

**HEALTH, COMMUNITIES, DISABILITY SERVICES AND DOMESTIC AND  
FAMILY VIOLENCE PREVENTION COMMITTEE**

**Report No. 17**

**Director of Child Protection Litigation Bill 2016**

**QUEENSLAND GOVERNMENT RESPONSE**

---

**INTRODUCTION**

On 16 February 2016, the Director of Child Protection Litigation Bill 2016 (the Bill) was introduced to 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. 17) in the Queensland Parliament in relation to the Bill (the Report).

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 Director of Child Protection Litigation Bill 2016 be passed.

***Queensland Government response:***

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

**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.

***Queensland Government response:***

The office of the Director of Child Protection Litigation (DCPL) will be located in Brisbane. Staff within the DCPL will travel across Queensland to attend child protection proceedings in the Childrens Court, when required. Adopting a

---

Brisbane based model is designed to ensure appropriate professional supervision and support for staff and to promote consistency of approach. This is also important to establish and embed a new culture, particularly in the early stages of the new office, and drive practice improvement consistent with the intent of the court reforms.

Personal appearances at mentions, trials and court ordered conferences will be the preferred mode of attendance for DCPL lawyers. However, in the event that personal appearance is not possible, video and telelink options will be used to enable lawyers to attend via these mechanisms. DCPL lawyers will, when considering how to manage a court matter, take into account the needs and requirements of the child and his or her family, including whether it is necessary to be personally present at court mentions.

Work is being done by the DCPL Implementation Team and Queensland Court Services to confirm the technological capabilities at each of the court houses. Where possible upgrades to some of the court's facilities will be made to ensure that DCPL officers are able to attend mentions via a telephone or a video link-up. Where this is not possible, the DCPL will ensure other arrangements are made. This will be by personal appearance by the DCPL officer or through engagement of a town agent or counsel under clause 11 of the Bill, to appear for the DCPL.

It should be noted that the Department of Justice and Attorney-General is also progressing the remake of the Childrens Court Rules (Rules) that is proposed to commence on 1 July 2016 and which forms part of the child protection court reforms. Based on consultation to date, the new Rules are expected to make provision for a court case management framework that will ensure matters are determined and progressed in a timely, efficient and effective manner and that the voices of children and families are heard. A court case management framework proposes the court will proactively manage cases to ensure issues are identified early and appropriate directions made, leading to a reduction of unnecessary mentions and adjournments.

The Government acknowledges the concerns raised by stakeholders and has been advised by the Department of Justice and Attorney-General that there will be close monitoring of the office of the DCPL model, particularly in the first 12 months, so that improvements can be made as soon as possible if an issue is identified.

### **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.

**Queensland Government response:**

The Bill includes the principles to be followed when the DCPL and staff administer their functions and powers under the Act. Clause 5 of the Bill provides that the main principle for administering the Act is that the safety, wellbeing and best interests of a child are paramount. Clause 6 provides other general principles that apply for administering the Act, including that the DCPL should only take action that is warranted in the circumstances, including, for example, by applying for the least intrusive child protection order. Clauses 5 and 6 are consistent with the principles in the *Child Protection Act 1999* (CPA) which forms the basis of the operations under that Act. These principles are also consistent with the United Nations Convention on the Rights of the Child.

At all times, the safety, wellbeing and best interests of the child will guide DCPL lawyers in deciding actions that are warranted in the circumstances of the case. The “least intrusive order” in clause 6(1)(b) is an example of the general principle to only take action that is warranted in the circumstances. This does not necessarily mean a short term order, but what is in the child’s best interests.

Ultimately, it is the Childrens Court that will determine the appropriate child protection order to be made, if any. The proposed court reforms, comprising the Bill and the Child Protection Reform Amendment Bill are designed to ensure that the best evidence is before the court and that all relevant information is disclosed to parties during the proceedings.

**Recommendation 4**

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

**Queensland Government response:**

Clause 13 of the Bill states that in performing its functions and exercising its powers, the DCPL is not under the control or direction of the Minister. The Queensland Child Protection Commission of Inquiry (QCPCI) recommended the Queensland Government establish an independent statutory agency responsible to the Attorney-General for its statutory functions to make decisions as to which matters will be the subject of a child protection application and what type of child protection orders will be sought, as well as litigate the applications. The QCPCI stated that the rationale for the proposed structure is to “establish greater accountability and oversight for applications that are being proposed by individual Child Safety service centres and particular regions to ensure that only necessary applications are being made and those that are made are managed appropriately.”<sup>1</sup>

Although the DCPL will not be under direct Ministerial control, there are appropriate safeguards in place to ensure proper oversight of the DCPL and DCPL staff.

---

<sup>1</sup> Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, June 2013, p482.

The DCPL will be accountable to Parliament through the Minister as the Bill requires the DCPL to give to the Minister an annual report on the administration of the Act during that year. The Minister must table a copy of the annual report in the Legislative Assembly.

The Bill amends the *Family and Child Commission Act 2014* to ensure the DCPL is within the scope of the Queensland Family and Child Commission's (QFCC) oversight, including the ability of the QFCC to obtain information from the DCPL to assist in the performance of the QFCC's functions to promote the safety, wellbeing of children and young people and improve the child protection system.

The Bill amends the CPA to expand the scope of the Child Death and Serious Injury Review Panel (review panel) which currently reviews the chief executive, Department of Communities, Child Safety and Disability Services' (DCCSDS) involvement with particular children who have since died or suffered serious physical injury. The DCPL will be required to provide a report on its involvement with a child to the review panel after completing the internal review and the review panel will consider both the reports from the DCPL and the chief executive, DCCSDS at the same time. The Coroner will also have some limited oversight of the DCPL as DCCSDS must give a copy of child death reports to the Coroner for a reportable death under section 246H of the CPA.

The Legal Services Commissioner may, in some circumstances, consider a complaint about a DCPL lawyer. As DCPL lawyers will be government legal officers under the *Legal Profession Act 2007*, the Legal Services Commission can only accept complaints about DCPL lawyers made by the chief executive, Department of Justice and Attorney-General (DJAG), the Queensland Law Society, the Bar Association of Queensland or an Australian legal practitioner.

Employees of the DCPL will be public servants employed under the *Public Service Act 2008* and therefore subject to the oversight and disciplinary measures applicable to all public servants.

A decision of the DCPL will be subject to the provisions of the *Judicial Review Act 1991*.

### **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.

#### ***Queensland Government response:***

Clause 25 of the Bill states that the Minister may only recommend a person for appointment as DCPL if the person is a lawyer who has been admitted to practice for at least ten years and the Minister is satisfied the person demonstrates qualities of leadership, management and innovation in a senior government or private sector role.

While the provisions of the Bill provide the general eligibility requirements for appointment as DCPL, it is considered more appropriate the specific qualities being sought for the position are set out in the role description.

On 20 February 2016, the position of Director of Child Protection Litigation was advertised. The role description focuses on child protection and the welfare of children. The role description states that the ideal applicant will demonstrate ‘a *comprehensive understanding and knowledge of the law and professional practice relevant to child protection and other welfare matters*’ and ‘*significant litigation experience in a protective jurisdiction*’. The position also requires extensive legal background, high level experience and skills in management, implementing change processes and continuous improvement in the delivery of professional services.

### **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.

#### ***Queensland Government response:***

The Government does not accept this recommendation.

The period of five years is considered appropriate. The provision sets the maximum term only, with the ability to appoint a person for a shorter term if required. This approach is also consistent with many other statutory officer positions, for example, the Public Guardian, Public Trustee, Public Advocate, Ombudsman and Chair of the Crime and Corruption Commission.

### **Recommendation 7**

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

#### ***Queensland Government response:***

The Government accepts this recommendation and notes the amendment will be made during the consideration in detail stage of the Bill’s progression through the Legislative Assembly.

### **Recommendation 8**

The Committee recommends that the DCPL publish its guidelines.

#### ***Queensland Government response:***

The Government does not accept this recommendation.

Clause 40 of the Bill provides that the DCPL must produce an annual report to the Minister on the administration of the Act during the year. The annual report

must include a copy of each guideline made under clause 39 in force during the financial year. The Minister must then table a copy of the annual report in Parliament within 14 sitting days after the Minister receives it.

The DCPL guidelines will be published under this mechanism.

Also, a person may apply to the DCPL to access information under the *Right to Information Act 2009*.

### **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.

#### ***Queensland Government response***

The DCPL and the Department of Communities, Child Safety and Disability Services (DCCSDS) must have a good working relationship and will need to work closely together as partners, both adding value to the court process with their relevant expertise. The Bill requires the DCPL to consult with DCCSDS to discuss differences and seek further information if required before making a decision (clauses 6(1)(a), 17(2) and 18). If the DCPL decides, after consulting with DCCSDS, to take a course of action that is not consistent with advice provided by DCCSDS, the DCPL will be required to provide written reasons for the decision (clause 18(2)). The written reasons will explain the evidentiary deficiencies or otherwise of the DCCSDS's referral to the DCPL and can be used as a learning tool for future applications by DCCSDS.

DCCSDS may also seek an internal review of the DCPL decision. While the DCPL guidelines (made under clause 39 of the Bill) are currently being developed, it is proposed the guidelines will include an internal review process. The Department of Justice and Attorney-General is consulting with DCCSDS on the internal review process for inclusion in the guidelines.

In addition, a decision of the DCPL is a decision subject to the provisions of the *Judicial Review Act 1991*.

### **Recommendation 10**

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

#### ***Queensland Government response***

The primary function of the DCPL is to make applications on behalf of the State to apply to the Children's Court for a child protection order. The Bill requires the chief executive of the DCCSDS to provide all relevant information to the DCPL to enable the DCPL to make this decision.

When performing its functions or exercising its powers, the DCPL must apply the paramount principle (clause 5 of the Bill) and have regard to the other principles set out in clause 6. Clause 6(1)(c) of the Bill requires the DCPL to '*consider whether sufficient, relevant and appropriate evidence is available in deciding whether to make an application for a child protection order*'. The DCPL may ask DCCSDS to provide further evidence or information about a child protection matter before deciding whether to apply for the order or refer the matter back to the chief executive of the DCCSDS.

Section 59 of the CPA sets out the matters the Childrens Court must be satisfied of before making a child protection order. The DCPL will have regard to the provisions of section 59 in determining whether there is sufficient, relevant and appropriate evidence available to make an application for a child protection order.

If the DCPL decides that there is not enough evidence to support an application for a child protection order, the DCPL will refer the matter back to DCCSDS, with written reasons.