

Director of Child Protection Litigation Bill 2016

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Shannon Fentiman MP, Minister for Communities, Women and Youth, Minister for Child Safety and Minister for the Prevention of Domestic and Family Violence.

Title of the Bill

Director of Child Protection Litigation Bill 2016

Objectives of the Amendments

The objectives of the amendments to sections of the Bill, and additional amendments to the *Child Protection Act 1999*, are to further support the objectives of the Bill, as outlined in the original Explanatory Notes and implement recommendation 7 of the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee's (the Committee) Report No. 17 on its consideration of the Bill.

The amendments being made to the Bill will:

- clarify that the chief executive, of the Department of Communities, Child Safety and Disability Services (chief executive (child safety)) does not need to refer a matter to the Director of Child Protection Litigation (Director) where it is an interim child protection order in place under section 67 of the *Child Protection Act 1999*;
- provide that the statutory review of the Director of Child Protection Litigation Bill 2016 (once enacted) is to occur as soon as practicable after the end of 3 years after the commencement;
- make consequential amendments to the *Child Protection Act 1999* to clarify that it is the Director (not the officer) who applies for a child protection order; and
- make minor editorial changes to two provisions to clarify the operation of the amendment.

Achievement of the Objectives

Interim child protection orders

Clause 15 provides that where the chief executive (child safety) is satisfied that a child is a child in need of protection 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.

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.

The court may issue an interim order for the child on adjournment of proceedings under section 67 of the *Child Protection Act 1999*. Interim orders can often change based on the circumstances of the child and it would be onerous to require the chief executive (child safety) to refer each interim order to the Director.

Clause 15 will be amended to clarify that the clause does not apply to an interim order made under the *Child Protection Act 1999*, section 67, in relation to a proceeding for a child protection order.

Review of Act and operations of office

Clause 41 is amended to provide that the Minister must review the effectiveness of this Act and the operations of the Office of the Director as soon as practicable after the end of 3 years after the commencement of this section.

This amendment implements recommendation 7 of the Committee report.

Amendments to the *Child Protection Act 1999*

Sections 34 and 51AH of the *Child Protection Act 1999* are amended to clarify that it is the Director (not the officer) who is able to apply for a child protection order.

Minor technical amendments

Clauses 51 and 75 of the Bill will be amended to make required editorial changes to give effect to the amendment and avoid confusion.

Alternative Ways of Achieving Policy Objectives

There is no alternative way to achieve these objectives other than by amending the Bill.

Estimated Cost for Government Implementation

There are no costs associated with these amendments.

Consistency with Fundamental Legislative Principles

The amendments are consistent with fundamental legislative principles.

Consultation

Consultation was not undertaken on the amendments. However, one amendment arises from the recommendation of the Committee and the other amendments are made to give effect to editorial improvements and make consequential amendments to support the Bill.

NOTES ON PROVISIONS

Amendments 1 and 2 amend clause 15 of the Bill to clarify that the chief executive (child safety) does not need to refer a child protection matter to the Director if an interim order under section 67 of the *Child Protection Act 1999* is in place in relation to a proceeding for a child protection order.

Amendment 3 amends clause 41 of the Bill to provide 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 three years after commencement of this section.

Amendment 4 amends clause 51 of the Bill to remove the word ‘omit’ as this word is not necessary to effect to the amendment and causes confusion.

Amendment 5 inserts new clauses 51A and 51AB in the Bill to amend sections 34 and 51AH of the *Child Protection Act 1999* respectively, to remove the references to officers making applications for child protection orders as they are no longer authorised to do this – this is the role of the Director.

Amendment 6 amends clause 75 of the Bill to insert the word ‘omit’ as this word is necessary to effect to the amendment.