

# **Director of Child Protection Litigation Bill 2016**

**Report No. 17**

**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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<sup>1</sup> 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

CPA	<i>Child Protection Act 1999</i>
DCCSDS	Department of Communities, Child Safety and Disability Services
FLP	Fundamental legislative principles
DCPL	Director of Child Protection Litigation
KPIs	Key performance indicators
POQA	<i>Parliament of Queensland Act 2001</i>
QAK	Queensland Alliance for Kids
QFCC	Queensland Family and Child Commission
QLS	Queensland Law Society
The Chief Executive	The Chief Executive of the Department of Communities, Child Safety and Disability Services
The Commission	The Queensland Child Protection Commission of Inquiry
The Committee	Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee
The Department	The Department of Justice and Attorney-General
The Minister	Attorney-General and Minister for Justice
Together	Australian Municipal, Administrative, Clerical and Services Union Queensland

## 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 *Director of Child Protection Litigation 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 Bill is to:

- establish the Director of Child Protection Litigation, an independent statutory officer, reporting to the Attorney-General and Minister for Justice; and
- improve outcomes for children and families and provide greater accountability and oversight for child protection order applications by ensuring applications filed in court are supported by good quality evidence, promoting efficiency and evidence-based decision making.


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

The Committee has recommended that the Bill be passed. The Committee has made 10 recommendations aimed at addressing the 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 Justice and Attorney-General, Department of Communities, Child Safety and Disability Services, 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 Director of Child Protection Litigation Bill 2016 be passed.
- Recommendation 2** **6**  
The Committee requests that the Minister provide a response to the House addressing stakeholder concerns in regard to basing the Director of Child Protection Litigation staff in Brisbane, given staff will regularly work across Queensland.
- Recommendation 3** **9**  
The Committee recommends that the Minister responds to the House addressing concerns raised by stakeholders and clarifies how clauses 5 and 6 of the Bill ensure the best outcomes for children.
- Recommendation 4** **10**  
The Committee requests that the Minister assess whether clause 13 strikes the right balance and advise the House accordingly.
- Recommendation 5** **11**  
The Committee recommends the Minister consider the appropriate mechanism for including the desirability of the Director of Child Protection Litigation having experience in child protection.
- Recommendation 6** **12**  
The Committee recommends the Minister consider reducing the term of office for the DCPL to three years and aligning the end of the DCPL’s first term with the first review of the Bill.
- Recommendation 7** **12**  
The Committee recommends clause 41 be amended to ensure a review of the Act three years after commencement.
- Recommendation 8** **13**  
The Committee recommends that the DCPL publish its guidelines.
- Recommendation 9** **14**  
The Committee requests that the Minister address stakeholder concerns regarding the right of review of the Director of Child Protection Litigation’s decisions in the House.
- Recommendation 10** **14**  
The Committee recommends that the Minister advise the House of the grounds on which a request from the Department of Communities, Childs Safety and Disability Services to the Director of Child Protection Litigation apply for a child protection can be refused.





## 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.<sup>2</sup> On 16 February 2016, the Parliament agreed to amend Standing Orders, renaming the Committee and expanding its area of responsibility.<sup>3</sup>

The Committee's primary areas of responsibility include:

- Health and Ambulance Services;
- Communities, Women, Youth and Child Safety;
- Domestic and Family Violence Prevention; and
- 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; and
- 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 Attorney-General and Minister for Justice and Minister for Training and Skills introduced the Director of Child Protection Litigation 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 referral included calling for public submissions, a public departmental briefing and a public hearing.

The Committee sought a written briefing from the Department of Justice and Attorney-General (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* (the Legislative Standards Act).

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<sup>2</sup> *Parliament of Queensland Act 2001* (Qld), section 88, *Legislative Assembly of Queensland, Standing Rules and Orders of the Legislative Assembly, effective 18 February 2016*, Standing Order 194

<sup>3</sup> Hon S Hinchliffe MP, '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 granted extensions to a number of submitters. The Committee received seven submissions.

A list of individuals and organisations who made submissions is contained in Appendix A. 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 of Communities, Child Safety and Disability Services (DCCSDS) and 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 and the Department subsequent to the hearing.

#### **1.7 Child Protection Reform Amendment Bill 2016**

The Minister for Child Safety and Minister for the Prevention of Domestic and Family Violence introduced the Child Protection Reform Amendment Bill 2016 on the same day as the subject Bill. The Child Protection Reform Amendment Bill 2016 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.

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 Bill sets out the responsibilities of the Director of Child Protection Litigation (DCPL) and the Chief Executive of the Department of Child Safety and how they will work together.

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 DCCSDS and other inquiry participants, the Committee recommends that the Bill be passed.

**Recommendation 1**

The Committee recommends that the Director of Child Protection Litigation Bill 2016 be passed.

## **2. Examination of the Director of Child Protection Litigation Bill 2016 – Preliminary**

### **2.1 Background**

### **2.2 Queensland Child Protection Commission of Inquiry**

On 1 July 2012, the Government established the Queensland Child Protection Commission of Inquiry (the Commission), 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).

### **2.3 Outcome of the Inquiry**

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

One of the recommendations in the Commission's report was to establish the DCPL to decide which matters will be the subject of a child protection application, what type of child protection order will be sought and to litigate the applications.

### **2.4 Policy objectives of the Bill**

The policy objectives of the Bill are to:

- establish the DCPL, an independent statutory officer, reporting to the Attorney-General and Minister for Justice; and
- improve outcomes for children and families and provide greater accountability and oversight for child protection order applications proposed by the Chief Executive by ensuring applications filed in court are supported by good quality evidence, promoting efficiency and evidence-based decision making.

### **2.5 Consistency with legislation in 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.<sup>4</sup>*

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<sup>4</sup> Office of the Queensland Parliamentary Counsel, *Director of Child Protection Litigation Bill 2016 Explanatory Notes*, February 2016, p 5

## 2.6 Alternative ways of achieving the policy objectives

The explanatory notes to the Bill state that the proposed legislation is:

*...essential to implement the Commission's recommendation to establish an independent statutory agency to make decisions as to which matters will be the subject of a child protection application and what type of child protection order will be sought, as well as litigate the applications. There is no alternative way to implement the recommendation.*<sup>5</sup>

## 2.7 Consultation

The explanatory notes to the Bill state that a range of stakeholders was consulted as part of the Bill's development. Exposure drafts of the Bill were released for consultation with key stakeholders, with comments sought and incorporated where appropriate. The explanatory notes indicate that there was general support for the Bill.<sup>6</sup>

The Australian Municipal, Administrative, Clerical and Services Union Queensland (Together) confirmed that they had been consulted on the Bill and the matters identified in their submission have been raised through departmental consultative meetings and other related forums.<sup>7</sup>

## 2.8 Cost of implementation, resourcing and ability to deliver services across Queensland

The explanatory notes state the Bill:

*...will be funded in part through the reallocation of existing government resources and associated funding and additional Government approved funding.*<sup>8</sup>

The Committee sought additional clarification about the costs associated with the Office of the DCPL. The Department advised:

*The Office of the DCPL has approved Government funding of \$19.068 million (for operational and corporate support costs) over the 2016-17 to 2018-19 financial years.*<sup>9</sup>

The Department also advised that the staff of the office will be public servants. It advised that the Office will have 35 staff, 29 of whom will be lawyers and the remainder will be administrative support staff. The DCPL will leverage off Crown Law administrative support services such as information technology, human resources and financial services. It also advised that the Office of the DCPL will be located in Brisbane and staff will be required to travel across Queensland to attend child protection proceedings in the various Childrens Courts across the State.<sup>10</sup>

The Department advised that:

*The Brisbane based model has been adopted and it has been designed in that way to ensure that there is appropriate professional supervision and support for staff and to promote consistency of approach. This is also important to establish and embed a new culture and drive practice improvement consistent with the intent of the court reforms.*<sup>11</sup>

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<sup>5</sup> Director of Child Protection Litigation Bill 2016, Explanatory Notes, p 3

<sup>6</sup> Director of Child Protection Litigation Bill 2016, Explanatory Notes, p 5

<sup>7</sup> Submission ,Together, pp 1-2

<sup>8</sup> Director of Child Protection Litigation Bill 2016 Explanatory Notes, p 3

<sup>9</sup> Correspondence from Department of Justice and Attorney-General to HCDSDFVPC dated 2 March 2016, p 1

<sup>10</sup> Ms Masiotti, Department of Justice and Attorney-General, *Public Briefing – Inquiry into the Child Protection Reform Amendment Bill 2016 and Director of Child Protection Litigation Bill 2016*, 24 February 2016, p 10

<sup>11</sup> Ms Masiotti, Department of Justice and Attorney-General, *Public Briefing – Inquiry into the Child Protection Reform Amendment Bill 2016 and Director of Child Protection Litigation Bill 2016*, 24 February 2016, p 10

Some stakeholders presented evidence to the Committee of practical issues regarding staff who are Brisbane based travelling to attend to matters throughout the State.

**Recommendation 2**

The Committee requests that the Minister provide a response to the House addressing stakeholder concerns in regard to basing the Director of Child Protection Litigation staff in Brisbane, given staff will regularly work across Queensland.

### 3. Examination of the Director of Child Protection Litigation Bill 2016 clauses

The Committee found that submissions generally supported the Bill, with the exception of the Name Suppressed submission who stated:

*...it's hard to see how splitting the agency's legal services so that some matters go to DCPL and others go to in-house lawyers, transferring the function of applying for some orders from the Department and creating a new entity, and the papering over the cracks created with information exchange provisions (from cl 22), is any more efficient than the status quo.<sup>12</sup>*

Other stakeholders raised other issues which are detailed in the following sections.

#### 3.1 Clauses 5 and 6 – balancing the best interests of the child with applying for the least intrusive order

Clause 5 sets out the main principle for administering the Bill – that the safety, well-being and best interests of the child are paramount.

Clause 6 sets out other principles that persons administering the Bill must have regard to. Clause 6(1)(b) states that:

*...in protecting a child, the DCPL should only take the action that is warranted in the circumstances, including, for example, by applying for the least intrusive child protection order;<sup>13</sup>*

Queensland Alliance for Kids (QAK)<sup>14</sup> and the Name Suppressed submission<sup>15</sup> both raised concerns that, when deciding which order a child should be placed on, proposed section 6(1)(b) may be used as a reason to place a child on a short-term order, when a long-term order may be in the child's best interests. This could result in a young child being placed on a succession of short-term orders throughout their life, leading to a lack of stability for the child.

Both submissions stated that research shows that when permanency is identified as the best solution for the child, it is best for the child that they are placed on a permanent order as soon as possible.<sup>16</sup>

QAK advised the Committee:

*We would also appreciate clarification in regard to the reference in clause 6(1) (b) to the 'least intrusive child protection order'. When a child needs permanency because of the situation they find themselves in, it is imperative that an order for permanency be sought at the first opportunity. There is undeniable evidence that long-term foster care has negative short- and long-term effects on a child's wellbeing including increased anxiety, insecurity and low self-esteem. On the other hand, permanency including open adoption has been found to mitigate some of these negative effects largely due to providing the child with security, belonging and a sense of identity in a permanent family.*

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<sup>12</sup> Submission, Name Suppressed, p 2

<sup>13</sup> Director of Child Protection Litigation Bill 2016, Clause 6(1)(b)

<sup>14</sup> Submission, Queensland Alliance for Kids, p 2

<sup>15</sup> Submission, Name Suppressed, pp 2 – 3

<sup>16</sup> Submission Name Suppressed, p 4; Submission, Queensland Alliance for Kids, Annex

*For reasons that QAK understands, Queensland's department of child safety has become reticent to embrace adoption as a permanent option for children requiring long-term or permanent care. However, this reticence has resulted in the pendulum swinging too far in the opposite direction and children are suffering from a lack of permanency. In 2013 there were only nine Queensland [children] adopted, excluding step-parent adoption, and none were adopted using the provision in the Queensland Adoption Act 2009 which allows for the dispensing with the requirement for parents' consent. This provision was introduced to protect the most vulnerable children, but it is not being practised. QAK strongly objects to the lack of stability and sense of belonging that results for our society's most vulnerable children because of ongoing extensions of two-year short-term orders when a permanent placement, guardianship or open adoption would be in the best interests of the child.<sup>17</sup>*

The Name Suppressed submission raised the issue that the Bill might inadvertently support interpretations that obstruct the best interests of the child. This submission recommended that the emphasis on the least intrusive order be removed or reframed as it is out of step with contemporary understanding 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.<sup>18</sup>

The Department advised that 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.

### **3.2 Committee comment**

The Committee notes that clause 5 sets out the main principle for administering the Bill, which is ensuring the child's best interests, while clause 6 contains principles that those administering the Bill should have regard to. Being required to have regard to a principle does not mean that principle has equal weight to the main principle for administering the Bill. It may not be given any weight at all if it is not considered relevant in a case. However, the Committee considers that the risk remains that this could occur.

Stakeholders raised a number of options to overcome this issue, such as:

- rewording the clause
- clarifying the matter in the DCPL's guidelines<sup>19</sup>
- omitting the example included in proposed section 6(1)(b).

The Committee recommends that the Minister responds to concerns raised by stakeholders and clarifies how clauses 5 and 6 of the Bill will ensure the best outcomes for children.

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<sup>17</sup> Ms Francis, Queensland Alliance for Kids, *Public Hearing, Inquiries into the Child Protection Reform Amendment Bill 2016 and Director of Child Protection Litigation Bill 2016*, 5 April 2016, p 3

<sup>18</sup> Submission, Name Suppressed, pp 3-4

<sup>19</sup> The power of the Director to issue guidelines is discussed below.



**Recommendation 3**

The Committee recommends that the Minister responds to the House addressing concerns raised by stakeholders and clarifies how clauses 5 and 6 of the Bill ensure the best outcomes for children.

**3.3 Clause 9 – the functions of the DCPL should be expanded**

Clause 9 establishes the functions of the DCPL. The DCPL is to do the following under the CPA:

- prepare and apply for child protection orders and conduct child protection proceedings
- prepare and apply for transfers of a child protection order or child protection proceeding to a participating State
- prepare, institute and conduct appeals against decisions about applications for protection orders and decisions to transfer a child protection order or child protection proceeding to a participating State.

In his submission, Mr Ryan Haddrick, Barrister, expressed the concern that expressly describing to do these functions under the CPA may limit the role of the DCPL pursuant to the CPA. Mr Haddrick noted that the Commission contemplated that the State would, on rare occasions, need to make an application to the Supreme Court for the invocation of that Court's *parens patriae*<sup>20</sup> jurisdiction to obtain orders for the protection of a child in circumstances where the CPA does not provide the desired order.<sup>21</sup>

The submission states that while clause 8 gives the DCPL the status, privileges and immunities of the State, this does not make it clear that the DCPL has the function and power to prepare and apply for an order from the Supreme Court. The submission states:

*...for the Director to have the sufficient flexibility to make an application tailored to the precise protection, care and welfare needs of each child, and so the Director has the proper statutory basis for the making of an application to the Supreme Court for a secure care order, the functions of the Director, as set out in clause 9, ought to be slightly expanded.*<sup>22</sup>

In its response to the submission, the Department stated that it had engaged a consultant to develop an evidence base and options for contained therapeutic care approaches. As this work has not been concluded or approved by Government, the Department considered it would be premature to include this proposal as a function of the DCPL. The Department advised that overarching responsibility for the safety, wellbeing and best interests of children in Queensland is with the Chief Executive.

**3.4 Committee comment**

The Committee notes that work is ongoing in this regard and hence some ambiguity remains. Once the consultant's work is completed, the Committee considers that the Department should re-examine this issue.

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<sup>20</sup> A doctrine that grants the inherent power and authority of the State to protect persons who are legally unable to act on their own behalf

<sup>21</sup> Submission, R Haddrick, p 2

<sup>22</sup> Submission, R Haddrick, p 2

### 3.5 Clause 13 – oversight of the DCPL of Child Protection Litigation

The explanatory notes explain that the DCPL will be an independent statutory officer, reporting to the Attorney-General and Minister for Justice.<sup>23</sup> Clause 13 of the Bill also states that the DCPL is not under the Minister's control or direction when performing its functions or exercising its powers.<sup>24</sup>

The Queensland Family and Child Commission (QFCC), who has legislative responsibility for the oversight of Queensland's child protection system<sup>25</sup>, strongly supported the oversight provisions of the DCPL in the Bill.<sup>26</sup>

However, the QFCC suggested that the Bill should extend the oversight of the DCPL by enabling the Child Death and Serious Injury Review Panel (the Panel) to review the DCPL's involvement in relation to a child's death or serious injury in certain circumstances.

The Name Suppressed submission suggested that the DCPL would be subject to little oversight compared to staff performing similar functions at present.<sup>27</sup> The submission noted the Director-General of DCCSDS is subject to direction from the Minister and can be dismissed, as can the Minister at an election. Child protection workers can also be replaced, and a decision to apply for a long-term order is subject to oversight from DCCSDS' managers, the Director-General and the Minister. In addition, Magistrates' decisions can be appealed.<sup>28</sup>

The submission noted that oversight of the DCPL was important given its power to take a child from a family and that the role does not require child safety experience. It also questioned the appropriateness of the DCPL being able to approve the State's intervention into a family, when previously this role has been a court's.<sup>29</sup>

The Department's response acknowledged that the DCPL is not subject to ministerial direction regarding the performance of the statutory functions under the Act. It noted that the Bill provides that the DCPL may be removed from office by the Governor-in-Council on the Minister's recommendation. Reasons for dismissal include misconduct, incompetent performance, being incapable of performing the duties, or neglect of duties.<sup>30</sup>

### 3.6 Committee comment

Given the significance of the concerns raised by a number of submitters regarding the oversight of the DCPL and given its powers, the Committee requests that the Minister respond to this issue.

#### **Recommendation 4**

The Committee requests that the Minister assess whether clause 13 strikes the right balance and advise the House accordingly.

<sup>23</sup> *Director of Child Protection Litigation Bill 2016 Explanatory Notes*, p 1

<sup>24</sup> *Director of Child Protection Litigation Bill 2016 Explanatory Notes*, p 8

<sup>25</sup> *Family and Child Commission Act 2014* (Qld), section 9

<sup>26</sup> Submission, Queensland Family and Child Commission, p 2

<sup>27</sup> Submission, Name Suppressed, pp 2-3

<sup>28</sup> Submission, Name Suppressed, p 2

<sup>29</sup> Submission, Name Suppressed p 3

<sup>30</sup> Correspondence from Department of Justice and Attorney-General to HCDSDFVPC dated 24 March 2016, p 13

### 3.7 Clause 25 – qualifications and qualities required of the DCPL

Clause 25 of the Bill states that the DCPL is appointed by the Governor in council on the Minister's recommendation and that the Minister may recommend a person for appointment only if:

- (a) the person is a lawyer who has been admitted to practise for at least 10 years; and*
- (b) the Minister is satisfied the person has demonstrated qualities of leadership, management and innovation in a senior government or private sector role.<sup>31</sup>*

The Name Suppressed and QAK submissions highlighted that there was no requirement for the DCPL to have an understanding of child protection.<sup>32</sup>

The Name Suppressed submission suggested that the qualities of the DCPL should be better aligned with its functions and that the DCPL should understand contemporary child protection practice and be committed to the rights and interests of children and young people.

### 3.8 Committee comment

The Committee considers that a background in child protection is highly desirable for the DCPL. However, the Committee acknowledges that prescribing the job requirements in legislation may limit the field of candidates. The Committee considers that it may be appropriate that the background of the DCPL be set out elsewhere, such as, in the DCPL's job specification and objectives and/or in key performance indicators (KPIs).

#### **Recommendation 5**

The Committee recommends the Minister consider the appropriate mechanism for including the desirability of the Director of Child Protection Litigation having experience in child protection.

### 3.9 Clause 27 – term of office for the DCPL

The Bill sets out that the DCPL's term of office is for not more than five years. QAK recommended that the DCPL's appointment be reviewed every year or every two-and-a-half years to ensure child-focused decisions are made and that the DCPL be highly supervised and supported in their first year in the role.<sup>33</sup>

### 3.10 Committee comment

The Committee notes that clause 40 of the Bill ensures that the DCPL must give a report to the Minister on the administration of the Act during the year, as soon as practicable after the end of each financial year. The Minister must table a copy of the report in the Legislative Assembly within 14 days of receipt. The Committee considers that the requirement in clause 40 will provide some regular accountability for the DCPL's performance.

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<sup>31</sup> *Director of Child Protection Litigation Bill 2016*, p 19

<sup>32</sup> Submission, Name Suppressed, p 4; Submission, Queensland Alliance for Kids, p 1

<sup>33</sup> Submission, Queensland Alliance for Kids, p 2

As recommended above, the Committee expects that the DCPL will have an appropriate job specification, objectives and/or KPIs which will be assessed at least annually and if any performance shortcomings are identified, they must be addressed within a reasonable timeframe or the DCPL could be dismissed.

The Committee considers that a five-year term of office may be too long, given that the DCPL will perform an important and new role. It considers that a three-year term of office, consistent with, for example, Queensland's first Mental Health Commissioner, may be more appropriate.<sup>34</sup> The Committee considers there could be merit in reviewing the Act after three years, not after five years as the Bill proposes, and starting this review at the same time as the end of the DCPL's first term in office.

**Recommendation 6**

The Committee recommends the Minister consider reducing the term of office for the DCPL to three years and aligning the end of the DCPL's first term with the first review of the Bill.

**3.11 Clause 41 – Review of the Bill**

The Bill requires that the Minister must review the effectiveness of this Act and the operations of the Office of the DCPL as soon as practicable five years after commencement.

The Name Suppressed submission stated that as the role will be experimental and is a radical change to how decisions will be made, five years is too long to wait for a review.

**3.12 Committee comment**

The Committee considers that five years may be too long to wait to review an Act that will fundamentally change the child protection system. The Committee considers that sufficient information should be available after three years to be able to review the Act and make any necessary changes.

The Committee recommends a review of the Act three years after it commences. The review should start when the first DCPL's term of office expires.

**Recommendation 7**

The Committee recommends clause 41 be amended to ensure a review of the Act three years after commencement.

**3.13 Clause 39 – DCPL's power to make guidelines**

The Bill allows the DCPL to issue written guidelines to be issued to the DCPL's staff, the Chief Executive and staff in the DCCSDS. There is no requirement on the DCPL to issue guidelines and they do not need to be approved by a third party.

The Name Suppressed submission stated that clause 39 gives the DCPL too much power, especially given its functions, that it is not subject to direction and its decisions cannot be appealed. The submission recommends that the guidelines be made by the Minister and tabled in the Parliament, made available publicly and reviewed regularly.

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<sup>34</sup> *Queensland Mental Health Commission Act 2013*, section 18, p 15

### 3.14 Committee comment

The Committee understands the need for the DCPL to be sufficiently independent. However, the Committee also heard testimony raising concerns that, as there is no right of appeal of the DCPL's decisions, consideration should be given to balance between the DCPL's independence and the Government's responsibilities regarding child protection.

The Committee considers that in the interests of transparency, the guidelines should be published, to improve stakeholders' understanding of what the DCPL requires of its staff and those in the DCCSDS.

#### Recommendation 8

The Committee recommends that the DCPL publish its guidelines.

### 3.15 Other issues

#### 3.16 Review of the DCPL's decisions

The QFCC suggested that given the responsibility the Chief Executive has regarding child protection, when he/she does not agree with a decision of the DCPL, they should be given an external right of appeal. The QFCC advised:

*The duty of the State in intervening in the private lives of families to protect children and young people is very serious. Given the Chief Executive (Child Safety) has the significant responsibility in relation to the protection of children in Queensland under the Child Protection Act 1999, this officer should have an external recourse for the review or appeal of matters where they do not agree with the DCPL's decision and the reasons for the decision.*

*The QFCC acknowledges that under clause 39 of the DCPL Bill, the DCPL may issue written guidelines and this may include procedures about how the chief executive (child safety) may seek an internal review of a decision of the director for which reasons are required to be given under section 18. The QFCC supports an internal review process. However, there should be an external review or appeal mechanism available for the Chief Executive (Child Safety).<sup>35</sup>*

The QFCC recommends prescribing an external review or appeal mechanism for those matters where the Chief Executive does not agree with the DCPL's decision and the reasons for the decision.<sup>36</sup>

The Department advised that the DCPL may issue guidelines under clause 39 which may include an internal review process for the Chief Executive to seek internal review of a decision of the DCPL. It noted that both the Chief Executive and the DCPL represent the State and external review provisions are generally put in place for persons to seek review of administrative decisions of the State.<sup>37</sup>

### 3.17 Committee comment

While the Committee acknowledges the Department's response that an internal review process may be included in the guidelines, it remains concerned that this may not occur as the DCPL is not statutorily required to do either.

The Committee recommends that the Minister consider what other mechanisms may be available to achieve this objective and to provide a response in the Bill's second reading.

<sup>35</sup> Submission, Queensland Family and Child Commission, p 3

<sup>36</sup> Submission, Queensland Family and Child Commission, p 3

<sup>37</sup> Correspondence from Department of Justice and Attorney-General to the HCDSDFVPC dated 24 March 2016, p 5

**Recommendation 9**

The Committee requests that the Minister address stakeholder concerns regarding the right of review of the Director of Child Protection Litigation's decisions in the House.

**3.18 Reasons for the DCPL refusing a request from the Department of Child Safety to apply for a protection order**

The Name Suppressed submission advised that the Bill did not state when the DCPL can refuse a request from the DCCSDS to apply for a child protection order, and that the Bill should state the grounds where the DCPL can legitimately refuse a request from the DCCSDS to make an application for a protection order.

**3.19 Committee comment**

The Committee recommends the Department verify whether this is the case and that the Minister provide further information stating the grounds for refusal in the Bill's second reading.

**Recommendation 10**

The Committee recommends that the Minister advise the House of the grounds on which a request from the Department of Communities, Childs Safety and Disability Services to the Director of Child Protection Litigation apply for a child protection can be refused.

**3.20 Issues raised by Together**

Together rased a number of concerns regarding the potential impact of the reforms in regional areas. They were particularly concerned about the impact of the changes on their members and the removal of the existing court coordinators.

Together advised the Committee that it does not disagree with the policy objectives of improved outcomes for children and families in relation to court proceedings, but is concerned with the potential unintended consequences and the ability of the DCCSDS to implement these changes.<sup>38</sup>

With regard to the court coordinators, Together advised that its members fear that the removal of this position will place further strain on already over-burdened staff.<sup>39</sup>

The Committee sought comment regarding the court co-ordinator role from the QLS, who indicated it supported a legally-qualified practitioner responsible for the conduct of the matter to attend court proceedings.<sup>40</sup>

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<sup>38</sup> Mr Scott, Together, *Public Hearing – Inquiries into the Child Protection Reform Amendment Bill 2016 and Director of Child Protection Litigation Bill 2016*, 5 April, p 4

<sup>39</sup> Mr Gee, Together, *Public Hearing – Inquiries into the Child Protection Reform Amendment Bill 2016 and Director of Child Protection Litigation Bill 2016*, 5 April, p 5

<sup>40</sup> Correspondence from Queensland Law Society to HCDSDFVPC dated 8 April 2016

The Department provided the following response to the issues raised:

*The DCPL Bill and the CPRA Bill form part of a package of court reforms designed to achieve better outcomes for children and families and improve the functioning of the Childrens Court. The Court Case Management Committee (established in accordance with Recommendation 13.1 of the QCPCOI and chaired by the President of the Childrens Court) developed the court case management framework, which will be enshrined in the remaking of the Childrens Court Rules.*

*It is proposed that the new Childrens Court Rules will commence at the same time as the two Bills (when enacted) and will: improve the quality of evidence before the Childrens Court; avoid unnecessary delays in finalising proceedings; and ensure applications filed in court are supported by good quality evidence. In addition, the new duty of disclosure on the DCPL will facilitate a fairer process in proceedings for a child protection order by allowing parties to be aware of all the evidence the DCPL will rely on to support its application for a child protection order.*

*The court work reforms and the proposed remake of the Childrens Court Rules will: streamline the litigation process thereby avoiding unnecessary mentions of matters; provide greater clarification of roles; and give a more structured response by DCCSDS and DCPL. A court case management approach will result in the early identification of issues and/or parties to be involved in the proceedings, as well as a consideration of the need for legal representation for parties.*

*DCCSDS will retain responsibility for the case management of the child and their family and continue to be involved with the child and family, including attendance at court mentions and hearings.<sup>41</sup>*

The Department's response did not address the court coordinator role. The Committee sought further advice from the Department which advised:

*...court coordinators are employed within each Child Safety Service Centre (CSSC) to represent the Director-General in child safety court matters, provide advice and act as a consultant to other departmental staff. Through the court work reforms, some of the functions undertaken by court coordinators will transfer to the Director of Child Protection Litigation (DCPL). Those functions relating to the making of applications for child protection orders, with the exception of urgent orders, and representation in court proceedings will be the responsibility of the DCPL following commencement. Resources for those functions will also be transferred from DCCSDS to the DCPL.*

*The majority of the remaining court coordinator functions will be undertaken by the Office of the Child and Family Official Solicitor (OCFOS) within DCCSDS. The OCFOS is established by the realignment of court coordinators to within the OCFOS structure. Within each CSSC, local arrangements have resulted in a slight variation in the activities undertaken by court coordinators in order to respond to local needs. DCCSDS is currently working to ensure that arrangements are in place within each CSSC to respond to the impacts of the introduction of the OCFOS and DCPL on these local arrangements. OCFOS officers will have a regional presence and remain located within CSSCs.<sup>42</sup>*

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<sup>41</sup> Correspondence from Department of Justice and Attorney-General to the Committee dated 6 April 2016, p 2

<sup>42</sup> Correspondence from Department of Justice and Attorney-General to the Committee dated 19 April 2016, p 2

**3.21 Committee comment**

The Committee acknowledges Together's concerns regarding ongoing pressures on its members' due to workload. The Committee also notes the Department's advice in this regard. The Committee notes these issues relate to operational and implementation matters and consultation between Together and the Department will continue as the reforms progress.



## 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:

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

The Committee has examined the application of the fundamental legislative principles 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.

### 4.2 Clause 19 – disclosure of confidential information

Clause 19 of the Bill allows confidential information about children and families to be disclosed to other people in certain circumstances. 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*. The explanatory notes state:

*However, the circumstances for which disclosure may occur is limited to where it is permitted by law, if authorised by a court or tribunal or if it is for a purpose directly related to a child’s protection or wellbeing. The use of information disclosed is strictly limited under clause 21 of the Bill.*<sup>43</sup>

The explanatory notes also state:

*The disclosure of confidential information under these provisions is justified as the care and protection needs of children take precedence over the protection of an individual’s privacy. The Director needs to obtain and use confidential information to perform the Director’s functions, which will ensure children’s interests are protected at all times.*<sup>44</sup>

### 4.3 Committee comment

The Committee considers that the potential breach may be justified in the circumstances.

### 4.4 Clauses 16 and 23

Clauses 16 and 23 of the Bill require the Chief Executive to provide confidential information to the DCPL in the form of a brief of evidence and also allows the DCPL to request information from the Chief Executive, who must take reasonable steps to provide it.

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<sup>43</sup> *Director of Child Protection Litigation Bill 2016 Explanatory Notes*, p 3

<sup>44</sup> *Director of Child Protection Litigation Bill 2016 Explanatory Notes*, p 4

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*. The explanatory notes state:

*It is important that the Director is able to obtain this information to inform the decision about whether or not to apply for a child protection order.<sup>45</sup>*

The explanatory notes also state:

*The disclosure of confidential information under these provisions is justified as the care and protection needs of children take precedence over the protection of an individual's privacy. The Director needs to obtain and use confidential information to perform the Director's functions, which will ensure children's interests are protected at all times.<sup>46</sup>*

#### **4.5 Committee comment**

The Committee considers that the potential breach may be justified in the circumstances.

#### **4.6 Clause 24 – disclosure of information**

Clause 24 of the Bill requires the Chief Executive to disclose all information and knowledge relevant to a child protection order proceeding that it has access to, to the DCPL. The explanatory notes state:

*This information will then be used by the Director to fulfil the Director's duty of disclosure obligations to parties under the Child Protection Reform Amendment Bill 2016.<sup>47</sup>*

The explanatory notes also state:

*The disclosure of confidential information under these provisions is justified as the care and protection needs of children take precedence over the protection of an individual's privacy. The Director needs to obtain and use confidential information to perform the Director's functions, which will ensure children's interests are protected at all times.<sup>48</sup>*

#### **4.7 Committee comment**

The Committee considers that the potential breach is justified in the circumstances.

#### **4.8 Clauses 19 and 21 – penalties**

Clause 19 makes it an offence to disclose information gained through administration of the Act to another person except in certain circumstances. Clause 21 makes it an offence to disclose information received from the DCPL or anyone else administering the Act under sections 19(3) or 20 to another person.

The maximum penalty for breaching either of these clauses is 100 penalty units or two years imprisonment.

A penalty should be proportionate to the offence. The OQPC Notebook states:

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<sup>45</sup> *Director of Child Protection Litigation Bill 2016 Explanatory Notes*, p 4

<sup>46</sup> *Director of Child Protection Litigation Bill 2016 Explanatory Notes*, p 4

<sup>47</sup> *Director of Child Protection Litigation Bill 2016 Explanatory Notes*, p 4

<sup>48</sup> *Director of Child Protection Litigation Bill 2016 Explanatory Notes*, p 4

*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.*<sup>49</sup>

The explanatory notes state:

*The introduction of these penalties is justified so as to ensure that the release of confidential information is contained and not used for another purpose, (except in limited circumstances) therefore protecting the privacy of families and children. The maximum penalties for these two offences are consistent with like provisions in other legislation, for example, sections 187 and 188 of the Child Protection Act 1999.*<sup>50</sup>

#### **4.9 Committee comment**

The Committee considers the two potential breaches to be justified in the circumstances.

#### **4.10 Delegation of administrative power – Section 4(3)(c)**

Section 4(3)(c) of the Legislative Standards Act requires that legislation has sufficient regard to the rights and liberties of individuals which depends on whether, for example, it allows the delegation of administrative power only in appropriate cases and to appropriate people.

#### **4.11 Clause 14 – the DCPL may delegate its functions and powers under the Bill to an appropriately-qualified member of the DCPL’s staff or a lawyer engaged under section 11 of the Bill**

Clause 14 provides that the DCPL may delegate its functions and powers under the Bill to an appropriately-qualified member of the DCPL’s staff or a lawyer engaged under section 11 of the Bill.

Powers should only be delegated to appropriately qualified officers or employees. The Office of Queensland Parliamentary Counsel (OQPC) Notebook provides that the appropriateness of a limitation on delegation depends on all the circumstances including the nature of the power, its consequences and whether its use appears to require particular expertise or experience.<sup>51</sup> Here, the provision clearly sets out that the person is to be appropriately qualified (or a lawyer under section 11).

The explanatory notes also state additional limitations set out in clause 14(2) of the Bill:

*...the Director can only delegate a function related to applying for child protection orders and transfers of child protection orders or child protection proceedings under section 10, if the person is a member of the Director’s staff and the Director considers the person is appropriately qualified to make applications mentioned in that section and the delegation is made in writing. The Director is not permitted to allow a sub-delegation of this delegated function.*<sup>52</sup>

#### **4.12 Committee comment**

The Committee consider that the potential breach is justified in the circumstances, given the delegation power limitations set out in the Bill.

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<sup>49</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120

<sup>50</sup> *Director of Child Protection Litigation Bill 2016 Explanatory Notes*, p 4

<sup>51</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 33

<sup>52</sup> *Director of Child Protection Litigation Bill 2016 Explanatory Notes*, p 8

**4.13 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.

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**

<b>Sub #</b>	<b>Submitter</b>
001	Queensland Alliance for Kids (QAK)
002	Protect All Children Today Inc. (PACT)
003	Name suppressed
004	Queensland Family and Child Commission (QFCC)
005	Mr Ryan Haddrick, Barrister-at-law
006	Together
007	Bar Association of Queensland

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

<b>Officers from the Department of Communities, Child Safety and Disability Services</b>
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
<b>Officers from the Department of Justice and Attorney-General</b>
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

<b>Witness from the Queensland Alliance for Kids (QAK)</b>
Ms Wendy Francis, Executive Member
<b>Witnesses from Protect All Children Today Inc. (PACT)</b>
Ms Jo Bryant, Chief Executive Officer
Ms Samantha Camilleri, Finance and Operations Officer
<b>Witnesses from the Queensland Family and Child Commission (QFCC)</b>
Ms Andrea Lauchs, Assistant Commissioner, Advocacy, Policy and Sector Development
Ms Nicole Blackett, Assistant Commissioner, Oversight, Evaluation and Community Education
<b>Witnesses from the Together Union</b>
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)
<b>Witnesses from the Queensland Law Society</b>
Mr Matt Dunn, Government Relations Principal Advisor
Ms Louise Pennisi, Policy Solicitor
Mr Jonathan Ward, Children's Law Committee representative (by teleconference)
<b>Witnesses from the Bar Association of Queensland</b>
Ms Elizabeth Wilson QC, Chair, Criminal Law Committee
Ms Julie Sharp, Member, Criminal Law Committee