

QUEENSLAND GOVERNMENT RESPONSE TO HEALTH, COMMUNITIES, DISABILITY SERVICES AND DOMESTIC AND FAMILY VIOLENCE PREVENTION COMMITTEE REPORT No. 16

Child Protection Reform Amendment Bill 2016

INTRODUCTION

On 16 February 2016, the Child Protection Reform Amendment Bill 2016 (the Bill) was introduced into the Queensland Parliament.

Parliament referred the Bill to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (the Committee) and requested the Committee table its report on its consideration of the Bill by 28 April 2016.

On 28 April 2016, the Committee tabled Report No. 16 in relation to the Bill in the Queensland Parliament.

The Queensland Government response to the recommendations contained in the Report on matters raised by the Committee is provided below.

RESPONSE TO RECOMMENDATIONS

Recommendation 1

The Committee recommends that the Bill be passed.

Queensland Government response:

The Queensland Government notes this recommendation and thanks the Committee for its consideration and support of the Bill.

Recommendation 2

The Committee recommends that 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.

Queensland Government response:

The Queensland Government notes this recommendation. The matter has been considered and the Minister has made the decision to retain the current wording in the Bill and will advise the outcome in the House.

Section 51VA of the *Child Protection Act 1999* (CPA) currently applies to children who are the subject of a child protection order granting long-term guardianship made by the Childrens Court. For these children, a Court has made a finding under section 59(6) that there is no parent able and willing to protect the child within the foreseeable future and the child's need for emotional security will be best met in the long term by making the order. The case plan goal for these children is to provide for their long-term stability and security.

Sub-section 51VA(2) requires the chief executive to have contact with the child at least once every twelve months to give the child an opportunity to make comments or queries about, or ask for a review of, the child's case plan. Sub-section 51VA(4) makes it clear that the child or the long-term guardian may ask the chief executive to review the case plan at any time.

The proposed amendment to section 51VA in the Bill includes the insertion of a new sub-section 51VA(5) to allow a child's parent to also ask the chief executive to review the case plan for the child, if it has not been reviewed in the previous twelve months.

The Bill also proposes to amend the current broad discretion for the chief executive to refuse to review a case plan for a child the subject of a long-term guardianship order 'if it would not be appropriate in all the circumstances' in sub-section 51VA(5), by inserting a new sub-section 51VA(5A) which provides additional guidance that the chief executive may exercise a discretion to refuse a request to review a case plan if the child's circumstances have not changed *significantly* since the plan was finalised or previously reviewed *or* for another reason, it would not be appropriate in all the circumstances. There may be minor changes in an individual child's circumstances from time to time that do not warrant the review of the child's case plan.

The principle, under section 5A of the CPA that safety, wellbeing and best interests of the child are paramount will apply to decisions made by the chief executive under section 51VA.

A decision of the chief executive to refuse a request to review a case plan under section 51VA is a reviewable decision under schedule 2 of the CPA. Therefore, if the chief executive decides not to review the case plan, the person requesting the review will continue to be able to apply to the Queensland Civil and Administrative Tribunal for an administrative review of the refusal decision.

The Minister has made the decision to retain the word 'significantly' in proposed section 51VA and will advise the House of this decision during debate on the Bill.

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.

Queensland Government response:

The Queensland Government accepts this recommendation. The issue raised by the Bar Association of Queensland has been considered and the Minister will respond to the House during the debate on the Bill.

Clause 32 of the Bill replaces section 191 of the CPA. The proposed section 191(2)(g)(i) permits the Director of Child Protection Litigation or another person to refuse to disclose personal information that is not *materially* relevant to the proceeding. The Bar Association of Queensland submitted that evidence is either relevant or not relevant, and that the qualifier 'materially' is not necessary.

The wording of this section is consistent with the current section 191 in the CPA, which allows a person to refuse to disclose information to a court or a tribunal if it is personal information that is not materially relevant to the proceeding. It is also consistent with wording used in the disclosure obligation in the *Criminal Code Act 1899* (section 590AP), which the Queensland Child Protection Commission of Inquiry proposed as a model for the recommended duty of disclosure under the CPA.

Requiring information to be 'materially relevant' to the proceeding is designed to balance the need to protect the privacy of a child or anyone else involved in a child protection proceeding with the need to ensure that the parties have access to information which is relevant to the ground upon which the application is made.

Recommendation 4

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

Queensland Government response:

The Queensland Government accepts this recommendation.

Appropriate protections for children participating in the making of decisions, including those made by a Court, will be considered as part of the broader review of the CPA which is currently being conducted by the Department of Communities, Child Safety and Disability Services.