure of information if it is satisfied the information is materially relevant.

The Bar Association noted that the requirement for information to be materially relevant is used. It suggested that in this context, evidence is either relevant or it is not and if it is relevant, it should be considered.[36]

They stated:

> *The language used in the proposed s 191(4)(a) warrants further consideration. Subsection (a) confers a discretion on the court to order the disclosure of the evidence if it is materially relevant to the proceeding. However, relevance in this particular evidentiary context is a binary state. lt would seem otiose to require only the disclosure of a document that is "materially" relevant when the true threshold of admissibility for this purpose is simply relevance.*
>
> *The insertion of "materially" adds nothing to the purpose and effect of the provision but poses the potential semantic quandary as to the precise distinction between evidence that is materially relevant and evidence that is relevant but not materially relevant. It is also noted that the same term is employed at s 191 (2)(g)(i).*[37]

The Department responded that 'material relevance' was used because the Commission report recommended that the revised obligations in the CPA should reflect those in section 590AB of the *Criminal Code 1899* (the Criminal Code).[38]

[36] Submission, Bar Association of Queensland, p 5

[37] Submission, Bar Association of Queensland, p 5

[38] Correspondence from Department of Communities, Child Safety and Disability Services to the Committee, to HCDSDFVPC dated 11 April 2016, pp 14-15

3.5.1 Committee comment

While the Commission report recommends that the provisions of section 590AB of the Criminal Code should be incorporated into the Bill, section 590AB does not say that evidence needs to be materially relevant.[39]

The Committee also notes that clause 31 introduces a penalty which will apply to a person who obtains a document relevant to an application for a child protection order and discloses it, or part of it, for a purpose unrelated to a current child protection proceeding. The Committee considers that these penalty arrangements will help to ensure confidential information is not unnecessarily disclosed.

The Committee notes the points raised by the Bar Association and request the Minister responds to the issues raised in the second reading speech.

Recommendation 3

The Committee recommends that, given the concerns raised, the Minister responds in the House to the issues raised by the Bar Association of Queensland in relation to clauses 31 and 32.

3.6 Other items raised in submissions

This section addresses concerns raised in submissions that do not directly relate to any of the Bill's clauses.

3.6.1 Children giving evidence in the Childrens Court should be afforded the same child witness provisions of the *Evidence Act 1997*

Protect All Children Today (PACT) suggested that children giving evidence in the Childrens Court should be afforded the child witness provisions of the *Evidence Act 1997*, (the Evidence Act) as adopted by the District Court in criminal court proceedings. PACT argued that the Government should consider enforcing legislation that affects children giving evidence to ensure a consistent approach across criminal jurisdictions. The section of the Evidence Act that should be adopted is section 21AA, below:

The purposes of this division are—

> *…*
>
> *(b) to require, wherever practicable, that an affected child's evidence be taken in an environment that limits, to the greatest extent practicable, the distress and trauma that might otherwise be experienced by the child when giving evidence.*[40]

The Department stated that applying any of the Evidence Act provisions to child protection proceedings was not recommended in the Commission report and so was outside the scope of the Bill and, in any case, sufficient protection was already given to children in the CPA.[41]

The Department stated that section 105[42] of the CPA provides that the Childrens Court is not bound by the rules of evidence, but may inform itself in any way it thinks appropriate. Section 112[43] of the CPA states that a child cannot be compelled to give evidence in a child protection proceeding and may only be called to do so with the leave of the court. Leave will only be granted if the child is at least 12 years

[39] Queensland. *Criminal Code 1899*, section 590AP(2), p 384
[40] *Evidence Act 1977*, section 21AA(b)
[41] Correspondence from Department of Communities, Child Safety and Disability Services to the HCDSDFVPC dated 23 March 2016, pp 2-3
[42] *Child Protection Act 1999*, section 105
[43] *Child Protection Act 1999*, section 112

old, is represented by a lawyer and agrees to give evidence. In this event, a child can only be cross examined with the leave of the court.

The Department also noted that in accordance with the Commission report, it is conducting a comprehensive review of the CPA and it will consider amendments to ensure the views of children are provided to the court[44], in accordance with the Commission report recommendations.

The Committee sought further clarification on this issue from DJAG, who advised:

> *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.*[45]

It advised that the court is to apply the principles of the CPA, including the paramount principle, to ensure that giving evidence is not inconsistent with the safety, well-being and best interests of the child. DJAG advised that if the court does grant leave to a child to give evidence, the Evidence Act would apply.[46]

DJAG also confirmed that it is progressing the remake of the Childrens Court Rules which forms part of the child protection court reforms. It is proposed that the Rules will commence on 1 July 2016. It noted:

> *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.*[47]

It advised that the Department, in undertaking the evaluation of the court reforms in 2017-18 and 2022-23, will include in the evaluation framework 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.[48]

3.6.2 Committee comment

The Committee considers that the Department's advice clarifies that the Evidence Act would apply to child protection order proceedings where appropriate, meaning no change is required to the Bill. The Committee considers that the issue of protection afforded to children in court should be considered as part of the Department's review of the Act.

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[44] Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Road Map for Queensland Child Protection*, recommendation 14.1, p 504

[45] Correspondence from Department of Justice and Attorney-General to the Committee to HCDSDFVPC dated 19 April 2016, p 1

[46] Correspondence from Department of Justice and Attorney-General to the Committee to HCDSDFVPC dated 19 April 2016, p 1

[47] Correspondence from Department of Justice and Attorney-General to the Committee to HCDSDFVPC dated 19 April 2016, p 1

[48] Correspondence from Department of Justice and Attorney-General to the Committee to HCDSDFVPC dated 19 April 2016, p 2

Recommendation 4

The Committee recommends that the Minister considers the protection afforded to children in court as part of the *Child Protection Act 1999* review process.

3.6.3 Change to existing section 99M – adding 'more' before 'quickly'

Section 99M deals with applications for review of administrative decisions by the Queensland Civil and Administrative Tribunal (QCAT). The Bar Association suggested that section 99M(2)(b) should be amended, so that the word 'more' is added before the word 'quickly'. Section 99M(2)(b) shows its suggested amendment in bold:

> *(2) The president must suspend the tribunal's review if the president considers—*
>
> *(a) the court's decision about the matters would effectively decide the same issues to be decided by the tribunal; and*
>
> *(b) the matters will be dealt with* ***more*** *quickly by the court.*[49]

The Bar Association suggested that the purpose of the section is to ensure the forum most able to deal effectively and efficiently with the subject matter of the review is used. This would usually be the Childrens Court, subject to the matter being 'dealt with more quickly'.[50]

The Department advised that timeliness of decision making was not the only relevant consideration to this section and when considering concurrent proceedings in the Childrens Court and QCAT, the Commission was concerned that to the greatest extent possible, decisions regarding a child should be made by one court.

3.6.4 Committee comment

The Committee agrees with the Department that this section deals with which body is best placed to deal with a matter, as well as the speed with which that matter is resolved. The section also states that the tribunal's review can only be suspended if the matter will be dealt with quickly by the court, so timeliness is taken into account.

[49] Submission, Bar Association of Queensland, p 3
[50] Submission, Bar Association of Queensland, p 3

4. Fundamental legislative principles

Section 4 of the Legislative Standards Act states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to both:

- the rights and liberties of individuals
- the institution of Parliament.

The Committee has examined the application of the fundamental legislative principles (FLP) to the Bill. The Committee brings the following to the attention of the House.

4.1 Rights and liberties of individuals – Section 4(2)(a) of the *Legislative Standards Act 1992 (Qld)*

Section 4(2)(a) of the Legislative Standards Act requires that legislation has sufficient regard to the rights and liberties of individuals. Whether a Bill has sufficient regard to the rights and liberties of individuals depends on a range of matters, such as whether the Bill has sufficient regard to the rights and liberties of individuals.[51]

4.1.1 Clauses 28 and 29 – confidentiality of information

Clauses 28 and 29 allow confidential information to be used, disclosed or made accessible to the extent necessary to protect a person from a serious and imminent risk to their safety or health.

Allowing the use or disclosure of, or provision of access to, confidential information may impact on an individual's right to privacy and therefore may be a departure from the principle that sufficient regard be given to the rights and liberties of individuals under section 4(2) of the *Legislative Standards Act 1992.* As stated in the explanatory notes:

> …*this may be necessary in situations where a serious and imminent risk to a person's safety or health is identified. Unless the risk reaches that threshold, the information will not be able to be lawfully used, disclosed or made accessible to someone else, under the CPA and the existing penalties will apply*.[52]

4.1.2 Clause 31 – DCPL's duty to disclose all relevant documents

Clause 31 imposes a duty on the DCPL to disclose all documents relevant to the proceeding to other parties.

It is likely that highly sensitive documents will be the subject of disclosure and this may impact on an individual's right to privacy. The explanatory notes state the provisions:

> …[a]*re considered necessary to allow for procedural fairness in child protection proceedings, so that parties are aware of the evidence which the litigation director will be relying on during the proceedings*.[53]

There are some safeguards relating to this duty of disclosure. For example, Clause 32 outlines when the Director may refuse to disclose a document, such as when the Director may refuse to disclose a document containing personal information not materially relevant to the proceeding. The explanatory notes state:

[51] Section 4(3) of the Legislative Standards Act provides other examples.
[52] *Child Protection Reform Amendment Bill 2016 Explanatory Notes*, pp 8-9.
[53] *Child Protection Reform Amendment Bill 2016 Explanatory Notes*, p 9.

> *Any personal information about third parties to proceedings and notifiers under the CPA will be redacted prior to disclosure. In addition, parties to proceedings (including the child or children) will be provided with an opportunity to request that certain information in the documents be redacted, for example, home addresses*.

This clause (section 191(5)) outlines that a court or tribunal may place conditions on disclosure to ensure the best interests of a child and the privacy and safety of any individual.[54]

Clause 31 also creates a new offence which requires that a person must not disclose or make use of a document or other information disclosed under section 189C of the CPA, other than for a purpose connected with a proceeding for a child protection order. The maximum penalty is 100 penalty units or 2 years imprisonment.

A penalty should be proportionate to the offence. The Office of Parliamentary Counsel (OQPC) Notebook states:

Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.[55]

The explanatory notes state:

> *As the documents being disclosed are likely to contain highly sensitive information, it is important that parties to the proceedings do not use them for purposes other than the proceedings, therefore protecting the privacy of families and children to the greatest extent possible. The maximum penalty of 100 penalty units or 2 years imprisonment is consistent with the maximum penalties for similar offences in sections 187 and 188 of the CPA.*[56]

4.1.3 Committee comments

The Committee considers that, on balance, the potential breach are justified in the circumstances. The penalties appear proportionate and relevant to the actions and are consistent within the same legislation. The rights to privacy are weighed against the protection of an individual's health and safety. The explanatory notes set out a number of safeguards in the Bill to mitigate the potential breach of an individual's right to privacy.

4.1.4 Clause 32 – refusal to disclose information

Clause 32 outlines when the DCPL may refuse to disclose a document. This clause outlines that if the document is a record of confidential therapeutic counselling, the document can only be disclosed with the consent of the person to whom the record relates (section 191(2)(e)). However, if the disclosure of the record is necessary to prevent or lessen a risk of harm to a child or serious risk to the health or safety of anyone else, the record may be disclosed without consent (section 191(3)).

Disclosure of records of confidential therapeutic counselling without the consent of the person to whom the record relates may be a breach of a person's right to privacy. The explanatory notes state:

> *…this is considered appropriate if disclosure of the document is necessary to prevent risk of harm to a child or serious risk to the health or safety of someone else.*[57]

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[54] *Child Protection Reform Amendment Bill 2016 Explanatory Notes*, p 9
[55] Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120
[56] *Child Protection Reform Amendment Bill 2016 Explanatory Notes*, p 9
[57] *Child Protection Reform Amendment Bill 2016 Explanatory Notes*, p 10

4.1.5 Committee comments

The Committee considers that, on balance, the potential breach are justified in the circumstances. The penalties appear proportionate and relevant to the actions and are consistent within the same legislation. The rights to privacy are weighed against the protection of an individual's health and safety. The explanatory notes set out a number of safeguards in the Bill to mitigate the potential breach of an individual's right to privacy.

4.2 Administrative power – Section 4(3)(a) of the *Legislative Standards Act 1992 (Qld)*

Section 4(3)(a) of the Legislative Standards Act states that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.[58]

4.2.1 Clause 5 – Review of a case plan

Clause 5 allows a parent of a child to request the chief executive to review a case plan for the child who is the subject of long-term guardianship to someone other than the chief executive, but only if the case plan has not already been reviewed within the previous 12 months.

The proposed amendment contains ambiguous terminology, which depending on interpretation, may place too high a threshold for applying for a review of a case plan.

The lack of ability to review the decision and reasons for refusal of decision are related, because while Schedule 2 of the CPA provides for review of section 51VA decisions, a review within 12 months cannot occur unless there is a 'significant' change in circumstances. 'Significant', when relating to a child's circumstances, is a subjective term and not defined.

The Bar Association stated its unease with the use of the word 'significant' in its submission[59] (discussed above), while QLS also stated that if a parent's request for a family group meeting or review of the child's case plan is not necessary, the Chief Executive should be required to provide a formal response to the parents, outlining the reasons for the decision. Parents and stakeholders should also be allowed to review the Chief Executive's decision.[60]

The explanatory notes state that all decisions made under section 51VA to refuse to review a case plan are reviewable decisions under schedule 2 of the CPA.[61]

4.2.2 Committee comments

The Committee considered this point in section 3.2.1 and recommended that the Minister consider whether the Bill needs to be amended to remove the word 'significantly' from proposed section 51VA.

4.3 Explanatory notes

Part 4 of the Legislative Standards Act relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

[58] *Legislative Standards Act 1992*, 4(3)(a)
[59] Submission, Bar Association of Queensland, p 2
[60] Submission, Queensland Law Society, p 2
[61] *Child Protection Reform Amendment Bill 2016 Explanatory Notes*, p 11

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to allow understanding of the Bill's aims and origins.

Appendix A – List of Submissions

Sub #	Submitter
001	Queensland Alliance for Kids
002	Protect All Children Today Inc.
003	Queensland Family and Child Commission
004	Queensland Law Society
005	Together
006	Bar Association of Queensland

Appendix B – Officers appearing at the public departmental briefing – 24 February 2016

Officers from the Department of Communities, Child Safety and Disability Services
Ms Leigh Roach, Deputy Director-General, Strategy, Engagement and Innovation
Ms Megan Giles, Executive Director, Legislative Reform, Policy and Legislation
Ms Helen Missen, A/Director, Child, Family and Community Services Commissioning
Officers from the Department of Justice and Attorney General
Ms Susan Masotti, Acting Director, Strategic Policy
Ms Angela Moy, Acting Principal Legal Officer, Strategic Policy

Appendix C – Witnesses appearing at the public hearing – 5 April 2016

Witness from the Queensland Alliance for Kids (QAK)
Ms Wendy Francis, Executive Member
Witnesses from Protect All Children Today Inc. (PACT)
Ms Jo Bryant, Chief Executive Officer
Ms Samantha Camilleri, Finance and Operations Officer
Witnesses from the Queensland Family and Child Commission (QFCC)
Ms Andrea Lauchs, Assistant Commissioner, Advocacy, Policy and Sector Development
Ms Nicole Blackett, Assistant Commissioner, Oversight, Evaluation and Community Education
Witnesses from the Together Union
Mr Alex Scott, Branch Secretary
Ms Jo O'Shanesy, Child Safety Delegate
Mr Alan Gee, Child Safety Delegate, Mackay (by teleconference)
Ms Georgia Storm, Child Safety Delegate, Mt Isa (by teleconference)
Witnesses from the Queensland Law Society
Mr Matt Dunn, Government Relations Principal Advisor
Ms Louise Pennisi, Policy Solicitor
Mr Jonathan Ward, Childrens Law Committee representative (by teleconference)
Witnesses from the Bar Association of Queensland
Ms Elizabeth Wilson QC, Chair, Criminal Law Committee
Ms Julie Sharp, Member, Criminal Law Committee