Child Protection Reform Amendment Bill 2016

Explanatory Notes

Short title

The short title of the Bill is the Child Protection Reform Amendment Bill 2016 (the Bill).

Policy objectives and the reasons for them

On 1 July 2013, the Queensland Child Protection Commission of Inquiry (the Commission of Inquiry) released its report – *Taking Responsibility: A Road Map for Queensland Child Protection*. The Commission of Inquiry 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.

The Palaszczuk Government committed to implement the recommendations of the Commission of Inquiry as part of the child and family reform agenda.

The Bill implements ten specific court-related recommendations of the Commission of Inquiry. The Bill aims to achieve better outcomes for families and children involved in child protection court proceedings, and generally improve the functioning of the Childrens Court and the quality of applications for a child protection order.

The Bill also implements a recommendation made by the Court Case Management Committee (CCMC) that will require the Director of Child Protection Litigation (litigation director), established under the Director of Child Protection Litigation Bill 2016, to seek leave of the court to withdraw an application for a child protection order. The CCMC was established as a result of recommendation 13.1 of the Commission of Inquiry. The CCMC is chaired by the President of the Childrens Court and includes the Chief Magistrate, Deputy Chief Magistrate and representatives from the Queensland Law Society, Legal Aid Queensland, Crown Law, the Department of Communities, Child Safety and Disability Services (DCCSDS) and the Department of Justice and Attorney-General (DJAG).

The Bill will reform court processes to: ensure the voices of children and their families are heard in decisions that impact on them, minimise delay, improve the quality of evidence presented to support applications for child protection orders, and improve decision making because the court will have all the relevant information it needs to make a decision. The Bill also clarifies the role of various entities in applying for orders under the *Child Protection Act 1999* (CPA) and facilitates the creation of the Office of the Child and Family Official Solicitor (OCFOS) within DCCSDS.

The Bill is complemented by the Director of Child Protection Litigation Bill 2016 which implements the Commission of Inquiry's recommendation to establish an independent statutory agency within the Justice portfolio to make decisions about which matters will be the subject of an application for a child protection order and what type of child protection order will be sought, as well as litigate the applications in the Childrens Court (recommendation 13.17).

The *Childrens Court Rules 1997* will also be revised as a result of this Bill and the Director of Child Protection Litigation Bill 2016.

Achievement of policy objectives

The Bill amends the CPA to:

- clarify the role of the various entities that may be involved in applying for orders under the CPA;
- allow a parent to request DCCSDS to review a long-term guardianship case plan in certain circumstances;
- clarify that a parent's attendance at a family group meeting or agreement to a case plan cannot be used against them in court proceedings;
- require the litigation director to seek leave of the court to withdraw an application for a child protection order;
- ensure the court is satisfied that living and contact arrangements have been included in a child's case plan prior to making a long-term guardianship order;
- allow the court to dispense with the requirement to hold a court-ordered conference in exceptional circumstances;
- require the Queensland Civil and Administrative Tribunal (QCAT) to suspend applications for the review of contact arrangements and notify the Childrens Court and all parties, where a child protection proceeding is also on foot in the Childrens Court;
- clarify the role of separate representatives;
- give the court discretion to allow significant people in a child's life to participate in proceedings;
- allow the court to join and hear two or more child protection proceedings if it is in the best interests of justice to do so; and
- introduce a general duty of disclosure on the litigation director in child protection proceedings.

Office of the Child and Family Official Solicitor – recommendation 13.16

The Commission of Inquiry recommended that DCCSDS establish an internal office of the Official Solicitor to provide early and more independent legal advice to DCCSDS staff and prepare briefs of evidence when a child protection order should be sought.

OCFOS will be established administratively within DCCSDS. However, the Bill includes a new section 7A of the CPA to clarify the role of various entities that may be involved in applying for different orders under the CPA. DCCSDS will retain responsibility for applying for assessment orders and temporary custody orders, the litigation director will have responsibility for applying for child protection orders and the chief executive of DCCSDS

will work collaboratively with the litigation director in relation to applications for child protection orders.

Review of long–term guardianship case plans – recommendation 13.25

The Commission of Inquiry recommended amendments to the CPA to include a reviewable decision where the DCCSDS refuses a request to review a long-term guardianship order by a child's parent or the child.

Currently, parents or children may apply directly to the court if they wish to seek a variation or revocation of a long-term guardianship order.

Under section 51VA of the CPA, where a child is subject to a long-term guardianship order to someone other than the chief executive, the child or their guardian may ask DCCSDS to review the child's case plan at any time. However, there is no ability for a parent to request DCCSDS to review a case plan where their child is subject to an order granting long-term guardianship to someone other than the chief executive.

The Bill addresses this by amending section 51VA to allow a parent to request DCCSDS review a case plan when their child is subject to a long-term guardianship order to someone other than the chief executive.

In order to ensure the best interests of the child, the amendments place restrictions on when the parents may apply for a review, by stating that the parents may only request a review if the case plan has not been reviewed in the previous 12 months. This is important to ensure stability and prevent disruption to a child's life. If a request is received, DCCSDS may decide not to review a case plan on the basis that the child's circumstances have not changed significantly since the plan was finalised or last reviewed or, if for another reason, DCCSDS considers it would not be appropriate.

Decisions of the chief executive to not review a case plan under section 51VA are reviewable decisions under schedule 2 of the CPA. Therefore, if DCCSDS decides not to review the case plan, the parent will be able to apply to QCAT for an administrative review of the refusal decision.

Attendance at family group meetings and agreement to case plans – recommendation 13.20

The Commission of Inquiry recommended that the CPA be amended to provide that the participation by a parent in a family group meeting and their agreement to a case plan cannot be used as evidence of an admission by them of any of the matters alleged against them.

The purpose of a family group meeting is to provide family-based responses to a child's protection and care needs, and to ensure an inclusive process for planning and making decisions relating to a child's wellbeing and protection and care needs, including developing a case plan. Typically, a case plan will set out a child's protection and care needs, the needs of the child's family, what will be done to help the child and the family, who will be helping the child and the family and when the child and family will receive help.

The amendments to sections 51YA and 51YB in the Bill make it clear that someone's mere attendance at a family group meeting and their participation in the development of, or

agreement to a case plan, cannot be used as an admission of anything alleged against them in child protection proceedings.

As family group meetings are a means of assessing and monitoring family risk factors, the actual information relayed in family group meetings may be used as evidence in child protection proceedings where it has informed an assessment that a child is in need of protection. For this reason, the amendments state that anything said or done in a family group meeting can still be used as evidence.

Withdrawing application for a child protection order – recommendation of CCMC

There is currently no specific legislation, rule or practice direction about the process for withdrawing an application for a child protection order. The CCMC considered this issue and recommended amendments to make it clear that the withdrawal of a child protection application requires leave of the court.

The Bill includes proposed new section 57A which provides that the litigation director may only withdraw an application for a child protection order with the leave of the court. When submitting an application for leave to withdraw an application, the litigation director will be required to give the court reasons why the order is no longer required.

Court-ordered conferencing – recommendation 13.6

The Commission of Inquiry recommended that the CCMC propose amendments to the CPA to provide a legislative framework for court-ordered conferencing at critical and optimal stages during child protection proceedings.

The purpose of court-ordered conferencing is to decide the matters in dispute between the parties to Childrens Court child protection proceedings, or try to resolve the matters in dispute. Under section 59 of the CPA, before making a child protection order in contested proceedings, the Childrens Court must be satisfied that a conference has been held between the parties or reasonable attempts to hold a conference have been made.

In considering the Commission of Inquiry recommendation, the CCMC found that there may be some circumstances where the ordering of a court-ordered conference is not appropriate. Accordingly, the CCMC recommended that the court should have the discretion under the CPA to dispense with the requirement to order a conference in contested proceedings, if it would be inappropriate to hold a conference. The CCMC also recommended further guidance for court-ordered conferences should be included in the Childrens Court Rules, Bench Book and Practice Directions.

Court-ordered conferences play an important role in facilitating the resolution of cases and preventing the need to proceed to a full court hearing. For this reason, the amendments to section 59 of the CPA in the Bill will only allow the court to dispense with the requirement to hold a conference in exceptional circumstances, for example, where there are concerns about the safety of a party if a conference were held and the court is satisfied this outweighs the potential benefit of holding the conference.

Contact and living arrangements for children under long-term guardianship orders – recommendation 13.24

The Commission of Inquiry recommended that the CCMC examine whether the Childrens Court, in making a long-term guardianship order, can feasibly make an order for the placement and contact arrangements for the child. The CCMC considered the issues and concluded it is not feasible to propose amendments to the CPA that would allow the Childrens Court to make orders for placement and contact when making an order for the long-term guardianship of a child to the chief executive. In order to protect the safety and wellbeing of a child, it is important that contact and placement decisions can be altered promptly by DCCSDS in response to a change in circumstances. This would not be possible if the matter had to return to court for a new order each time new arrangements were required.

In its consideration of this recommendation the CCMC recognised the important role that placement and contact arrangements play for children in out-of-home care and their families, and recommended amending the CPA to make it clear that when considering the appropriateness of a case plan before making a long-term guardianship order, the court must be satisfied it includes proposed placement and contact arrangements that are appropriate for the child at the time of making the order.

During consultation on the Bill, it was identified that if the court had to make decisions about the appropriateness of contact and living arrangements, this could impact on QCAT's ability to review the contact or placement decision as a reviewable decision under schedule 2 of the CPA. This could have the unintended consequence of removing an aggrieved person's right to request a review of a departmental decision by QCAT.

As a result, the Bill amends section 59 of the CPA to clarify that when making an order for long-term guardianship, the Childrens Court must merely be satisfied that living and contact arrangements are included in the child's case plan. As with any child protection order, the Childrens Court must be satisfied there is a case plan for the child that is appropriate for meeting the child's assessed protection and care needs.

Transfer of proceedings from QCAT to the Childrens Court – recommendation 13.28

The Commission of Inquiry recommended amendments to the CPA to allow the Childrens Court to deal with the application for a review of a contact or placement decision made to QCAT if it relates to a current proceeding before the Childrens Court. The Commission of Inquiry identified if child protection proceedings are underway in the Childrens Court and at the same time, QCAT is dealing with an application to review a decision about contact or placement arrangements for the child, this can lead to confusion for the parties and cause delay. Submissions made to the Commission of Inquiry argued it is better for the child that as few issues be left unresolved in a single proceeding as possible, and that timely orders are made.

The Bill includes a new section 99MA that will require QCAT to suspend its review of a contact decision by DCCSDS if there are child protection proceedings before the Childrens Court.

The Childrens Court may deal with the matter by making an interim contact order; or order that the matter be dealt with by QCAT; or not deal with the matter prior to making its final decision regarding the application for a child protection order. This allows the Court the flexibility to deal with the matter in the most appropriate way, based on the circumstances of

the individual case. This amendment facilitates a more efficient process by avoiding concurrent proceedings about the same matter being dealt with in two separate jurisdictions.

The amendments only relate to the review of contact decisions and do not apply to the review of placement decisions. This is because the Childrens Court does not have jurisdiction to make placement decisions. For the reasons noted by the CCMC in its consideration of recommendation 13.24, it is important that placement decisions remain an administrative decision of DCCSDS to ensure they may be altered promptly in response to a change in circumstances to secure the safety and wellbeing of the child.

Separate legal representation – recommendation 13.14

The Commission of Inquiry recommended amendments to the CPA to provide clarity about when the Childrens Court should exercise its discretion to appoint a separate legal representative for a child and also about what the separate legal representative is required to do.

The amendment to section 108 of the CPA in the Bill clarifies that in a child protection proceeding, the child may appear in person or be represented by either or both a direct representative (who acts on the child's instructions) or a separate representative appointed under section 110 of the CPA to act in the best interests of the child. The Public Guardian may also be involved in the proceeding.

The Bill replaces existing section 110 of the CPA and includes guidance about the role of the separate representative and clearly sets out their duties. The new section 110 requires a separate representative to meet with the child, explain their role to the child, and help the child take part in proceedings. As far as possible, the separate representative is to present the child's views and wishes to the court. However, the separate representative must act in the child's best interests, regardless of any instructions from the child. These amendments aim to strengthen the representation of children and young people in proceedings for a child protection order by ensuring a separate representative has comprehensive knowledge of the child's case

Participation of significant parties in proceedings – recommendation 13.19

The Commission of Inquiry recommended amendments to the CPA to give the Childrens Court discretion to allow members of the child's family or another significant person in the child's life to be joined as a party to the proceedings where the court agrees the person has sufficient interest in the outcome of the proceedings. The Commission also recommended that these parties should have the right to be legally represented.

Section 113 of the CPA currently allows the Childrens Court to hear submissions from a non-party to a child protection proceeding, including a member of the child's family or anyone else the court considers is able to inform it on any matter relevant to the proceeding.

The amendments in the Bill expand the extent to which the court may allow an individual to take part in proceedings under section 113. The amendments clarify that upon application by the person, the court has discretion to allow the person to do all or some of the things a party to proceedings can do. The extent of the person's participation in proceedings will be determined by the court on a case-by-case basis. The court will be required to make orders about the way and extent to which the individual can take part in proceedings, for example,

whether the participation is only for part of the proceedings or for the entire proceedings. The person will be able to be represented by a lawyer.

In deciding whether a non-party may participate, and also determining the extent to which they may participate, the court must consider the extent to which the person may be able to inform the court about a matter relevant to the proceedings and the person's relationship with the child. So the court can properly determine whether and how a person can participate in proceedings, the amendments provide for other parties to be given a reasonable opportunity to make submissions about the person's participation.

Currently, on adjournment of proceedings under section 66, the Court is able to give directions to parties to proceedings about things to be done during the adjournment. The amendments to section 66 in the Bill will also allow the court to give directions to a person the court has allowed to participate in proceedings as a non-party under section 113.

Joining of child protection proceedings – recommendation 13.4(2)

The Commission of Inquiry recommended amendments to the CPA to allow the court to transfer and join proceedings relating to siblings, if the court considers that having the matters dealt with together will be in the best interests of justice.

Currently, under section 114 of the CPA, the court may transfer proceedings to a court at another place on the court's own initiative or upon application by a party to the proceedings. Section 115 of the CPA allows the court to hear two or more applications for child protection orders together on the request of a party to proceedings. However, the court does not have the ability to join and hear applications for two or more orders on its own initiative.

The amendments to section 115 in the Bill will allow the Childrens Court to join and hear two or more applications on its own initiative, if it is in the best interests of justice to do so. The amendment is not specifically limited to siblings to provide the court with maximum flexibility to deal with the diversity of family relationships that the court may have to consider.

Duty of disclosure in proceedings for a child protection order – recommendation 13.5

The Commission of Inquiry recommended that the CCMC review the disclosure obligations and propose amendments to the CPA to introduce a continuing duty of disclosure on DCCSDS with appropriate safeguards.

The CCMC considered this recommendation and recommended amendments to the CPA to impose a duty of disclosure in proceedings for a child protection order.

The Bill inserts new sections 189C to 189E to address these recommendations. The proposed new section 189C imposes a continuing duty on the litigation director, who will be the applicant in proceedings for a child protection order, to disclose all documents relevant to the proceedings to the other parties. The chief executive of DCCSDS will have a corresponding duty to provide all information relevant to a proceeding to the litigation director under the Director of Child Protection Litigation Bill 2016.

Given the sensitive nature of the information being disclosed, a new section 189E makes it an offence for a party to directly or indirectly disclose or make use of a document other than for

a purpose connected to the proceeding. The maximum penalty for this offence is 100 penalty units or two years imprisonment.

The Bill also replaces existing section 191 to include grounds upon which the litigation director may refuse to disclose documents, such as where disclosure is subject to legal professional privilege, is likely to endanger a person's safety or psychological health, or where disclosure could reasonably be expected to prejudice an investigation.

If the document is a record of confidential therapeutic counselling, the litigation director will be unable to disclose it without the consent of the person to whom it relates, unless the 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 (this is dealt with in section 191(2)(e) and 191(3)). It is important that people are not discouraged from attending counselling and that their right to privacy is protected. For this reason, the Bill ensures that these records cannot generally be disclosed without consent. However, it is also acknowledged that overriding this right to privacy may be necessary to protect a child or someone else from a serious risk of harm.

The duty of disclosure will facilitate a fairer process in proceedings for a child protection order, by allowing parties to be aware of all the evidence the litigation director will rely on to support its application for a child protection order.

Alternative ways of achieving policy objectives

The proposed legislation is essential to commence implementation of key recommendations made by the Commission of Inquiry. There are no alternative ways of achieving the reforms.

Estimated cost for government implementation

The implementation of the amendments in the Bill is administrative in nature and will not have any direct financial implications.

OCFOS will be established administratively within DCCSDS and is fully funded.

Consistency with fundamental legislative principles

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

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

Clause 28 – Confidentiality of information obtained by persons involved in administration of Act (amendment of section 187) and Clause 29 – Confidentiality of information given by persons involved in administration of Act to other persons (amendment of section 188)

Clauses 28 and 29 of the Bill amend sections 187 and 188 of the CPA to allow confidential information to be used, disclosed or made accessible to the extent necessary to protect a person from a serious and imminent risk to their safety or health.

Allowing the use or disclosure of, or provision of access to, confidential information may impact on an individual's right to privacy and therefore may be a departure from the principle that sufficient regard be given to the rights and liberties of individuals under section 4(2) of the *Legislative Standards Act 1992*.

However, this may be necessary in situations where a serious and imminent risk to a person's safety or health is identified. Unless the risk reaches that threshold, the information will not be able to be lawfully used, disclosed or made accessible to someone else, under the CPA and the existing penalties will apply.

Clause 31 – Litigation director's duty of disclosure in child protection proceedings (new section 189C)

Clause 31 of the Bill imposes a duty on the litigation director to disclose all documents relevant to the proceeding to other parties.

The documents that will be disclosed are likely to contain highly sensitive information that may impact on an individual's right to privacy. However, the disclosure provisions that have been included are considered necessary to allow for procedural fairness in child protection proceedings, so that parties are aware of the evidence which the litigation director will be relying on during the proceedings.

Clause 32 outlines the grounds upon which the litigation director may refuse to disclose a document. One of the grounds upon which the litigation director may refuse to disclose a document is that it contains personal information that is not materially relevant to the proceeding.

Any personal information about third parties to proceedings and notifiers under the CPA will be redacted prior to disclosure. In addition, parties to proceedings (including the child or children) will be provided with an opportunity to request that certain information in the documents be redacted, for example, home addresses.

This clause (section 191(5)) outlines that a court or tribunal may place conditions on disclosure to ensure the best interests of a child and the privacy and safety of any individual.

Clause 31 – Offence of disclosing or using documents disclosed in proceedings (new section 189E)

Clause 31 of the Bill creates a new offence which requires that a person must not disclose or make use of a document or other information disclosed under section 189C, other than for a purpose connected with a proceeding for a child protection order.

As the documents being disclosed are likely to contain highly sensitive information, it is important that parties to the proceedings do not use them for purposes other than the proceedings, therefore protecting the privacy of families and children to the greatest extent possible. The maximum penalty of 100 penalty units or 2 years imprisonment is consistent with the maximum penalties for similar offences in sections 187 and 188 of the CPA.

Clause 32 – Refusal to disclose particular documents or information (revised section 191)

Clause 32 of the Bill outlines the grounds upon which the litigation director may refuse to disclose a document. This clause outlines that if the document is a record of confidential therapeutic counselling, the document can only be disclosed with the consent of the person to whom the record relates (section 191(2)(e)). However, if disclosure of the record is necessary to prevent or lessen a risk of harm to a child or serious risk to the health or safety of anyone else, the record may be disclosed without consent (section 191(3)).

Disclosing records of confidential therapeutic counselling without the consent of the person to whom the record relates may impact on an individual's right to privacy. However, this is considered appropriate if disclosure of the document is necessary to prevent risk of harm to a child or serious risk to the health or safety of someone else.

Consultation

The Commission of Inquiry undertook extensive community consultation in forming recommendations, including those which are being implemented by the Bill. In developing policy options for the legislative amendments, DCCSDS and DJAG conducted targeted consultation with key child protection and legal stakeholders.

Exposure drafts of the Bill and the Director of Child Protection Litigation Bill 2016 were released for consultation with key stakeholders including: 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. Stakeholders were invited to provide comment on the draft Bill. Consultation sessions were conducted with some key stakeholders to facilitate more informed discussion and written feedback.

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 or territory.

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

Notes on provisions

Part 1 Preliminary

Clause 1 states that, when enacted, the Bill will be cited as the *Child Protection Reform Amendment Act 2016*.

Clause 2 provides that certain provisions commence on 1 July 2016. These are provisions which relate to the Director of Child Protection Litigation Bill 2016, which will commence on 1 July 2016. All other provisions in the Bill commence on assent.

Clause 3 provides that the Act amends the *Child Protection Act 1999*.

Clause 4 inserts a new section 7A and is an explanatory provision outlining the respective roles of entities involved in court applications relevant to the protection of children. This Bill is complemented by the Director of Child Protection Litigation Bill 2016.

Clause 5 amends section 51VA to allow a parent of a child to request the chief executive to review a case plan for the child who is the subject of a long-term guardianship to someone other than the chief executive. As reviewing a case plan may impact on the stability of a child, limitations have been included so that the parent can only request a review if the case plan has not already been reviewed within the previous 12 month period.

Once the parent has made the request, the chief executive may decide not to review a case plan if the child's circumstances have not significantly changed since the last review or for another reason a review would not be appropriate. The intention of this subsection is to allow the chief executive to consider the value of reviewing the case plan, and prevent unnecessary disruption to a child's stability. All decisions under section 51VA to refuse to review a case plan are reviewable decisions under Schedule 2 of the CPA. Schedule 2 defines an aggrieved person broadly to cover any person who makes a request for review. Therefore Schedule 2 does not require amendment.

Clause 6 amends the heading of chapter 2, part 3A, division 6 (Particular evidence inadmissible in criminal proceedings) to "Admissibility or use of particular evidence" as the division will relate to the use of evidence in child protection and criminal proceedings.

Clause 7 amends the heading of section 51YA (Evidence of anything said or done at family group meetings) to "Evidence relating to family group meetings" and includes new subsections (2) and (3). Subsection (2) provides that a person's mere attendance or participation in a family group meeting cannot be used as evidence, in a child protection proceeding, of an admission of any allegations about the person. The subsection has been included to encourage attendance at family group meetings. However, given that disclosures of harm, or admissions of having perpetrated abuse, may be made at a family group meeting, subsection (3) has been included to clarify that anything that a person says or does at the meeting is still admissible as evidence in a child protection proceeding.

Clause 8 amends the heading of section 51YB (Evidence of anything recorded in a case plan) to "Evidence relating to case plans" and inserts a new subsection (2) which provides that in a

child protection proceeding, a person's participation in the development of, or agreement to a case plan, must not be taken as an admission by them of any allegations about them. Case plans play an important role in identifying the risks and protective factors for the child and their family, and may outline a plan for how risk factors are to be addressed. For this reason, a person's compliance or non-compliance with a case plan must still be able to be used as evidence in a proceeding.

Clause 9 inserts a new section 53A "Chief executive's role in support of litigation director" and explains the collaborative working relationship between the chief executive and the litigation director. This clause relates to requirements in the Director of Child Protection Litigation Bill 2016 for ongoing collaboration between the chief executive and the litigation director throughout the court process in order to achieve the best possible outcomes for children and families. Collaboration may include, for example, giving the litigation director information, documents and evidence required under the Director of Child Protection Litigation Bill 2016 and consulting with the litigation director when necessary.

Clause 10 inserts a new section 57A "Withdrawal of application" outlining a process to be followed when the litigation director seeks to withdraw an application for a child protection order. Given that at the time the order was applied for, the applicant was satisfied that the order was necessary to meet the child's protection needs, there is a requirement for the litigation director to provide reasons to the court as to why the order is no longer required when it is seeking leave to withdraw the application. It is anticipated the reasons will explain why the child is no longer in need of protection, or may outline how the child's protection needs issues are being dealt with. The court, prior to granting leave, must be satisfied that the order is no longer required.

This provision only relates to child protection orders and does not relate to temporary assessment orders, court assessment orders or temporary custody orders.

Clause 11 amends section 59 (Making of child protection order) by inserting subsection (1)(b)(iii) to clarify that prior to making an order granting long-term guardianship of the child, the court must be satisfied that living and contact arrangements for the child are included in the case plan. This section applies to an order granting long-term guardianship of the child to either the chief executive or to someone other than the chief executive.

Currently under section 59(1)(b) the court, prior to granting a child protection order, must be satisfied the child has a current case plan and that the case plan is appropriate for meeting the child's assessed protection and care needs. The amendments mean that when the order is for long-term guardianship, the court must specifically be satisfied that the living and contact arrangements for the child are included in the case plan. Under this provision, the court is not required to assess the appropriateness of the living and contact arrangements as both are administrative decisions of the chief executive.

Clause 11 also amends section 59 by replacing subsection (1)(c) to allow the court to dispense with the requirement for a court-ordered conference in contested proceedings, in exceptional circumstances. Given court-ordered conferences play an important role in refining or resolving issues, the presumption will be that the usual course is that a conference will be ordered in contested proceedings. However, the amendments acknowledge there may be circumstances where the court considers a conference should not be held, for example

when the court is satisfied that holding the conference may pose a risk to the safety of a party, and that this outweighs the potential benefits of the conference being held.

As section 104 of the CPA requires the court to give reasons for all decisions made under the CPA, the court will be required to give reasons for a decision to dispense with the requirement to hold a court-ordered conference under section 59(1)(c).

Clause 12 amends section 66(4) (Court may adjourn proceedings) to clarify the people to whom the court may give directions on adjournment includes the chief executive or a person the court has allowed to participate in proceedings under section 113.

Clause 13 amends section 68(1)(f) (Court's other powers on adjournment of proceedings for child protection orders) to clarify that this subsection is about an adjournment that is required because the court orders that a child be separately legally represented under section 110 of the CPA.

Clause 14 inserts new sections 68A "Access to information to prepare a court-ordered report" and 68B "Interim contact orders". The new section 68A applies if the Childrens Court orders, on an adjournment, a report be prepared. For example a social assessment report under section 68(1)(a), or a medical examination or treatment report under section 68(1)(b). The new section allows the court to order that the person preparing the report may view or be given a copy of a relevant document or other information already before the court. This is important to ensure the report writer is able to access previous reports and any other relevant information which the court considers may be relevant for the writing of the report.

Clause 14 also inserts new section 68B "Interim contact orders". The Bill inserts new section 99MA in Chapter 2A "Tribunal proceedings". Section 99MA gives the court the power to make an order under sections 67(1)(b) or 68(1)(c) in particular circumstances. The new section 68B has been included to make it clear the court has power to make an interim contact order in the circumstances outlined in section 99MA.

Clauses 15 and 16 amend section 69 (Registrar to appoint chairperson and convene conference) and section 72 (Report of conference) to remove the reference to "the *Childrens Court Act 1992"* as a new definition of the term "rules of court" used in these provisions has been included in schedule 3 Dictionary to mean *"rules of the court made under the Childrens Court Act 1992."*

Clause 17 amends section 99H (Constitution of tribunal) by deleting the definition of "legally qualified member" as the Bill inserts a definition of this term in the schedule 3 Dictionary.

Clause 18 amends section 99M (When matter before court) by replacing references to "the president" with references to a "legally qualified member" of QCAT. This allows decisions to suspend and dismiss review applications and cancel the suspension to be made by a legally qualified member of QCAT rather than just the president. The Bill includes a definition of "legally qualified member" in the schedule 3 Dictionary.

Clause 19 inserts a new section 99MA "Suspension of review proceeding if court may deal with contact matter" which requires a legally qualified member of QCAT to suspend a review of a contact decision by the chief executive if there is also a proceeding for a child protection order on foot in the Childrens Court and the applicant for the review in QCAT is also party to

the Childrens Court proceeding. This will allow the Childrens Court to deal with the matter instead. The intention of the provision is to prevent concurrent proceedings about the same matter being dealt with in two separate jurisdictions.

The new section 99MA(2) requires the chief executive to notify the registrar of QCAT if a review application has been made for a contact decision and there are relevant concurrent proceedings underway in the Childrens Court. The review proceedings must then be suspended by QCAT. The registrar of QCAT must notify the parties to the review proceedings and the registrar of the Childrens Court. The chief executive must notify the parties to the Childrens Court proceedings of the suspension of the QCAT review.

Once the Childrens Court is notified that the review proceeding has been suspended in QCAT, the Childrens Court may deal with the contact matter under section 99MA. The Childrens Court may make interim orders about contact arrangements for a child under sections 67(1)(b), or 68(1)(c).

There may be circumstances where the court considers that QCAT is better placed to deal with the contact matter. An example may be where QCAT is already considering a review of a placement decision, and changes to the placement decision may impact on subsequent contact decisions. In this situation, the Childrens Court may order that the matter be returned to QCAT under subsection (4).

Subsection (5)(c) applies where the next hearing in the Childrens Court is the final hearing and the court would not be able to deal with the contact matter unless it orders an adjournment. Given the principle that it is in the child's best interests for an application for an order to be decided as soon as possible, it is not the intention that the court should adjourn the final hearing to allow it to consider the contact matter. Subsection (5)(c) provides that if the court makes a final order without ordering that the matter be dealt with by QCAT or making an interim contact order, the Childrens Court registrar must notify the QCAT registrar of this. A legally qualified member of QCAT must then cancel the suspension of the review proceeding and continue to deal with it.

Clause 20 amends section 99V (Children giving evidence or expressing views to tribunal). Currently, section 99V of the CPA limits who may be present while a child gives evidence or expresses their views to QCAT and the public guardian is not listed as someone who may be present. However, under section 130(1)(b) of the *Public Guardian Act 2014*, the public guardian has a right to appear before QCAT in relation to a child protection matter, to present the child's views and wishes and to make submissions, call witnesses and test evidence. This clause amends section 99V to insert subsection (2)(e) to allow the public guardian to be present in QCAT when a child is giving evidence or expressing their views.

Clause 21 amends section 108 (Right of appearance and representation) to clarify that in a child protection proceeding, a child may appear in person without legal representation or they may have a legal representative to act on their instructions (a direct representative) and may also have a separate representative appointed by the Court under section 110 of the CPA, to act in their best interests. This amendment also aims to clarify and distinguish between the role of the separate representative and the role of the direct representative.

Clause 22 omits section 108A (Right of appearance of departmental coordinators) as DCCSDS staff will not be appearing in proceedings for applications for child protection

orders, as these applications will be litigated by litigation director. Authorised officers will retain the power to apply for assessment orders and temporary custody orders.

Clause 23 replaces section 108C(2) (Public guardian's role at hearing) to clarify that the public guardian may take part in proceedings even if the child has both a direct representative and a separate representative.

Clause 24 replaces section 110 (Separate legal representation of child) with a new section titled "Appointment of a separate representative". Subsection (1)(a) clarifies that a legal representative appointed under this provision is known as a "separate representative".

Subsection (2)(b) requires the court to consider making an order for a child to have a separate representative in the circumstances required by the Childrens Court Rules.

Subsection (3) outlines a minimum set of duties for separate representatives. The amendments are aimed to address the Commission of Inquiry's findings that the appointment of an independent person, such as a separate representative, may be necessary to advance the child's best interests and give them a voice in proceedings. In order for a separate representative to properly carry out their role, this subsection requires that the separate representative should, at a minimum and taking into account the child's age and ability to understand: meet with the child; explain their role to the child; and help the child participate in proceedings. The separate representative must act in the child's best interests regardless of any instructions from the child.

Clause 25 replaces section 113 (Court may hear submissions from non-parties to proceeding) with a new section titled "Court may allow non-parties to take part in proceedings". This amendment allows people to apply to the court to take part in a proceeding.

The amendment has been included to allow the court to be informed by people who are not a party to the proceedings, but who are significant in the child's life, for example, grandparents or foster carers. The extent to which the person may be able to participate will be at the court's discretion. The court may determine for example it is only appropriate for a person to make a written submission to the court. However, the court may decide that another person can participate to the full extent that a party can, and that person would be treated like a party to the proceedings, and have all of the rights and responsibilities of a party under the CPA.

All decisions under the CPA are subject to the principle that the child's safety, wellbeing and best interests are paramount. Therefore the court will be required to consider this when determining whether to allow people to participate in proceedings and the extent to which they can participate.

Individuals who are already parties to proceedings must be provided with an opportunity to make submissions to the court about the person's participation under section 113.

Clause 26 replaces section 115 (Hearing of applications together) to allow the court, on its own initiative, to join and hear two or more proceedings together if the court considers it is in the best interests of justice to do so. While the amendments refer to the best interests of justice, the court is still bound by the paramount principle in section 5A that the safety, wellbeing and best interests of a child are paramount. Therefore if the court considers that the

joining of proceedings may be in the best interests of justice, but may not be in the best interests of each of the relevant children, the proceedings should not be joined.

Clause 27 amends the heading of chapter 6, part 6 (Confidentiality) to "Confidentiality and disclosure" to reflect that this part will also be dealing with disclosure.

Clause 28 amends section 187(3) (Confidentiality of information obtained by persons involved in administration of Act) to align with the new disclosure provisions in sections 189C to 189E, and ensure that information that is otherwise confidential may be used, disclosed or made accessible, to protect a person from a serious and imminent risk to their safety or health.

Clause 29 amends section 188 (Confidentiality of information given by persons involved in administration of Act to other persons) to allow for confidential information to be used, disclosed or made accessible, to protect a person from a serious and imminent risk to their safety or health. This change also aligns section 188 with the new disclosure provisions.

Clause 30 amends the heading of chapter 6, part 6, division 3 (Confidentiality in relation to proceedings) to "Confidentiality and disclosure in relation to proceedings" as disclosure will also be covered in this division.

Clause 31 inserts new sections 189C to 189E. Section 189C imposes a duty on the litigation director to disclose to all parties in proceedings for a child protection order all relevant documents in the director's possession or control. The duty of disclosure facilitates the litigation director's compliance with model litigant principles, by ensuring that all parties to proceedings are aware of all of the relevant information for the proceeding. The duty of disclosure will mean parties will not have to rely on the subpoena process to access information relevant to their case.

The majority of the documents which the litigation director will be required to disclose will have been provided to the litigation director by the chief executive. To ensure the litigation director is able to fulfil its duty of disclosure, the chief executive has a corresponding duty to disclose information to the litigation director in the Director of Child Protection Litigation Bill 2016.

The duty of disclosure under section 189C commences when an application for a child protection order is filed and continues until the end of the proceeding. The disclosure provisions will not apply to appeals under the CPA.

Section 189D clarifies that if the litigation director does not disclose a document, it cannot rely on the document except with leave of the court.

Section 189E makes it an offence for a person who obtains a document relevant to an application for a child protection order from disclosing or using it, or any information contained in the document for a purpose not connected with a current child protection proceeding. This is an important provision to protect the sensitive nature of the information relied on in child protection proceedings.

Clause 32 replaces section 191 (Refusal of disclosure of certain information during proceeding) with a new section titled "Refusal to disclose particular documents or

information". Section 191 applies to child protection proceedings as well as other court or tribunal proceedings and outlines the grounds upon which the litigation director or another person may refuse to disclose a document or information.

Under section 191(2)(e) and (3) records of confidential therapeutic counselling must not be disclosed unless the person who received the counselling consents to the disclosure, except if the disclosure is necessary to prevent or lessen a risk of harm to a child or serious risk to the health or safety of someone else. Records of confidential therapeutic counselling are dealt with in this way as it is important that people are not discouraged from seeking counselling. However, if the disclosure of the therapeutic record is necessary to protect a child or someone else, the litigation director or other person will be permitted to disclose the record.

Section 191(5) provides the court with the power to order disclosure, on conditions that it considers appropriate. This is important to provide the court with the power to control how highly sensitive information about the child and family are disclosed to each other. For example, the court may order that a document be disclosed but that certain information in the document is redacted prior to it being disclosed. The court may also order that certain information in the documents can be disclosed to some but not all of the parties.

The non-disclosure of a document does not impact on the court's ability to inform itself in any way it thinks appropriate under section 105 of the CPA. For this reason, even if a document is not disclosed, the court may use it in its decision making.

Clause 33 inserts transitional provisions by inserting a new Chapter 9, Part 10 titled "Transitional provisions for Child Protection Reform Amendment Act 2016".

New section 272 "Suspension of current tribunal proceedings dealing with contact matter" provides that section 99MA will only apply to review proceedings started in QCAT after the commencement of section 99MA.

New section 273 "Duty of disclosure in current proceedings" notes that the disclosure obligation under section 189C will apply to all current proceedings for child protection orders, even if the proceedings were initiated before commencement of the new provisions.

Clause 34 updates a range of terms and inserts new terms into in schedule 3 (Dictionary) as a result of amendments made in the Bill.