



Queensland

# **Child Protection Reform Amendment Act 2016**

**Act No. 24 of 2016**





Queensland

# Child Protection Reform Amendment Act 2016

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## **Child Protection Reform Amendment Act 2016**

**Act No. 24 of 2016**

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**An Act to amend the Child Protection Act 1999 for particular purposes**

**[Assented to 25 May 2016]**

## **The Parliament of Queensland enacts—**

### **1 Short title**

This Act may be cited as the *Child Protection Reform Amendment Act 2016*.

### **2 Commencement**

The following provisions commence on 1 July 2016—

- (a) section 4;
- (b) sections 9 and 10;
- (c) section 22;
- (d) sections 27 to 32;
- (e) section 33, to the extent it inserts new section 273;
- (f) section 34(2), to the extent it inserts the definition *litigation director*.

### **3 Act amended**

This Act amends the *Child Protection Act 1999*.

### **4 Insertion of new s 7A**

Chapter 1, part 2, division 2—  
*insert—*

#### **7A Explanation about entities involved in court applications**

- (1) The scheme under this Act includes the making of court orders to—
  - (a) authorise actions as part of an investigation to assess whether a child is a child in need of protection; or

- 
- (b) ensure a child's protection.
  - (2) Authorised officers appointed by the chief executive are empowered to apply for temporary assessment orders, court assessment orders and temporary custody orders.
  - (3) Police officers are empowered to apply for temporary assessment orders and court assessment orders.
  - (4) Under the *Director of Child Protection Litigation Act 2016*, the litigation director is empowered to apply for child protection orders.
  - (5) The chief executive is responsible for working collaboratively with the litigation director in relation to applications for child protection orders, including by collecting and preparing evidence.

## 5 **Amendment of s 51VA (Review of plan—long-term guardian)**

- (1) Section 51VA(5)—

*omit, insert—*

- (5) Also, at any time, a parent of the child may ask the chief executive to review the case plan if the plan has not been reviewed in the previous 12 months.
- (5A) On a request under subsection (4) or (5)—
  - (a) the chief executive may decide not to review the plan if satisfied—
    - (i) the child's circumstances have not changed significantly since the plan was finalised or, if it has been reviewed, since the most recent review; or
    - (ii) for another reason, it would not be appropriate in all the circumstances; or

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- (b) otherwise, the chief executive must review the plan and prepare—
  - (i) a report about the review under section 51X; and
  - (ii) a revised case plan.
- (2) Section 51VA(6), after ‘subsection (4)’—  
*insert—*  
or (5)
- (3) Section 51VA(7), ‘subsection (6)’—  
*omit, insert—*  
subsection (7)
- (4) Section 51VA(5A) to (7)—  
*renumber* as section 51VA(6) to (8).

**6 Replacement of ch 2, pt 3A, div 6, hdg (Particular evidence inadmissible in criminal proceedings)**

Chapter 2, part 3A, division 6, heading—

*omit, insert—*

**Division 6                      Admissibility or use of  
particular evidence**

**7 Amendment of s 51YA (Evidence of anything said or done at family group meetings)**

- (1) Section 51YA, heading—

*omit, insert—*

**51YA Evidence relating to family group meetings**

- (2) Section 51YA—

*insert—*

- (2) In a child protection proceeding, a person must not be taken to have admitted anything alleged about the person only because the person



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attended or participated in a family group meeting.

- (3) However, if a person attends or participates in a family group meeting, subsection (2) does not affect the admissibility, in a child protection proceeding, of evidence of anything the person says or does at the meeting.

## **8 Amendment of s 51YB (Evidence of anything recorded in a case plan)**

- (1) Section 51YB, heading—

*omit, insert—*

### **51YB Evidence relating to case plans**

- (2) Section 51YB—

*insert—*

- (2) In a child protection proceeding, a person must not be taken to have admitted anything alleged about the person only because the person participated in the development of, or agreed to, a case plan.

## **9 Insertion of new s 53A**

Chapter 2, part 4, division 2—

*insert—*

### **53A Chief executive's role in support of litigation director**

- (1) This section applies if the chief executive refers a child protection matter to the litigation director under the *Director of Child Protection Litigation Act 2016*, section 15.
- (2) The chief executive must work collaboratively with the litigation director in relation to the matter, including by giving the litigation director

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the information, documents and evidence required under that Act.

## 10 Insertion of new s 57A

After section 57—

*insert—*

### 57A Withdrawal of application

- (1) The application may be withdrawn only with the court's leave.
- (2) When seeking the court's leave, the litigation director must give reasons why the order is no longer required.

## 11 Amendment of s 59 (Making of child protection order)

- (1) Section 59(1)(b)—

*insert—*

- (iii) for an order granting long-term guardianship of the child—that includes living arrangements and contact arrangements for the child; and

- (2) Section 59(1)(c)—

*omit, insert—*

- (c) if the making of the order has been contested—
  - (i) a conference between the parties has been held or reasonable attempts to hold a conference have been made; or
  - (ii) because of exceptional circumstances, it would be inappropriate to require the parties to hold a conference; and

*Example of exceptional circumstances—*

The court may be satisfied the risk to the safety of a party if a conference were held

outweighs the potential benefit of holding the conference.

**12 Amendment of s 66 (Court may adjourn proceedings)**

Section 66(4), after ‘proceeding’—

*insert—*

, the chief executive or a person the court has allowed to take part in the proceeding under section 113

**13 Amendment of s 68 (Court’s other powers on adjournment of proceedings for child protection orders)**

Section 68(1)(f), after ‘order’—

*insert—*

under section 110

**14 Insertion of new ss 68A and 68B**

Chapter 2, part 5, division 1, after section 68—

*insert—*

**68A Access to information to prepare a court-ordered report**

- (1) This section applies if, on an adjournment, the Childrens Court makes an order under section 66(4) or 68(1)(a) or (b) requiring that a report be prepared.
- (2) The court may order that a person preparing the report be permitted to view, or be given a copy of, a relevant document or other information before the court.

**68B Interim contact orders**

Section 99MA deals with particular circumstances in which the court may decide to make an order under

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section 67(1)(b) or 68(1)(c) while a tribunal proceeding is suspended.

**15 Amendment of s 69 (Registrar to appoint chairperson and convene conference)**

Section 69(2), ‘made under the *Childrens Court Act 1992*’—  
*omit.*

**16 Amendment of s 72 (Report of conference)**

Section 72(1), ‘made under the *Childrens Court Act 1992*’—  
*omit.*

**17 Amendment of s 99H (Constitution of tribunal)**

Section 99H(6), definition *legally qualified member*—  
*omit.*

**18 Amendment of s 99M (When matter before court)**

(1) Section 99M(2), ‘The president’—  
*omit, insert—*

A legally qualified member of the tribunal

(2) Section 99M(2), ‘the president’—  
*omit, insert—*

the member

(3) Section 99M(3), ‘If the president’—  
*omit, insert—*

If a legally qualified member

(4) Section 99M(3), ‘president must’—  
*omit, insert—*

member must

- 
- (5) Section 99M(4)(a), ‘the president’—  
*omit, insert—*  
a legally qualified member
- (6) Section 99M(5), ‘president’—  
*omit, insert—*  
member
- (7) Section 99M(6), ‘The president’—  
*omit, insert—*  
A legally qualified member
- (8) Section 99M(6), ‘president’s’—  
*omit, insert—*  
member’s

## 19 Insertion of new s 99MA

After section 99M—

*insert—*

### **99MA Suspension of review proceeding if court may deal with contact matter**

- (1) This section applies if—
- (a) the chief executive makes a reviewable decision under section 87(2) about contact between a child and the child’s parents or members of the child’s family; and
  - (b) a review application for the reviewable decision is made; and
  - (c) a proceeding for the review application (the ***review proceeding***) is before the tribunal; and
  - (d) the applicant is also a party to a child protection proceeding relating to the child before the Childrens Court.

- (2) If the chief executive becomes aware the circumstances mentioned in subsection (1) have arisen, the chief executive must notify the tribunal registrar.
- (3) After the tribunal registrar is notified—
  - (a) a legally qualified member of the tribunal must suspend the review proceeding; and
  - (b) the tribunal registrar must notify the parties to the review proceeding and the court registrar of the suspension; and
  - (c) the chief executive must notify the parties to the child protection proceeding of the suspension.
- (4) While the review proceeding is suspended, the court may make an order that the subject matter of the reviewable decision may be dealt with by the tribunal in the review proceeding.
- (5) The court registrar must—
  - (a) if the court makes an order under subsection (4)—give the tribunal registrar a copy of the order; or
  - (b) if the court adjourns the child protection proceeding and makes an interim contact order—give the tribunal registrar a copy of the interim contact order; or
  - (c) if the court decides the child protection proceeding without making an order under subsection (4) or an interim contact order—notify the tribunal registrar of that action.
- (6) If the tribunal registrar is notified that the court has acted in a way mentioned in subsection (5)(a) or (c)—
  - (a) a legally qualified member of the tribunal must cancel the suspension of the review proceeding; and

- (b) the tribunal registrar must notify the parties to the review proceeding that the proceeding is no longer suspended.
- (7) If the tribunal registrar is notified that the court has made an interim contact order—
- (a) a legally qualified member of the tribunal must dismiss the review application; and
- (b) the tribunal registrar must notify the parties to the review proceeding of the dismissal.
- (8) This section does not affect the tribunal’s power to dismiss the review application apart from this section.
- (9) In this section—
- court registrar*** means the registrar of the Childrens Court.
- interim contact order*** means an order under section 67(1)(b) or 68(1)(c) about the subject matter of the reviewable decision mentioned in subsection (1)(a).
- party***, to a child protection proceeding, includes—
- (a) a separate representative for the child in the proceeding; and
- (b) a person taking part in the proceeding under an order in force under section 113.
- tribunal registrar*** means the principal registrar under the QCAT Act.

## 20 Amendment of s 99V (Children giving evidence or expressing views to tribunal)

Section 99V(2)—

*insert—*

- (e) the public guardian.

**21 Amendment of s 108 (Right of appearance and representation)**

Section 108(1)—

*omit, insert—*

- (1) In a proceeding on an application for an order for a child—
  - (a) the child may appear in person or be represented by either or both of the following—
    - (i) a lawyer engaged as the child’s direct representative to act on the child’s instructions;
    - (ii) a lawyer appointed under section 110 to act in the child’s best interests; and
  - (b) the child’s parents and other parties may appear in person or be represented by a lawyer.

**22 Omission of s 108A (Right of appearance of departmental coordinators)**

Section 108A—

*omit.*

**23 Amendment of s 108C (Public guardian’s role at hearing)**

Section 108C(2)—

*omit, insert—*

- (2) The public guardian’s role in the proceeding is not diminished even if there is a direct representative or separate representative for the child.



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**24 Replacement of s 110 (Separate legal representation of child)**

Section 110—

*omit, insert—***110 Appointment of a separate representative**

- (1) If, in a child protection proceeding, the Childrens Court considers it is necessary in the child's best interests for the child to be separately represented by a lawyer, the court may—
  - (a) order that the child be separately represented by a lawyer (the child's *separate representative*); and
  - (b) make any other orders it considers necessary to secure the child's separate legal representation.
- (2) Without limiting subsection (1), the court must consider making an order for the child to have a separate representative if the proceeding concerns an application that is contested by the child's parents or opposed by the child.
- (3) The rules of court may prescribe matters that the court must consider when deciding whether to make an order for the child to have a separate representative.
- (4) If a separate representative is appointed, he or she must—
  - (a) to the extent that is appropriate, taking into account the child's age and ability to understand—
    - (i) meet with the child; and
    - (ii) explain the separate representative's role; and
    - (iii) help the child take part in the proceedings; and

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- (b) as far as possible, present the child's views and wishes to the court.
- (5) The separate representative must act in the child's best interests regardless of any instructions from the child.
- (6) The separate representative is not a party to a proceeding on the application but—
  - (a) must do anything required to be done by a party; and
  - (b) may do anything allowed to be done by a party.
- (7) The parties to the proceeding must act in relation to the proceeding as if the separate representative were a party to the proceeding.
- (8) The separate representative's role ends when—
  - (a) the application is decided or withdrawn; or
  - (b) if there is an appeal in relation to the application—the appeal is decided or withdrawn.

**25 Replacement of s 113 (Court may hear submissions from non-parties to proceeding)**

Section 113—

*omit, insert—*

**113 Court may allow non-parties to take part in proceedings**

- (1) This section applies in relation to a proceeding on an application for an order for a child.
- (2) On application by a person who is not a party, the court may, by order, allow the person to take part in the proceeding by doing all or some of the things that a party is or may be allowed to do.
- (3) Before deciding the application, the court must—

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- (a) give the other parties a reasonable opportunity to make submissions about the person's participation; and
  - (b) consider—
    - (i) the extent to which the person may be able to inform the court about a matter relevant to the proceeding; and
    - (ii) the person's relationship with the child.
  - (4) An order allowing the person to take part in the proceeding—
    - (a) must state—
      - (i) how the person may take part; and
      - (ii) whether the participation is allowed until the proceeding ends or only for a stated part of the proceeding; and
    - (b) may be subject to conditions; and
    - (c) may require the person to do a thing that a party is or may be required to do; and
    - (d) may provide that a stated provision of this Act, or all provisions, apply in relation to the person as if the person were a party.
  - (5) This Act applies in relation to the person, as if the person were a party, to the extent provided in the order.
  - (6) The person may be represented by a lawyer for the purpose of taking part in the proceeding.

## **26 Replacement of s 115 (Hearing of applications together)**

Section 115—

*omit, insert—*

### **115 Hearing of applications together**

- (1) The Childrens Court may hear 2 or more applications for orders together if the court considers it is in the interests of justice to do so.
- (2) Subsection (1) applies even though the parties, or all of the parties, to the proceedings are not the same.
- (3) The court may decide to act under subsection (1), at any time before the applications are decided, on its own initiative or on the application of a party to the proceeding.

### **27 Amendment of ch 6, pt 6, hdg (Confidentiality)**

Chapter 6, part 6, heading, after ‘Confidentiality’—

*insert—*

**and disclosure**

### **28 Amendment of s 187 (Confidentiality of information obtained by persons involved in administration of Act)**

Section 187(3)—

*insert—*

- (d) to the extent necessary to protect a person from a serious and imminent risk to the person’s safety or health.

### **29 Amendment of s 188 (Confidentiality of information given by persons involved in administration of Act to other persons)**

Section 188(3)—

*omit, insert—*

- (3) However, the receiver may, subject to section 186, use or disclose the information or give access to the document to someone else to the

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extent that the use, disclosure or giving of access is—

- (a) authorised by the chief executive under section 189B; or
- (b) for purposes directly related to a child's protection or wellbeing; or
- (c) necessary to protect a person from a serious and imminent risk to the person's safety or health; or
- (d) for purposes directly related to obtaining information requested by the chief executive under section 246C; or
- (e) otherwise required or permitted by law.

**30 Amendment of ch 6, pt 6, div 3, hdg (Confidentiality in relation to proceedings)**

Chapter 6, part 6, division 3, heading, after 'Confidentiality'—  
*insert—*

**and disclosure**

**31 Insertion of new ss 189C–189E**

Chapter 6, part 6, division 3—  
*insert—*

**189C Litigation director's duty of disclosure**

- (1) This section applies in relation to a proceeding for a child protection order.
- (2) The litigation director has a duty to disclose, to each other party, all documents in the litigation director's possession or control that are relevant to the proceeding.
- (3) The duty continues until the proceeding is decided.
- (4) The duty applies subject to section 191.

- (5) If the litigation director does not disclose a document to a party on a ground mentioned in section 191(2), the litigation director must give the party a written notice stating—
  - (a) the ground for the non-disclosure; and
  - (b) that the litigation director is not required to disclose the document to the party other than as required under section 191; and
  - (c) that the party may apply to the court for an order under section 191 that it be disclosed.
- (6) Nothing in this section—
  - (a) requires disclosure that is unlawful under this or another law; or
  - (b) affects a person's right to anything under another law.
- (7) For this section, a reference to a document in the litigation director's possession or control is taken to include a document in the chief executive's possession or control.

*Note—*

The *Director of Child Protection Litigation Act 2016* requires the chief executive to give relevant documents to the litigation director.

- (8) The rules of court may make provision about disclosure under this section, including the time by which a document must be disclosed.

### **189D Consequences of non-disclosure**

- (1) Failure to comply with section 189C in a proceeding does not affect the validity of the proceeding.
- (2) If the litigation director does not disclose a document under section 189C, the litigation director must not tender the document, or adduce evidence comprising information contained in

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the document, in the proceeding without the court's leave.

**189E Disclosure or use of documents or information disclosed in a proceeding**

- (1) This section applies to a document, or information contained in a document, disclosed by the litigation director under section 189C to a party to a proceeding.
- (2) A person must not, directly or indirectly, disclose or make use of the document or information other than for a purpose connected with the proceeding.

Maximum penalty—100 penalty units or 2 years imprisonment.

**32 Replacement of s 191 (Refusal of disclosure of certain information during proceeding)**

Section 191—

*omit, insert—*

**191 Refusal to disclose particular documents or information**

- (1) Subsection (2) states the grounds on which—
  - (a) the litigation director may refuse to disclose a document to a party to a proceeding under section 189C; or
  - (b) another person who is or was engaged in the administration of this Act may refuse to disclose to a court or tribunal in a proceeding, or to a party to a proceeding, information obtained under or in relation to the administration of this Act.
- (2) The litigation director or other person may refuse to disclose the document or information if—

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- (a) it is the subject of legal professional privilege; or
- (b) it is a communication between—
  - (i) a public service employee employed in the department; and
  - (ii) the litigation director, a member of the litigation director's staff or a lawyer engaged under the *Director of Child Protection Litigation Act 2016*, section 11; or
- (c) its disclosure would be likely to endanger a person's safety or psychological health; or
- (d) it identifies or is likely to identify its source and identification of the source is likely to prejudice the achievement of the purpose of this Act; or
- (e) it is a record of confidential therapeutic counselling and the person to whom it relates does not consent to its disclosure; or
- (f) its disclosure could reasonably be expected to—
  - (i) prejudice the investigation of a contravention or possible contravention of the law in a particular case; or
  - (ii) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; or
  - (iii) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
- (g) the litigation director or other person reasonably believes—



- (i) it is or contains personal information that is not materially relevant to the proceeding; or
  - (ii) its disclosure would be contrary to the public interest; or
  - (iii) there is other good reason for not disclosing it, having regard to the best interests of a child who is a subject of the proceeding; or
- (h) the party already has the document, or a copy of the document, or the information.
- (3) The litigation director or other person must refuse to disclose a record mentioned in subsection (2)(e) unless the litigation director or other person considers disclosure is necessary to prevent or lessen a risk of harm to a child or serious risk to the health or safety of anyone else.
- (4) Despite subsections (2) and (3), on the application of a party to the proceeding, the court or tribunal may order the disclosure of the document or information if satisfied—
  - (a) it is materially relevant to the proceeding; and
  - (b) its disclosure is, on balance, in the public interest.
- (5) The court or tribunal may order the disclosure on the conditions it considers appropriate, including conditions to ensure the best interests of a child who is a subject of the proceeding and the privacy and safety of any individual.
- (6) To enable the court or tribunal to make a decision about the disclosure of the document or information, the litigation director or other person must disclose it to the judicial officers of the court or tribunal.

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- (7) In deciding whether or not the document or information should be disclosed, the judicial officers must deal with it in a way that ensures it is not disclosed to anyone else.
- (8) If the court or tribunal refuses to order disclosure of the document or information, the judicial officers must return anything produced to them under subsection (6).
- (9) The rules of court may make provision about a matter under this section.
- (10) In this section—  
*judicial officers*, of a court or tribunal, means the person or persons constituting the court or tribunal.

### **33 Insertion of new ch 9, pt 10**

Chapter 9—

*insert—*

## **Part 10 Transitional provisions for Child Protection Reform Amendment Act 2016**

### **272 Suspension of current tribunal proceedings dealing with contact matter**

Section 99MA does not apply in relation to a review proceeding mentioned in that section started before the commencement.

### **273 Duty of disclosure in current proceedings**

Section 189C applies in relation to a proceeding for a child protection order even if the proceeding started before the commencement.

**34 Amendment of sch 3 (Dictionary)**

(1) Schedule 3, definition *registrar*—

*omit.*

(2) Schedule 3—

*insert—*

***direct representative*** means a lawyer mentioned in section 108(1)(a)(i).

***finalised***, for a case plan, means recorded in the approved form and endorsed by the chief executive.

***legally qualified member*** see the QCAT Act, schedule 3.

***litigation director*** means the Director of Child Protection Litigation under the *Director of Child Protection Litigation Act 2016*.

***registrar***—

- (a) for chapter 2A—see section 99B; or
- (b) of the Childrens Court held at a place, includes the clerk of the Magistrates Court at the place.

***review application***, for chapter 2A, see section 99B.

***rules of court*** means rules of court made under the *Childrens Court Act 1992*.

***separate representative***, for a child—

- (a) for chapter 2A—see section 99Q(3); or
- (b) for chapter 3—see section 110(1)(a).

***support person***, for chapter 2A, see section 99B.