
Director of Child Protection Litigation Bill 2016

Explanatory Notes

Short title

The short title of the Bill is the Director of Child Protection Litigation Bill 2016.

Policy objectives and the reasons for them

On 1 July 2013, the Queensland Child Protection Commission of Inquiry (Commission) released its report – *Taking Responsibility: A Road Map for Queensland Child Protection* (Commission report). The Commission confirmed the child protection system is under immense stress and made 121 recommendations aimed at addressing the risk of systemic failure, and building a sustainable and effective child protection system over the next decade.

One of the recommendations made by the Commission was that the Queensland Government establish an independent statutory agency – the Director of Child Protection – within the justice portfolio 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 (recommendation 13.17).

The Director of Child Protection Litigation Bill 2016 (Bill) implements recommendation 13.17 of the Commission.

The policy objectives of the Bill are to:

- establish the Director of Child Protection Litigation (Director), 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 that are being proposed by the chief executive (child safety) (as defined in schedule 1 of the Bill) by ensuring that applications filed in court are supported by good quality evidence, promoting efficiency and evidence-based decision making.

Achievement of policy objectives

To achieve its objectives, the Bill will establish the independent statutory position of the Director and set out its functions and powers.

The Director is appointed by Governor in Council for a term of up to five years, but may be reappointed for further terms. A person is eligible for appointment if the person

has been admitted to legal practice for at least 10 years and has demonstrated qualities of leadership, management and innovation in a senior government or private sector role.

The Director represents the State. The Director has control of the office of the Director and its staff. The Director will be required to provide an annual report to the Minister on the administration of the Act. The Minister must table the report in the Legislative Assembly to ensure accountability and transparency.

The Bill will achieve its objectives to provide greater accountability and oversight for child protection order applications that are being proposed by the chief executive (child safety) by providing that the Director is solely responsible for preparing and applying for child protection orders and conducting child protection order proceedings in the Childrens Court (including transfers of child protection orders and proceedings to a participating State).

If the chief executive (child safety) is satisfied that a child is a child in need of protection (as defined under the *Child Protection Act 1999*) and a child protection order is appropriate and desirable for the child's protection, the chief executive (child safety) must refer the matter to the Director by way of a brief of evidence. The Director must then decide whether or not a child protection order application should be made and the type of order that should be sought. If an application for a child protection order is made, the Director will be responsible for conducting the proceeding in the Childrens Court.

The main principle for administering the proposed Act is that the safety, wellbeing and best interests of the child are paramount (consistent with section 5A of the *Child Protection Act 1999*). Other principles under the Bill require the Director to work collaboratively with the chief executive (child safety); only take action that is warranted in the circumstances; and consider whether there is sufficient, relevant and appropriate evidence before applying for a child protection order. Principles contained in the *Child Protection Act 1999* will also need to be applied when administering the proposed Act where relevant to the functions being performed or powers exercised.

When making decisions, the Director must consult with the chief executive (child safety) and if the Director disagrees with the recommendations made by the chief executive (child safety), the Director must provide written reasons for the decision.

The chief executive (child safety) must take reasonable steps to obtain information requested by the Director. In addition, the chief executive (child safety) has a duty to disclose all relevant knowledge and information to the Director once an application for a child protection order has been filed with the Childrens Court. This ensures the Director has all of the information necessary to make decisions and to allow the Director to discharge the Director's duty of disclosure to parties to the proceedings.

The Director is also given the ability to provide legal advice to the chief executive (child safety) and represent the State in other child and family related matters, for example, family law and adoption matters. This work will be undertaken on a fee for service basis.

The Bill makes consequential amendments to the *Child Protection Act 1999* to ensure that child safety staff are still able to participate in child protection order proceedings as necessary, for example, requiring the chief executive (child safety) to give notice to parents and children about applications for child protection orders made and allowing the court to direct the chief executive (child safety) to do certain things, i.e. facilitate the writing of a specialist report. In addition, the *Childrens Court Act* is amended to ensure that the chief executive (child safety) is able to be in attendance in closed Childrens Courts.

The Bill also amends the *Child Protection Act 1999* to expand the scope of the Child Death and Serious Injury Review Panel to allow the Panel to review the involvement of the Director in relation to a child's death or significant injury in stated circumstances.

The Bill also includes consequential amendments to the *Family and Child Commission Act 2014* to ensure the Queensland Family and Child Commission, which has oversight of the child protection system, is able to obtain information from the Director and oversee the Director's work as part of the child protection system.

Alternative ways of achieving policy objectives

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.

Estimated cost for government implementation

Full implementation of the Bill will be funded in part through the reallocation of existing government resources and associated funding and additional Government approved funding.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2) *Legislative Standards Act 1992*) – confidential information

Clause 19 of the Bill allows confidential information about children and families to be disclosed to other people in certain circumstances. 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.

Clauses 16 and 23 of the Bill require the chief executive (child safety) to provide confidential information to the Director in the form of a brief of evidence and also

allows the Director to request information from the chief executive (child safety) who must take reasonable steps to provide it. 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.

Clause 24 of the Bill also requires the chief executive (child safety) to disclose all information and knowledge to the Director that it has access to that is relevant to a child protection order proceeding. 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.

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.

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2) Legislative Standards Act 1992) – introducing a new penalty

Clause 19 makes it an offence to disclose information gained through administration of the Act to another person except in certain circumstances. The maximum penalty for this offence is 100 penalty units or two years imprisonment.

Clause 21 makes it an offence to disclose information received from the Director or anyone else administering the Act under sections 19(3) or 20 to another person. The maximum penalty for this offence is 100 penalty units or two years imprisonment.

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*.

Consultation

An exposure draft of the Bill was released for targeted consultation with key non-government child protection and legal stakeholders, the President of the Queensland Civil and Administrative Tribunal (QCAT), the Chief Judge of the District Court, the President of the Childrens Court and the Chief Magistrate in November 2015. The Queensland Family and Child Commission, Director of Public Prosecutions, and the Office of the Public Guardian were also provided with an exposure draft of the Bill. Briefings were also provided to key stakeholders to receive verbal feedback and to facilitate more informed written feedback.

The following child protection and legal stakeholders were consulted as part of the development of the Bill: Foster Care Queensland; Bravehearts; PeakCare; CREATE Foundation; Working Against Violence Support Service; Queensland Aboriginal and Torres Strait Islander Child Protection Peak; Churches of Christ Care; Queensland Law Society; Aboriginal and Torres Strait Islander Legal Service; the Bar Association of Queensland; Legal Aid Queensland; Women's Legal Service; South West Brisbane

Community Legal Centre; Queensland Indigenous Family Violence Legal Service; Queensland Association of Independent Legal Services; and Youth Advocacy Centre.

There was general support of the Bill. Stakeholders' comments were considered, and, where appropriate, amendments were made to the Bill during the drafting process.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with, or complementary to, legislation of the Commonwealth or another state.

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

Notes on provisions

Part 1 Preliminary

Division 1 Introduction

Clause 1 states that, when enacted, the Bill will be cited as the *Director of Child Protection Litigation Act 2016*.

Clause 2 states that the Bill will commence on 1 July 2016.

Clause 3 provides that the dictionary in the schedule defines particular words used in this Act.

Division 2 Purpose and principles

Clause 4 provides that the main purpose of the Act is to establish the Director to apply for child protection orders and conduct child protection proceedings.

Clause 5 provides that the main principle for administering the Act is that the safety, wellbeing and best interests of a child are paramount. This principle is consistent with the paramount principle in section 5A of the *Child Protection Act 1999*.

Clause 6 sets out the other principles that persons administering the Act must have regard to. These principles are consistent with, and in some cases refer directly to, principles in the *Child Protection Act 1999*.

The other principles provided by clause 6 for administering the Act are:

- (a) fair, timely and consistent outcomes for the protection of children are best achieved when the Director and the chief executive (child safety) work together collaboratively;
- (b) in taking steps to protect children the Director should only take action that is warranted in the circumstances including by applying for the least intrusive child protection order that will meet the child's care and protection needs;
- (c) in deciding whether to apply for a child protection order the Director should consider whether sufficient, relevant and appropriate evidence is available to support the application;
- (d) the principles stated in section 5B of the *Child Protection Act 1999* for ensuring the safety, wellbeing and best interests of a child apply to the extent the principle is capable of being applied to a person performing a function or exercising a power under the Act;
- (e) the additional principles stated in section 5C of the *Child Protection Act 1999* applying to an Aboriginal or Torres Strait Islander child apply to a person performing a function or exercising a power under the Act;

Subclause (2) provides that the principles in section 5D(1) about exercising powers and making decisions under the *Child Protection Act 1999* apply to the extent the principle

is capable of being applied to a person performing a function or exercising a power under the Act.

Subclause (3) provides that section 5E of the *Child Protection Act 1999* about giving a child an opportunity to express their views applies to a person giving a child an opportunity to express their views under this Act.

Part 2 Director of Child Protection Litigation

Division 1 Director of Child Protection Litigation

Clause 7 provides that there must be a Director.

Clause 8 provides that the Director represents the State and has the status, privileges and immunities of the State.

Division 2 Functions and powers

Clause 9 establishes the functions of the Director. Subclause (1) provides that the Director's main functions are to:

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

Subclause (2) provides that the Director may provide legal advice to the chief executive (child safety) and represent the State in other child and family related matters, for example, family law, adoption matters and applications under the *Family Law (Child Abduction Convention) Regulations 1986* (made under section 111B of the *Family Law Act 1975* (Cwlth)).

Under subclause (2)(d), the Director may also be given another function under this Act or another Act.

Clause 10 provides that the Director may apply, on behalf of the State, to the Childrens Court for a child protection order under chapter 2, part 4 of the *Child Protection Act 1999* or an order transferring a child protection order or child protection proceeding to a participating State under section 212 or 225 of the *Child Protection Act 1999*.

This clause makes it clear that no other person can make one of these applications on behalf of the State with the exception of a person who the Director delegates this power to under section 14 of the Bill.

Clause 11 provides that the Director may engage appropriately qualified lawyers to assist the Director in carrying out the Director's functions under the Act.

Clause 12 provides that the Director has the powers given under this Act and also the power to do all things necessary or convenient to be done in performing the Director's functions.

Clause 13 provides that the Director is not under the control or direction of the Minister when performing the Director's functions or exercising the Director's powers.

Clause 14 provides that the Director may delegate the Director's functions and powers under this Act to an appropriately qualified member of the Director's staff or a lawyer engaged under section 11.

However, 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.

Part 3 Referrals

Division 1 Referral of child protection matters

Clause 15 provides that where the chief executive (child safety) is satisfied that a child is a child in need of protection, as defined in section 10 of the *Child Protection Act 1999*, and a child protection order is appropriate and desirable for the child's protection, the chief executive (child safety) must refer the matter to the Director. Referrals under this paragraph will include where the chief executive (child safety) would like the Director to consider varying or extending a current child protection order.

Also, if a child protection order is already in force for a child and the chief executive (child safety) is satisfied that the order is no longer appropriate and desirable for the child's protection, the chief executive (child safety) must refer the matter to the Director. This paragraph provides a mechanism for the chief executive (child safety) to refer matters where the chief executive (child safety) would like the Director to consider seeking an order to revoke a child protection order from the Childrens Court.

Clause 16 provides that, if a matter is referred to the Director by the chief executive (child safety) under section 15(1)(a), the chief executive (child safety) must provide a brief of evidence that includes the reasons why the child is a child in need of protection, reasons why a child protection order is appropriate and desirable for the child's protection, and the type of order the chief executive (child safety) considers appropriate and desirable for the child's protection.

If a matter is referred to the Director by the chief executive (child safety) under section 15(1)(b), the chief executive (child safety) must provide a brief of evidence that includes the reasons why a child protection order is no longer appropriate and desirable for the child's protection.

Supporting documents for any of the above matters and any other documents and evidence relevant to the referral that are available to the chief executive (child safety) must also be provided.

Subclause (2) provides that the referral and the brief of evidence must comply with the guidelines made by the Director under section 39.

Division 2 Dealing with child protection matters

Clause 17 provides that for each child protection matter referred to the Director under section 15, the Director may decide to either apply for an order or refer the matter back to the chief executive (child safety).

Before making a decision, the Director may ask the chief executive (child safety) about the child protection matter and any further information or evidence that may be required about whether to apply for a child protection order and the type of order sought.

If the Director decides that there is not enough evidence to support an application for a child protection order, the Director will refer the matter back to the chief executive (child safety). Otherwise, the Director will file an application for a child protection order with the Childrens Court.

Clause 18 provides that the Director must consult with the chief executive (child safety) before referring a matter back to the chief executive (child safety) under section 17(1)(b) or applying for a child protection order of a different type, or an order that is otherwise different from the order mentioned in the brief of evidence provided by the chief executive (child safety) to the Director under section 16.

The Director must also consult with the chief executive (child safety) for any other reason prescribed under the guidelines made by the Director under section 39.

Subclause (2) provides that if the Director still decides to do a thing mentioned in subsection (1) after consultation with the chief executive (child safety) and without the agreement of the chief executive (child safety), the Director must give reasons for this decision to the chief executive (child safety).

Part 4 Confidentiality and exchange of information

Division 1 Confidentiality

Clause 19 makes it an offence for a person who gains confidential information through involvement in the administration of the Act, to make a record of the information or intentionally or recklessly disclose the information to anyone. The maximum penalty for this offence is 100 penalty units or two years imprisonment.

Subclause (2) provides that a person gains confidential information through involvement in the administration of the Act if the person gains information because of being, or an opportunity given by being:

- (a) the Director or a member of the Director's staff;
- (b) a person engaged by the Director under section 11;
- (c) a public service employee in the department; or

-
- (d) a public service employee employed in the department administered by the chief executive (child safety).

Subclause (3) provides exceptions for when confidential information may be recorded or disclosed to someone else, including:

- (a) for this Act;
- (b) to discharge a function under another law;
- (c) for a proceeding in a court or QCAT;
- (d) if authorised by a court or QCAT in the interests of justice;
- (e) if required or permitted by law; or
- (f) if the confidential information relates to a child, for a purpose directly related to a child's protection or wellbeing.

Clause 20 provides that the Director may authorise a person to have access to information relating to the administration of this Act, including information from a member of the Director's staff for the purpose of carrying out research.

Subclause (2) provides that the Director may only authorise access to the information if the Director is satisfied that the research is relevant to the Director's functions and powers under this Act and the information will be collected in a way that could not reasonably be expected to result in the identification of any individuals that it relates to.

Subclause (3) provides that the Director may authorise the person to use or disclose the information, or give access to the information, to someone else.

Clause 21 makes it an offence for a person who is given confidential information by a person under section 19(3) or given access to information for research purposes under section 20 to use or disclose the information to anyone else. The maximum penalty for this offence is 100 penalty units or two years imprisonment.

Subclause (2) provides exceptions for when the person receiving the confidential information may use or disclose the confidential information, including:

- (a) if authorised by the Director;
- (b) for a proceeding in a court or QCAT;
- (c) if authorised by a court or QCAT in the interests of justice;
- (d) if the confidential information relates to a child, for a purpose directly related to a child's protection or wellbeing; or
- (e) if the use or disclosure is otherwise required or permitted by law.

Division 2 Information exchange

Clause 22 defines the term information for division 2 as including a document.

Clause 23 provides that the Director may ask the chief executive (child safety) for information relevant to a matter referred to the Director under section 15.

Subclause (2) provides that the chief executive (child safety) must take reasonable steps to provide this information.

Clause 24 provides the chief executive (child safety) has an ongoing duty to disclose all information relevant to the proceeding, including knowledge of a matter that is in the possession or control of the chief executive (child safety) to the Director.

This duty commences when an application for a child protection order is filed in the Childrens Court and continues until the proceeding is finally decided or otherwise ends.

The duty of the chief executive (child safety) to disclose under this clause corresponds with the Director's duty to disclose to the parties under section 189C of the *Child Protection Act 1999* (inserted by clause 31 of the Child Protection Reform Amendment Bill 2016). This clause enables the Director to comply with the disclosure obligations contained in section 189C.

Part 5 Administration

Division 1 Appointment of director and related matters

Clause 25 provides that the Director is appointed by the Governor in Council on recommendation of the Minister.

Subclause (2) provides that the Minister can only recommend a person for appointment if the person is a lawyer who has been admitted to practice for at least 10 years and the Minister is satisfied the person has demonstrated qualities of leadership, management and innovation in a senior government or private sector role.

Clause 26 provides that the Director is appointed under this Act and not under the *Public Service Act 2008*.

Clause 27 provides that the Director holds office for a term stated in the Director's instrument of appointment and for not more than five years.

Clause 28 provides that the Director is to be paid the remuneration and allowances decided by the Governor in Council. The Director holds office on the terms and conditions decided by the Governor in Council to the extent they are not provided for by this Act.

Clause 29 provides that if a public service officer is appointed as the Director, the person keeps all rights accrued or accruing to the person as a public service officer as if the service as the Director were a continuation of service as a public service officer. At the end of the person's term of office or on resignation as the Director, the person's service as Director is taken to be service of a like nature in the public service for deciding the person's rights as a public service officer.

Clause 30 provides that the Director must not, without the Minister's consent, engage in any work (paid or otherwise) relating to the protection of rights and interests of children and young people or an adult who has been charged with an offence against a child.

Clause 31 provides that if, prior to appointment as the Director, the Director was involved in a matter in the practice of the person's profession, and at the time of appointment as the Director, the matter has not been finally decided or otherwise dealt with, the involvement does not prevent the Director from or limit the Director in performing the Director's functions.

Subclause (3) provides for how the Director must deal with information obtained by the Director in his/her professional capacity before appointment as Director.

Clause 32 provides that the office of the Director becomes vacant if the Director:

- (a) resigns office by signed notice to the Minister giving at least one month's notice;
- (b) is convicted of an indictable offence;
- (c) is an insolvent under administration under section 9 of the *Corporations Act 2001* (Cwlth);
- (d) is removed from office by Governor in Council under subsection (3).

Subclause (3) provides that the Director may be removed from office by the Governor in Council upon recommendation from the Minister.

Subclause (4) provides that the Minister may recommend the Director's removal if the Minister is satisfied that the Director:

- (a) has been guilty of misconduct;
- (b) is incapable of performing his or her duties;
- (c) has neglected his or her duties or performed them incompetently.

Subclause (5) provides that the Minister may suspend the Director for up to 60 days by signed notice to the Director if there is an allegation of misconduct against the Director or the Minister is satisfied a matter has arisen in relation to the Director that may be grounds for removal under this section.

Clause 33 provides for an acting Director to be appointed by the Minister for a period of not more than six months where there is a vacancy in the office of the Director. A person acting as the Director can be appointed by the Minister to act for a further period if the person's total period of continuous appointments is not more than six months. In all other circumstances, the Governor in Council must make the acting appointment.

Subclause (2) provides that a person cannot be appointed as the acting Director unless the Minister could recommend the person be appointed as Director under section 25.

Subclause (4) provides that the Governor in Council may at any time cancel the appointment of a person acting as the Director.

Clause 34 provides that the Director is not a statutory body for the purposes of the *Statutory Bodies Financial Arrangements Act 1982* or the *Financial Accountability Act 2009*.

Division 2 Office and staff

Clause 35 provides for the establishment of the office of the Director. The office consists of the Director and the Director's staff.

Clause 36 provides that the office's function is to help the Director perform the Director's functions.

Clause 37 provides that the Director's staff are employed under the *Public Service Act 2008*.

Clause 38 provides that the Director controls the office. However, this does not prevent the attachment of the office to the department for the purpose of ensuring the office is supplied with the administrative support services it requires to carry out its functions effectively and efficiently.

Part 6 Miscellaneous

Clause 39 provides that the Director may issue written guidelines. The guidelines may be issued to the Director's staff or persons engaged by the Director, the chief executive (child safety) and public service employees employed in the department administered by the chief executive (child safety) who are undertaking work relevant to the Director's functions.

Subclause (2) provides that the guidelines must be consistent with this Act and the *Child Protection Act 1999*. It also provides a non-exhaustive list of the types of things that may be included in the guidelines, including:

- (a) procedures about the referral of child protection matters from the chief executive (child safety) to the Director, including the form and content of a brief of evidence required under section 16;
- (b) procedures for dealing with child protection matters, including factors the Director must have regard to in deciding whether to apply for child protection orders;
- (c) principles and procedures for the conduct of child protection proceedings including procedures about the roles of the Director and the chief executive (child safety) during the proceedings;
- (d) procedures for the chief executive (child safety) seeking an internal review of a decision of the Director;
- (e) decisions in circumstances when the Director is required to give the chief executive (child safety) written reasons for decision under section 18;
- (f) procedures about the Director's functions mentioned in section 9(2)(a), (b) and (c).

Subclause (4) provides that a guideline must not be made in relation to a particular case.

Clause 40 provides that as soon as practicable after the close of each financial year but not later than four months after the close, the Director must give the Minister a report on the administration of this Act during the year.

Subclause (2) provides that the report must include a copy of each guideline made under section 39 in force during the financial year and any actions taken in the financial year in response to a report given by a review panel under section 246DD of the *Child Protection Act 1999*.

Subclause (3) provides that the Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving it.

Clause 41 provides that the Minister must undertake a review of the effectiveness of this Act and the operations of the Office of the Director as soon as practicable after the end of five years after commencement of this section. As soon as practicable after finishing the review, the Minister must table a report about its outcome in the Legislative Assembly.

Clause 42 provides that the Governor in Council may make regulations under this Act.

Part 7 Transitional provisions for this Act

Clause 43 provides that a pre-amended provision of the *Child Protection Act 1999* for this part means a provision in force before the commencement of this Act.

Clause 44 provides that this section applies to applications for:

- (a) an application for a child protection order made by an authorised officer under the pre-amended sections 54, 64 or 65 of the *Child Protection Act 1999*;
- (b) an application for an order transferring a child protection order or child protection proceeding to a participating State under chapter 7, part 2 or 4 of the *Child Protection Act 1999*.

Subclause (2) provides that if immediately before commencement the application had not been finally dealt with, the application is taken to be a child protection matter referred under section 15 and the Director is taken to have made the application.

Clause 45 provides that this section applies to a child protection proceeding or a proceeding in an appellate court for an appeal against a decision about an application under pre-amended chapter 3, part 4 or an appeal against a decision to transfer a child protection order or child protection proceeding to a participating State under pre-amended chapter 7, part 2 or 4 of the *Child Protection Act 1999*.

Subclause (2) provides that where an application or proceeding in one of the above circumstances has not been finally dealt with, the Director becomes a party to the proceeding in place of the authorised officer and for a proceeding, the application which is the subject of the proceeding, is taken to be a child protection matter.

Subclause (3) provides that section 24 (information exchange and disclosure) applies to the chief executive (child safety) in relation to the proceeding.

Clause 46 provides that where a child protection proceeding is transferred to Queensland from a participating State under pre-amended chapter 7, part 5 of the *Child Protection Act 1999* and the chief executive (child safety) has filed a notice stating the name of the authorised officer to become a party to a proceeding and immediately before commencement the proceeding has not been finally dealt with, upon commencement the Director becomes a party to the proceeding in place of the authorised officer.

Clause 47 provides that where, immediately before commencement, a decision has been made by the Childrens Court about an application for a child protection order under chapter 2, part 4 of the *Child Protection Act 1999* or an application for an order transferring a child protection order or child protection proceeding to a participating State under chapter 7, part 2 or 4 of the *Child Protection Act 1999*, on and from commencement the Director is taken to be a party to the proceeding for the purpose of appealing the decision.

Part 8 Amendment of Acts

Division 1 Amendment of this Act

Clause 48 provides that division 1 amends this Act.

Clause 49 amends the long title of the Act.

Division 2 Amendment of Child Protection Act 1999

Clause 50 provides that division 2 amends the *Child Protection Act 1999*.

Clause 51 amends section 6 to provide that when the Director is making a significant decision about an Aboriginal or Torres Strait Islander child, they must give an opportunity to a recognised entity for the child to participate in the decision making process. Also, when making a decision, other than a significant decision, the Director must consult with a recognised entity for the child before making the decision.

Subclause (2) inserts a new subsection (6), which provides that if the Director is satisfied the chief executive (child safety) or an authorised officer has already given the opportunity to participate or consulted with the recognised entity in relation to the decision and the chief executive (child safety) or authorised officer has provided the Director with the outcome of the participation or consultation for consideration, the Director does not need to engage with the recognised entity directly to satisfy this statutory obligation.

Subclause (3) inserts an example into renumbered subsection (7) to provide that a decision by the Director about whether or not to apply for a child protection order for a child is a significant decision.

Clause 52 amends section 51L(1) to provide that the Director may participate in a family group meeting if the chief executive (child safety) requests this.

Clause 53 amends section 54 to remove references to authorised officers making applications for child protection orders as they are no longer authorised to do this – this is the role of the Director.

Clause 54 amends section 56(1) and (2) to provide that it is the chief executive (child safety) rather than the applicant who is required to personally serve a copy of a child

protection order application on each parent of the child and tell the child about the application once filed. The chief executive (child safety) will continue undertaking this task while working with the child and their family rather than the Director taking over this role.

Clause 55 amends section 64(1) to remove references to authorised officers making applications for an extension of a child protection order as they are no longer authorised to do this – this is the role of the Director.

Clause 56 amends section 65 to remove references to authorised officers making applications for a variation or revocation of a child protection order as they are no longer authorised to do this and the chief executive (child safety) becoming a respondent in a matter – this is the role of the Director.

Subclause (3) amends section 65(5)(b) so that the registrar of the Childrens Court is required to give written notice to both the chief executive (child safety) and the Director of the time and place for a hearing related to an application for a variation or revocation of a child protection order that is made by the child or a parent.

Clause 57 amends section 65A(1) to provide that if a court decides an appeal against the making of a child protection order in favour of a person other than the chief executive (child safety), the Court may make a transition order. This clause also amends section 65A(1) to remove references to the chief executive (child safety) having decisions on appeal being made against them as it will be the Director as a party to the proceeding not the chief executive (child safety) who will be placed in this situation.

Clause 58 amends section 68 to insert new subsection (6) that clarifies the chief executive (child safety) may be subject to one of the orders the Childrens Court may make under section 68 despite the fact that they are not a party to the proceeding. This is important as the Childrens Court will still need to make orders that are binding on the chief executive (child safety), for example, requiring the chief executive (child safety) to facilitate a social assessment of the child being undertaken.

Clause 59 amends section 70(5) to require that the chief executive (child safety) must attend the conference even though he/she is not a party to the proceeding. This is important as the chief executive (child safety) is still responsible for the case management of the child and the presence of the chief executive (child safety) at these conferences will ensure decisions are made which the chief executive (child safety) is able to action. This clause also provides that the Public Guardian may attend the conference, which is currently provided for in this section.

Clause 60 amends section 186(2) to insert new paragraph (g) to ensure the chief executive (child safety) is able to provide the details of a notifier to the Director. This is important as the Director may need to have access to this information in order to perform the Director's functions, for example, if leave from the Childrens Court or QCAT is sought for this information to be produced.

Clause 61 amends section 212 to remove references to the chief executive (child safety) making an application for an order transferring a child protection order to a participating

State as the chief executive (child safety) is no longer authorised to do this – this is the role of the Director.

Clause 62 amends section 225(1) to remove references to authorised officers making applications for an order transferring a child protection proceeding to the Childrens Court in a participating State as they are no longer authorised to do this – this is the role of the Director.

Clause 63 amends section 227(1) and (2) to provide that it is the chief executive (child safety) rather than the applicant who is required to personally serve a copy of an application to transfer a child protection proceeding to a participating State on each of the child’s parents and tell the child about the application once filed. The chief executive (child safety) will continue undertaking this task while working with the child and their family rather than the Director taking over this role.

Clause 64 amends section 235(3) to provide that when the chief executive (child safety) is filing and registering a decision to transfer a child protection proceeding to Queensland from a participating State, the chief executive (child safety) must nominate the Director as the party to a child protection proceeding being transferred in place of the interstate government officer.

Clause 65 amends section 236(2) to remove the reference to the authorised officer nominated under section 235(3) and replace it with the Director who will be the party in the proceeding.

Clause 66 amends section 238(1) to remove the reference to the chief executive (child safety) as a person who may apply to the Childrens Court to revoke the registration of an interstate transfer decision or associated interim order and replace it with the Director who will have this role.

Clause 67 inserts a heading for a new chapter 7A, part 1, division 1 in the *Child Protection Act 1999*.

Clause 68 replaces section 246AA with a new section 245 to expand the purpose of the chapter to capture reviews undertaken by the Director in certain circumstances under chapter 7A.

No changes are made to the purpose of the chapter relating to the reviews of the chief executive (child safety).

Clause 69 inserts a heading for a new chapter 7A, part 1, division 2 and a new section 246 that provides this division applies if a child dies or suffers serious physical injury.

Clause 70 amends section 246A to renumber the paragraphs and insert a new subsection (5), which provides that if the chief executive (child safety) is required to undertake a review under this section and the Director has performed or is performing a litigation function, the chief executive (child safety) must give notice to the Director of the requirement for the review as soon as practicable after identifying that a review must be undertaken. This requirement will enable the Director to then determine whether the

Director must undertake a review under new section 246AA (inserted by clause 71 of the Bill).

Clause 71 inserts new section 246AA to provide for the circumstances when the Director must carry out a review of the involvement of the office of the Director has had in a matter relating to a child. For a review to be required from the Director, first the Director must receive notice from the chief executive (child safety) (as provided for in clause 70) and then one of the following circumstances must apply:

- (i) at the time of the child's death or serious physical injury, the Director is involved in performing a litigation function in relation to the child; or
- (ii) within one year before the child's death or serious physical injury, the Director has performed a litigation function; or
- (iii) the chief executive (child safety) requests the review in writing.

Clause 72 inserts a heading for new chapter 7A, part 1, division 3 and new section 246AB. New section 246AB(1) and (2) provides that for a review to be carried out by the chief executive (child safety), the chief executive (child safety) must decide the terms of reference for the review and for a review to be carried out by the Director, the Director must decide the terms of reference for the review.

No changes are made to the requirement the chief executive (child safety) must decide the terms of reference for its reviews.

Clause 73 amends section 246B by renaming and renumbering the section. No changes are made to the things the chief executive (child safety) may include in the terms of reference for a review.

Clause 74 inserts new section 246BA to provide for the matters the terms of reference for the Director's review may encompass, including:

- (a) considering whether the Director complied with legislative requirements, guidelines made by the Director under section 39 of the *Director of Child Protection Litigation Act 2016* and any policies relevant to the performance of a litigation function in relation to the child;
- (b) commenting on the adequacy of the legislative requirements, guidelines and policies for performing litigation functions;
- (c) commenting on the sufficiency of evidence made available to the office of the Director for the purposes of making decisions under the *Director of Child Protection Litigation Act 2016*; or
- (d) making recommendations about the matters mentioned in paragraphs (a) to (c) above and suggesting strategies to put into effect the recommendations.

Clause 75 amends section 246C to clarify that this section relates to a chief executive (child safety) review.

Clause 76 inserts a heading for new chapter 7A, part 1, division 4 in the *Child Protection Act 1999*.

Clause 77 replaces section 246D. New section 246D provides that the chief executive (child safety) and the Director must, as soon as practicable and not more than six months after a triggering event for the review, complete the review and prepare and

provide a report about the review to the review panel, along with any other documents obtained by the chief executive (child safety) or the Director and used for the review.

New subsection (3) provides that if both the chief executive (child safety) and the Director are required to prepare and give a report to the review panel, they must, at the same time as giving the review documents to the review panel, also give a copy of the review report to each other.

New subsection (4) defines what a triggering event means for the chief executive (child safety) and the Director. A triggering event is:

- (a) for a review by the chief executive (child safety) under section 246A(1)(a) to (d)—the chief executive (child safety) becoming aware of the child’s death or serious physical injury;
- (b) for a review by the chief executive (child safety) under section 246A(1)(e)—the chief executive (child safety) receiving the Minister’s written request; or
- (c) for a review by the Director under section 246AA(b)(i) or (ii)—the Director receiving the written notice of the chief executive (child safety) of the review of the chief executive (child safety) under section 246A(3); or
- (d) for a review by the Director under section 246AA(b)(iii)—the Director receiving the written request of the chief executive (child safety).

No changes are made to chief executive (child safety) reviews under this clause.

Clause 78 amends section 246DA to allow the review panel to obtain further information from the Director in addition to the chief executive (child safety) when undertaking a review of the Director’s involvement in the matter.

No changes are made in relation to chief executive (child safety) reviews under this clause.

Clause 79 replaces section 246DB and 246DC and inserts new section 246DD.

New section 246DB provides that the review panel must conduct a review of the Director’s review in addition to the review of the chief executive (child safety)’s review where relevant. The review panel must decide the extent and terms of reference for its review.

Subsection (2) provides a non-exhaustive list of the things the review panel may decide to consider for a chief executive (child safety) review or a Director review, including a matter within the terms of reference for the original review.

The matters the terms of reference for a chief executive (child safety) review may encompass include:

- (a) ways of improving the department’s practices for the delivery of services to children and families;
- (b) ways of improving the relationship between the department and other entities with functions involving children and families; and
- (c) whether disciplinary action should be taken against an employee of the department relating to the department’s involvement with the child.

The matters the terms of reference a Director review may encompass include:

- (a) ways of improving the guidelines issued by the Director under section 39 of the *Director of Child Protection Litigation Act 2016* and any other relevant policies;
- (b) ways of improving the relationship between the office of the Director and the department; and
- (c) whether disciplinary action should be taken against a member of the Director's staff relating to the staff member's performance of litigation functions.

No changes are made in relation to chief executive (child safety) reviews under this section.

Subsection (3) provides that the review panel must complete its review within six months after receiving the original review documents.

Subsection (4) provides that where a review has been conducted by both the chief executive (child safety) and the Director about the same child, the review panel must conduct the further review for both of the original reviews at the same time and complete the review not more than six months after receiving the last original review document relating to the reviews.

New section 246DC requires the review panel to complete a review, prepare a report and give a copy of the report to the chief executive (child safety) (if it is related to a review conducted by the chief executive (child safety) under section 246DB) within the time prescribed in sections 246DB(3) or (4).

Subsection (2) provides that the chief executive (child safety) may give a copy of the report to the Director. The chief executive (child safety) is also required to give the Minister a copy of the report if the review was carried out at the request of the Minister or the Minister asks for a copy.

No changes to the circumstances when the Minister must be provided with a copy of the review panel's report are made in relation to chief executive (child safety) reviews under this clause.

Subsection (3) requires the Minister to give a copy of the report to the Minister administering the *Director of Child Protection Litigation Act 2016* if the report includes a matter concerning the Director.

New section 246DD requires the review panel to complete a review, prepare a report and give a copy of the report to the Director (if it is related to a review conducted by the Director under section 246DB) within the time prescribed in sections 246DB(3) or (4).

Subsection (2) provides that the Director may give a copy of the report to the chief executive (child safety). The Director is also required to give the justice Minister a copy of the report if the Minister asks for a copy.

Subsection (3) requires the justice Minister to give a copy of the report to the Minister if the report includes a matter concerning the department.

The justice Minister is defined as the Minister administering the *Director of Child Protection Litigation Act 2016*.

Clause 80 amends section 246H to require the Director, in addition to the chief executive (child safety), to provide a copy of a report completed under section 246D or is given a copy of a report by the review panel under section 246DC or 246DD, to the State Coroner.

No changes are made in relation to chief executive (child safety) reviews under this clause.

Clause 81 amends section 246HA(3) to renumber the paragraphs in this section and insert new paragraph (b), which provides that a person is eligible for appointment to the pool of review panel members if the person has expertise in litigation relating to child protection proceedings or proceedings of a similar nature.

Clause 82 amends section 246HE to provide that the Minister may establish Child Death Case Review Panels to carry out independent reviews of the reviews of the chief executive (child safety) and the Director under part 1.

No changes are made in relation to chief executive (child safety) reviews under this clause.

Clause 83 amends section 246HF(1) to provide that for each review mentioned in part 1 of this chapter, the Minister must establish a review panel or nominate an existing review panel to carry out a review of the review of the chief executive (child safety) or Director.

No changes are made in relation to chief executive (child safety) reviews under this clause.

Clause 84 amends section 246HH(2) to insert a new paragraph (d) to provide that if the panel is established for reviewing a review by the Director, at least one person on the review panel must be someone who has expertise in litigation relating to child protection proceedings or proceedings of a similar nature.

Clause 85 amends section 246HJ to renumber the section and insert a new paragraph (b) to provide that at least one member who has expertise in litigation relating to child protection proceedings or proceedings of a similar nature must be present for a quorum for the review panel if the review relates to a review carried out by the Director.

Clause 86 amends section 246HK(6) to extend the requirement for information about a disclosure made by a panel member under subsection (2) to be included in a report prepared under section 246DD as well as section 246DC.

Clause 87 amends schedule 3 to insert a definition, *litigation function*. The clause also amends the definition of *original review documents* to refer to section 246D(2)(c).

Division 3 Amendment of Child Protection (International Measures) Act 2003

Clause 88 provides that division 3 amends the *Child Protection (International Measures) Act 2003*.

Clause 89 amends sections 7(1) and (2) to insert references to the Director so that a Queensland court may exercise jurisdiction for a matter on application by the Director in addition to the department and public trustee.

Subclause (2) also omits the editor's note in this section as it is no longer relevant or necessary.

Clause 90 amends sections 8(1) and (2) to insert references to the Director to provide that part 2 of the Act applies if an issue under Queensland law is whether the Director, in addition to the department (as defined under the *Child Protection (International Measures) Act 2003*) and a Queensland court, as opposed to a central authority or competent authority of a Convention country or a competent authority of a non-Convention country, is to take measures directed to the protection of the person of a child.

Amended subsection (2) provides that this part does not apply if an issue under Queensland law is whether a Queensland court, the department or the Director, as opposed to another competent authority in Australia, is to take measures to the protection of the person of a child.

Clause 91 amends sections 9(2)(b)(iv) and (v) and (c)(iii) and (iv) to provide that it is only a Queensland court or the department that is able to receive a request to assume jurisdiction or make an agreement to assume jurisdiction from a competent authority under this section. The intention is that the department or court may agree to assume jurisdiction from a competent authority and then where appropriate refer the matter to the Director to perform a function or exercise a power under the *Child Protection (International Measures) Act 2003* and relevant Queensland law.

Clause 92 inserts new section 11(4). New subsection (4) provides that if the Queensland authority is the Director, before it exercises its jurisdiction under the Act, the Director must be satisfied that the department has used its best efforts to consult with the competent authority in the convention country to find out whether measures relating to the protection of the person of the child have been sought from the competent authorities.

Clause 93 amends section 12(1) to exclude the application of the section to the Director. The Director is not considered a Queensland authority for the purpose of this section because the Director will not be the authority who is being requested to assume jurisdiction from a competent authority of a convention country. The Director may be referred matters by the department if the department assumes jurisdiction under this section.

Clause 94 amends section 23 to renumber paragraphs and insert a new subsection to provide that one of the actions the department may take after receiving a foreign

personal protection measure for a child and a request from a competent authority from a convention country to take action under the Child Protection Convention, is to refer the matter to the Director for the Director to exercise the Director's jurisdiction under part 2.

This clause also replaces subsection (5) to provide a person interested in an application made by the Director following a referral under subsection (2)(d) or an application made by the department under subsection (2)(e) may apply to a Queensland court to be joined as a party to the proceeding.

Clause 95 amends section 30(1)(c) to insert a new function of the department, which is to refer a matter to the Director to consider applying for a Queensland personal protection measure relating to a child.

This clause also amends section 30(1)(h)(ii) to insert a note, which provides that an application to a Queensland court for a measure that is a child protection order under the *Child Protection Act 1999* may be made by the Director if a referral is made to the Director following consideration by the department as mentioned in paragraph (c). This clause outlines how the Director's functions and powers under the *Director of Child Protection Litigation Act 2016* fit with the functions of the department as the central authority under this Act.

Clause 96 amends schedule 4 to insert a definition for the Director and also amends the definition of *Queensland Authority* to include the Director so far as a personal protection measure relates to a function or power given to the Director under the *Director of Child Protection Litigation Act 2016*.

Division 4 Amendment of Childrens Court Act 1992

Clause 97 provides that division 4 amends the *Childrens Court Act 1992*.

Clause 98 amends section 21A to renumber paragraphs and insert a definition of *chief executive (child safety)*. The clause also amends the definition of *relevant person* to include the chief executive (child safety) where a proceeding is a child protection proceeding under the *Child Protection Act 1999*, and the Public Guardian under the *Public Guardian Act 2014*.

Clause 99 amends section 21D to make reference to the chief executive (child safety) rather than chief executive (child protection) and remove the definition of the chief executive (child protection) and child guardian from this section.

Division 5 Amendment of Family and Child Commission Act 2014

Clause 100 provides that division 5 amends the *Family and Child Commission Act 2014*.

Clause 101 amends schedule 1 to renumber paragraphs and insert new paragraph (d) to provide that the definition of *relevant agency* includes the Director.

Division 6 Amendment of Public Service Act 2008

Clause 102 provides that division 6 amends the *Public Service Act 2008*.

Clause 103 amends schedule 1 to provide that the office of the Director is a public service office and the Director is the head of that office.

Schedule 1 Dictionary

Schedule 1 provides a dictionary of terms used in the *Director of Child Protection Litigation Act 2016*.