

THIS PUBLIC BILL has this day been read a Third time and passed

*The Clerk of the Parliament.*

*Legislative Assembly Chamber,  
Brisbane, May 2016*



Queensland

**No.  
A BILL for**

**An Act to establish the Director of Child Protection Litigation and for related purposes, and to make consequential amendments of this Act, the Child Protection Act 1999, the Child Protection (International Measures) Act 2003, the Childrens Court Act 1992, the Family and Child Commission Act 2014 and the Public Service Act 2008**





Queensland

# Director of Child Protection Litigation Bill 2016

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# 2016

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## A Bill

for

**An Act to establish the Director of Child Protection Litigation and for related purposes, and to make consequential amendments of this Act, the *Child Protection Act 1999*, the *Child Protection (International Measures) Act 2003*, the *Childrens Court Act 1992*, the *Family and Child Commission Act 2014* and the *Public Service Act 2008***

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[s 1]

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

# **Part 1 Preliminary**

## **Division 1 Introduction**

### **1 Short title**

This Act may be cited as the *Director of Child Protection Litigation Act 2016*.

### **2 Commencement**

This Act commences on 1 July 2016.

### **3 Definitions**

The dictionary in schedule 1 defines particular words used in this Act.

## **Division 2 Purpose and principles**

### **4 Main purpose of Act**

The main purpose of this Act is to establish the Director of Child Protection Litigation to apply for child protection orders and conduct child protection proceedings.

### **5 Paramount principle**

The main principle for administering this Act is that the safety, wellbeing and best interests of a child are paramount.

*Example—*

If the director is making a decision under this Act about a child protection proceeding where there is conflict between the child's safety, wellbeing and best interests, and the interests of adults involved in the proceeding, the conflict must be resolved in favour of the child's safety, wellbeing and best interests.

## **6 Other general principles**

- (1) This Act is to be administered having regard to the following principles—
  - (a) collaboration between the director and chief executive (child safety) best achieves fair, timely and consistent outcomes for the protection of children;
  - (b) in protecting a child, the director should only take the action that is warranted in the circumstances, including, for example, by applying for the least intrusive child protection order;
  - (c) the director should consider whether sufficient, relevant and appropriate evidence is available in deciding whether to make an application for a child protection order;
  - (d) each principle stated in the *Child Protection Act 1999*, section 5B for ensuring the safety, wellbeing and best interests of a child, to the extent the principle is capable of being applied to a person performing a function or exercising a power under this Act, including, for example—
    - (i) a child has a right to be protected from harm or risk of harm; and
    - (ii) a delay in making a decision in relation to a child should be avoided, unless appropriate for the child;
  - (e) each additional principle applying in relation to an Aboriginal or Torres Strait Islander child stated in the *Child Protection Act 1999*, section 5C.

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- (2) Also, each principle relevant to exercising powers and making decisions under the *Child Protection Act 1999*, section 5D(1) applies to the extent the principle is capable of being applied to a person exercising a power or making a decision under this Act.
- (3) In addition, the *Child Protection Act 1999*, section 5E applies in relation 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**

#### **7                      Establishment**

There must be a Director of Child Protection Litigation.

#### **8                      Director represents the State**

- (1) The director represents the State.
- (2) Without limiting subsection (1), the director has the status, privileges and immunities of the State.

### **Division 2                Functions and powers**

#### **9                      Functions**

- (1) The director's main functions are to do the following under the *Child Protection Act 1999*—
  - (a) prepare and apply for child protection orders, and conduct child protection proceedings, under chapter 2, part 4 of that Act;

- (b) prepare and apply for transfers of a child protection order or child protection proceeding to a participating State under chapter 7, part 2 or 4 of that Act;
  - (c) prepare, institute and conduct appeals against—
    - (i) decisions about applications for child protection orders under chapter 3, part 4 of that Act; and
    - (ii) decisions to transfer a child protection order or child protection proceeding to a participating State under chapter 7, part 2 or 4 of that Act.
- (2) In addition, the director has the following functions—
- (a) providing legal advice to the chief executive (child safety) in relation to—
    - (i) the functions of the chief executive (child safety) under the *Adoption Act 2009* and the *Child Protection Act 1999*; and
    - (ii) other matters relating to the safety, wellbeing or protection of a child;
  - (b) representing the State in legal proceedings under the *Adoption Act 2009* and the *Child Protection Act 1999* or other proceedings relating to the safety, wellbeing or protection of a child other than proceedings mentioned in subsection (1);
  - (c) for a matter involving the State to which the Convention on the Civil Aspects of International Child Abduction applies under the *Family Law Act 1975* (Cwlth), section 111B—
    - (i) providing advice to the State about the matter; and
    - (ii) representing the State in proceedings relating to the matter;
  - (d) any other function given to the director by this Act or another Act.

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## **10 Applying for child protection orders and related orders**

- (1) The director may, on behalf of the State, apply to the Childrens Court for the following—
  - (a) a child protection order for a child under the *Child Protection Act 1999*, chapter 2, part 4;
  - (b) an order transferring a child protection order or child protection proceeding to a participating State under the *Child Protection Act 1999*, section 212 or 225.
- (2) Subject to section 14, no other person may make an application mentioned in subsection (1).

## **11 Engaging lawyers**

The director may engage appropriately qualified lawyers to assist the director in carrying out the director's functions under this Act.

## **12 Powers**

- (1) The director has the powers given under this Act.
- (2) Also, the director has the power to do all things necessary or convenient to be done in performing the director's functions.

## **13 Not under Ministerial control**

In performing the director's functions and exercising the director's powers, the director is not under the control or direction of the Minister.

## **14 Delegation**

- (1) The director may delegate the director's functions and powers under this Act to—
  - (a) an appropriately qualified member of the director's staff; or
  - (b) a lawyer engaged under section 11.

- (2) However, a delegation of a function under section 10(1)—
  - (a) may be made only to a member of the director’s staff;  
and
  - (b) must be in writing; and
  - (c) may not permit a subdelegation of the function.

## Part 3 Referrals

### Division 1 Referral of child protection matters

#### 15 When chief executive (child safety) must refer child protection matter

- (1) This section applies—
  - (a) if the chief executive (child safety) is satisfied—
    - (i) a child is a child in need of protection; and
    - (ii) a child protection order is appropriate and desirable for the child’s protection; or
  - (b) if—
    - (i) a child protection order, other than an interim order, is in force for the child; and
    - (ii) the chief executive (child safety) is satisfied the order is no longer appropriate and desirable for the child’s protection.
- (2) The chief executive (child safety) must refer the matter (a *child protection matter*) to the director.
- (3) In this section—

*interim order* means an interim order under the *Child Protection Act 1999*, section 67 in relation to a proceeding for a child protection order.

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## **16 Requirements for referral of child protection matter**

- (1) For each child protection matter referred under section 15, the chief executive (child safety) must give the director the following—
  - (a) for a matter mentioned in section 15(1)(a), a brief of evidence about the child that includes—
    - (i) the reasons why the child is a child in need of protection; and
    - (ii) the reasons why a child protection order is appropriate and desirable for the child's protection; and
    - (iii) the type of child protection order the chief executive (child safety) considers appropriate and desirable for the child's protection;
  - (b) for a matter mentioned in section 15(1)(b), a brief of evidence about the child that includes the reasons why a child protection order is no longer appropriate and desirable for the child's protection;
  - (c) supporting documents for the matters mentioned in paragraph (a) or (b) available to the chief executive (child safety), including, for example, affidavits;
  - (d) all other documents and evidence relevant to the referral that are available to the chief executive (child safety).
- (2) The referral and brief of evidence must comply with the guidelines made by the director under section 39.

## **Division 2 Dealing with child protection matters**

### **17 How director may deal with referral of child protection matter**

- (1) For each child protection matter referred under section 15, the director may decide to either—



- (a) apply for a child protection order for the child; or
  - (b) refer the matter back to the chief executive (child safety).
- (2) Before deciding how to deal with the matter under subsection (1), the director may ask the chief executive (child safety) to provide further evidence or information about the matter.

*Example—*

The director may consider further evidence or other information may be needed to enable the Childrens Court to grant a child protection order. The director may ask the chief executive (child safety) for the evidence or information before deciding whether to apply for the order or refer the matter back to the chief executive (child safety).

## **18 When director must consult with chief executive (child safety) and give reasons**

- (1) The director must consult with the chief executive (child safety) before doing any of the following things in relation to a child protection matter—
- (a) referring a child protection matter back to the chief executive (child safety) under section 17(1)(b);
  - (b) 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 given by the chief executive (child safety);
  - (c) any other thing prescribed for this section in the guidelines made by the director under section 39.
- (2) If, after consulting with the chief executive (child safety), the director decides to do a thing mentioned in subsection (1) without the agreement of the chief executive (child safety), the director must give the chief executive (child safety) written reasons for the decision.

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## **Part 4                      Confidentiality and exchange of information**

### **Division 1                Confidentiality**

#### **19        Confidentiality of information**

(1) If a person gains confidential information through involvement in the administration of this Act, the person must not—

- (a) make a record of the information or intentionally disclose the information to anyone, other than under subsection (3); or
- (b) recklessly disclose the information to anyone.

Maximum penalty—100 penalty units or 2 years imprisonment.

(2) A person gains confidential information through involvement in the administration of this Act if the person gains the information because of being, or an opportunity given by being—

- (a) the director or a member of the director's staff; or
- (b) a person engaged by the director for this Act; or
- (c) a public service employee employed in the department; or
- (d) a public service employee employed in the department administered by the chief executive (child safety).

(3) However, a person may make a record of confidential information or disclose it to someone else—

- (a) for this Act; or
- (b) to discharge a function under another law; or
- (c) for a proceeding in a court or QCAT; or

- (d) if authorised by a court or QCAT in the interests of justice; or
- (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.

## **20 Disclosure by director of information for research purposes**

- (1) For the purpose of allowing a person to carry out research, the director may authorise the person to have access to information relating to the administration of this Act, including information from a member of the director’s staff.
- (2) The director may only authorise the person to have access to the information if the director is satisfied—
  - (a) the research is relevant to the director’s functions and powers under this Act; and
  - (b) the information will be collected in a way that could not reasonably be expected to result in the identification of any of the individuals it relates to.
- (3) The director may authorise the person to use or disclose the information, or give access to the information, to someone else.

## **21 Confidentiality of information given to other persons**

- (1) This section applies to a person (the *receiver*) who is given confidential information by a person under section 19(3) or given access to information for research purposes under section 20.
- (2) The receiver must not use or disclose the information to anyone else.

Maximum penalty—100 penalty units or 2 years imprisonment.

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- (3) However, the receiver may use or disclose the information to someone else—
- (a) if the use or disclosure is authorised by the director under section 20; or
  - (b) for a proceeding in a court or QCAT; or
  - (c) if authorised by a court or QCAT in the interests of justice; or
  - (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**

### **22            Definition for division**

In this division—

*information* includes a document.

### **23            Director may ask for information**

- (1) The director may ask the chief executive (child safety) for information relevant to a child protection matter.
- (2) The chief executive (child safety) must take reasonable steps to provide the information.

### **24            Disclosure by chief executive (child safety) for child protection proceeding**

- (1) This section applies in relation to a child protection proceeding.
- (2) The chief executive (child safety) has a duty to disclose to the director all information relevant to the proceeding, including

knowledge of a matter relevant to the proceeding, in the possession or control of the chief executive (child safety).

- (3) The duty continues until the proceeding is finally decided or otherwise ends.

## **Part 5 Administration**

### **Division 1 Appointment of director and related matters**

#### **25 Appointment**

- (1) The director is appointed by the Governor in Council on the recommendation of the Minister.
- (2) The Minister may recommend a person for appointment only if—
  - (a) the person is a lawyer who has been admitted to practise for at least 10 years; and
  - (b) the Minister is satisfied the person has demonstrated qualities of leadership, management and innovation in a senior government or private sector role.

#### **26 Director appointed under this Act**

The director is appointed under this Act and not under the *Public Service Act 2008*.

#### **27 Term of office**

Subject to this division, the director holds office for a term, of not more than 5 years, stated in the director's instrument of appointment.

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## **28 Conditions of appointment**

- (1) The director is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) The director holds office on the terms and conditions that are decided by the Governor in Council, to the extent the terms and conditions are not provided for by this Act.

## **29 Preservation of rights of director**

- (1) This section applies if a public service officer is appointed as the director.
- (2) The person keeps all rights accrued or accruing to the person as a public service officer as if service as the director were a continuation of service as a public service officer.
- (3) At the end of the person's term of office or on resignation as the director, the person's service as the 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.

## **30 Other employment limited**

Other than under this Act, the director must not, without the Minister's consent, engage in any work relating to—

- (a) the protection or rights and interests of children and young people; or
- (b) an adult who has been charged with an offence against a child.

## **31 Director's previous involvement does not prevent or limit performance of functions**

- (1) This section applies to a person appointed as the director if—
  - (a) before the appointment, the person was involved in a matter in the practice of the person's profession; and
  - (b) at the time of the appointment, the matter has not been finally decided or otherwise dealt with.

- 
- (2) The involvement does not prevent the person from, or limit the person in, performing the person's functions as director.
  - (3) However, the person must not—
    - (a) disclose information given to the person in his or her professional capacity in relation to the matter before the person's appointment as director, other than to—
      - (i) the person for whom the director was acting in the matter in the practice of the director's profession;  
or
      - (ii) a legal representative of that person; or
      - (iii) a person authorised by the person or legal representative mentioned in subparagraph (i) or (ii) to receive the information; or
    - (b) act personally in relation to the matter.

## **32 Vacancy in office**

- (1) The office of the director becomes vacant if the director—
  - (a) resigns office by signed notice to the Minister giving at least 1 month's notice; or
  - (b) is convicted of an indictable offence; or
  - (c) is an insolvent under administration under the Corporations Act, section 9; or
  - (d) is removed from office by the Governor in Council under subsection (3).
- (2) Also, if the director is suspended by the Minister under subsection (5), the office is vacant during the period of suspension.
- (3) The Governor in Council may, at any time, remove the director from office on the recommendation of the Minister.
- (4) The Minister may recommend the director's removal if the Minister is satisfied the director—
  - (a) has been guilty of misconduct; or

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- (b) is incapable of performing his or her duties; or
  - (c) has neglected his or her duties or performed them incompetently.
- (5) The Minister may suspend the director for up to 60 days by signed notice to the director if—
- (a) there is an allegation of misconduct against the director; or
  - (b) the Minister is satisfied a matter has arisen in relation to the director that may be grounds for removal under this section.

### **33 Acting director**

- (1) If there is a vacancy in the office of the director or the director is absent or for any other reason is unable to perform the functions of the office, the Minister may appoint a person to act as the director for a period of not more than 6 months.
- (2) A person can not be appointed to act as the director unless the Minister could recommend the person be appointed as director under section 25.
- (3) A person appointed to act as the director may be appointed to act as director for a further period—
  - (a) if the appointment is continuous on 1 or more of the person's previous appointments as acting director and the total period of continuous appointments is not more than 6 months—by the Minister; or
  - (b) otherwise—by the Governor in Council.
- (4) The Governor in Council may, at any time, cancel the appointment of a person to act as the director.

### **34 Not a statutory body for particular Acts**

To remove any doubt, it is declared that the director is not a statutory body for the *Statutory Bodies Financial*



*Arrangements Act 1982 or the Financial Accountability Act 2009.*

## **Division 2                    Office and staff**

### **35            Establishment**

- (1) The Office of the Director of Child Protection Litigation is established.
- (2) The office consists of the director and the director's staff.

### **36            Function**

The office's function is to help the director perform the director's functions.

### **37            Staff**

The director's staff are employed under the *Public Service Act 2008*.

### **38            Control of office**

- (1) The director controls the office.
- (2) Subsection (1) 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**

### **39            Director may make guidelines**

- (1) The director may issue written guidelines to any of the following—

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- (a) the director's staff;
  - (b) the chief executive (child safety);
  - (c) public service employees employed in the department administered by the chief executive (child safety) undertaking work relevant to the director's functions;
  - (d) persons engaged by the director under section 11.
- (2) The guidelines—
- (a) must be consistent with this Act and the *Child Protection Act 1999*; and
  - (b) may include the following—
    - (i) procedures about the referral of child protection matters to the director by the chief executive (child safety), including the form and content of a brief of evidence required under section 16;
    - (ii) procedures for dealing with child protection matters, including factors the director must have regard to in deciding whether to apply for child protection orders;
    - (iii) principles and procedures for the conduct of child protection proceedings, including procedures about the roles of the director and chief executive (child safety) during the proceedings;
    - (iv) procedures about how the chief executive (child safety) may seek an internal review of a decision of the director for which reasons are required to be given under section 18;
    - (v) procedures about the director's functions mentioned in section 9(2)(a), (b) and (c), including how matters relevant to those functions are referred to the director by the chief executive (child safety).
- (3) Subsection (2)(b) does not limit the matters for which guidelines may be made.
- (4) A guideline must not be made in relation to a particular case.

#### **40 Annual report**

- (1) As soon as practicable after the close of each financial year but not later than 4 months after the close, the director must give to the Minister a report on the administration of this Act during that year.
- (2) The report must include—
  - (a) a copy of each guideline made under section 39 in force during the financial year; and
  - (b) any actions taken during the financial year in response to a report given by a review panel under the *Child Protection Act 1999*, section 246DD.
- (3) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after the Minister receives it.

#### **41 Review of Act and operations of office**

- (1) The Minister must review the effectiveness of this Act and the operations of the Office of the Director of Child Protection Litigation as soon as practicable after the end of 3 years after the commencement of this section.
- (2) As soon as practicable after finishing the review, the Minister must table a report about its outcome in the Legislative Assembly.

#### **42 Regulation-making power**

The Governor in Council may make regulations under this Act.

[s 43]

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## Part 7 Transitional provisions for this Act

### 43 Meaning of *pre-amended* for this part

A reference in this part to a pre-amended provision of the *Child Protection Act 1999* is a reference to the provision as in force before the commencement.

### 44 Existing applications

- (1) This section applies to the following applications—
  - (a) an application for a child protection order made by an authorised officer under the pre-amended *Child Protection Act 1999*, section 54, 64 or 65;
  - (b) an application for an order transferring a child protection order or child protection proceeding to a participating State under the pre-amended *Child Protection Act 1999*, chapter 7, part 2 or 4.
- (2) If, immediately before the commencement, the application had not been finally dealt with—
  - (a) the application is taken to be a child protection matter referred under section 24; and
  - (b) the director is taken to have made the application.

### 45 Existing proceedings

- (1) This section applies to the following proceedings—
  - (a) a child protection proceeding;
  - (b) a proceeding in an appellate court for—
    - (i) an appeal against a decision about an application started under the pre-amended *Child Protection Act 1999*, chapter 3, part 4; or

- (ii) an appeal against a decision to transfer a child protection order or child protection proceeding to a participating State started under the pre-amended *Child Protection Act 1999*, chapter 7, part 2 or 4.
- (2) If, immediately before the commencement, the proceeding had not been finally dealt with—
  - (a) on the commencement the director becomes a party to the proceeding in place of the authorised officer; and
  - (b) for a child protection proceeding—the application the subject of the proceeding is taken to be a child protection matter.
- (3) Section 24 applies to the chief executive (child safety) in relation to the child protection proceeding.

#### **46 Existing child protection proceedings transferred to Queensland**

- (1) This section applies to a child protection proceeding transferred to Queensland from a participating State under the pre-amended *Child Protection Act 1999*, chapter 7, part 5 if—
  - (a) the chief executive (child safety) has, under section 235(3) of that Act, filed a notice stating the name of an authorised officer to become a party to the proceeding; and
  - (b) immediately before the commencement the proceeding has not been finally dealt with.
- (2) On the commencement, the director becomes a party to the proceeding in place of the authorised officer named in the notice.

#### **47 Appealing decisions on applications made before commencement**

- (1) This section applies in relation to the following decisions of the Childrens Court made before the commencement if,

[s 48]

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immediately before the commencement, an appeal against the decision has not been started—

- (a) a decision on an application for a child protection order made under the pre-amended *Child Protection Act 1999*, chapter 2, part 4;
  - (b) a decision on an application for an order transferring a child protection order or child protection proceeding to a participating State under pre-amended chapter 7, part 2 or 4 of that Act.
- (2) On and from the commencement, for the purpose of appealing the decision, the director is taken to have been a party to the proceeding for the application.

## **Part 8                      Amendment of Acts**

### **Division 1                Amendment of this Act**

#### **48      Act amended**

This division amends the *Director of Child Protection Litigation Act 2016*.

#### **49      Amendment of long title**

Long title, from ‘purposes,’

*omit, insert—*

**purposes**

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## Division 2                      **Amendment of Child Protection Act 1999**

### 50      **Act amended**

This division amends the *Child Protection Act 1999*.

### 51      **Amendment of s 6 (Recognised entities and decisions about Aboriginal and Torres Strait Islander children)**

(1) Section 6(1), (2), (3) and (5), after ‘, the chief executive’—

*insert—*

, the litigation director

(2) Section 6—

*insert—*

(5A) Subsections (1) to (3) do not apply to the litigation director if—

(a) the litigation director is satisfied the chief executive or an authorised officer has already given the opportunity to participate or consulted with the recognised entity in relation to the decision; and

(b) the chief executive or authorised officer has provided the litigation director with the outcome of the participation or consultation for the director’s consideration.

(3) Section 6(6), examples—

*insert—*

3 a decision by the litigation director about whether or not to apply for a child protection order for the child

(4) Section 6(5A) and (6)—

*renumber* as section 6(6) and (7).

[s 51A]

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**51A Amendment of s 34 (Extension of temporary assessment orders)**

Section 34(4), after ‘court assessment order or’—

*insert—*

the litigation director intends to apply for a

**51AB Amendment of s 51AH (Extension of temporary custody orders)**

Section 51AH(4), ‘officer’—

*omit, insert—*

litigation director

**52 Amendment of s 51L (Who should be involved)**

Section 51L(1)—

*insert—*

(j) on the request of the chief executive—the litigation director.

**53 Replacement of s 54 (Application for child protection order)**

Section 54—

*omit, insert—*

**54 Application for child protection order**

An application for a child protection order for a child must—

- (a) be made to the Childrens Court; and
- (b) state the grounds on which it is made; and
- (c) state the nature of the order sought; and
- (d) comply with applicable rules of court; and
- (e) be filed in the court.



*Note—*

Only the litigation director may make the application—see the *Director of Child Protection Litigation Act 2016*, section 10.

**54 Amendment of s 56 (Notice of application)**

Section 56(1) and (2), ‘applicant’—

*omit, insert—*

chief executive

**55 Amendment of s 64 (Extension of certain child protection orders)**

Section 64(1)—

*omit, insert—*

- (1) An application for an extension of a child protection order for a child, other than an order granting long-term guardianship of a child, may be made to the Children’s Court.

*Note—*

Only the litigation director may make the application—see the *Director of Child Protection Litigation Act 2016*, section 10.

**56 Amendment of s 65 (Variation and revocation of child protection orders)**

- (1) Section 65(1), ‘An authorised officer’—

*omit, insert—*

The litigation director

- (2) Section 65(5)(a), ‘chief executive’—

*omit, insert—*

litigation director

- (3) Section 65(5)(b), ‘chief executive’—

[s 57]

---

*omit, insert—*

litigation director and chief executive

**57 Amendment of s 65A (Court may make transition order)**

Section 65A(1), ‘chief executive’—

*omit, insert—*

litigation director

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

Section 68—

*insert—*

- (6) To remove any doubt, it is declared that the chief executive may be the subject of an order mentioned in subsection (1)(a), (b) or (c) even though the chief executive is not a party to the proceeding.

**59 Amendment of s 70 (Attendance of parties)**

- (1) Section 70(1), ‘and’—

*omit, insert—*

, the chief executive and the

- (2) Section 70(5), ‘Also, the’—

*omit, insert—*

The

- (3) Section 70(6), ‘However, no-one’—

*omit, insert—*

No-one

---

**60 Amendment of s 186 (Confidentiality of notifiers of harm or risk of harm)**

Section 186(2)—

*insert—*

- (g) to the litigation director for the purposes of the director performing a function under the *Director of Child Protection Litigation Act 2016*.

**61 Amendment of s 212 (Application for transfer)**

Section 212, ‘chief executive’—

*omit, insert—*

litigation director

**62 Amendment of s 225 (Application for transfer)**

Section 225(1)—

*omit, insert—*

- (1) If there is a child protection proceeding pending in the Childrens Court, an application may be made to the court transferring the proceeding to the Childrens Court in a participating State.

*Note—*

Only the litigation director may make the application—see the *Director of Child Protection Litigation Act 2016*, section 10.

**63 Amendment of s 227 (Notice of application)**

Section 227(1) and (2), ‘applicant’—

*omit, insert—*

chief executive

[s 64]

---

**64 Amendment of s 235 (Filing and registration of interstate transfer decision)**

Section 235(3)—

*omit, insert—*

- (3) Also, if an interstate government officer of the participating State is a party to the proceeding, the chief executive must file in the Childrens Court a notice stating that the litigation director is a party to the proceeding in place of the interstate government officer.

**65 Amendment of s 236 (Effect of registration of interstate transfer decision)**

Section 236(2), ‘authorised officer nominated under section 235(3)’—

*omit, insert—*

litigation director

**66 Amendment of s 238 (Revocation of registration)**

- (1) Section 238(1)—

*insert—*

(ab) the litigation director;

- (2) Section 238(1)(ab) to (e)—

*renumber* as section 238(1)(b) to (f).

**67 Insertion of new ch 7A, pt 1, div 1, hdg**

Chapter 7A, part 1, before section 246AA—

*insert—*

**Division 1 Preliminary**

---

**68 Replacement of s 246AA (Purpose)**

Section 246AA—

*omit, insert—*

**245 Purpose**

- (1) This chapter provides for a system of review of—
  - (a) the department’s involvement with particular children who have since died or suffered serious physical injury; and
  - (b) the involvement of the office of the litigation director in performing a litigation function in relation to the children mentioned in paragraph (a).
- (2) The system includes—
  - (a) a review by the chief executive and, in certain circumstances, the litigation director; and
  - (b) a further independent review by a panel of appropriately qualified persons.
- (3) The purposes of requiring the reviews are—
  - (a) to facilitate ongoing learning and improvement in the provision of services by the department and the litigation director; and
  - (b) to promote the accountability of the department and the litigation director.

**69 Insertion of new ch 7A, pt 1, div 2, hdg and s 246**

Chapter 7A, part 1, before section 246A—

*insert—*

**Division 2                      When reviews must be  
carried out**

[s 70]

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## **246 Application of division**

This division applies if a child dies or suffers serious physical injury.

### **70 Amendment of s 246A (Chief executive to review department's involvement with particular children)**

(1) Section 246A, heading, 'particular children'—

*omit, insert—*

**child**

(2) Section 246A(1)—

*omit.*

(3) Section 246A(2)(e), 'subsection (3)'—

*omit, insert—*

subsection (2)

(4) Section 246A(2) and (3)—

*renumber* as section 246A(1) and (2).

(5) Section 246A—

*insert—*

(3) If the litigation director is performing or has performed a litigation function in relation to the child, the chief executive must give notice to the director of the requirement for the review as soon as practicable after the chief executive becomes aware of the requirement.

### **71 Insertion of new s 246AA**

After section 246A—

*insert—*

---

**246AA Litigation director to review office's involvement in matter**

The litigation director must carry out a review of the involvement of the office of the director in a matter relating to the child if—

- (a) the chief executive gives notice to the litigation director under section 246A(3); and
- (b) any of the following apply—
  - (i) at the time of the child's death or serious physical injury, the litigation director is involved in performing a litigation function in relation to the child; or
  - (ii) within 1 year before the child's death or serious physical injury, the litigation director has performed a litigation function in relation to the child; or
  - (iii) the chief executive requests the review in writing.

**72 Insertion of new ch 7A, pt 1, div 3, hdg and s 246AB**

Chapter 7A, part 1, before section 246B—

*insert—*

**Division 3                      Terms of reference and extent of reviews**

**246AB Deciding terms of reference and extent of review**

- (1) If a review is to be carried out by the chief executive, the chief executive must decide the extent of, and terms of reference for, the review.
- (2) If a review is to be carried out by the litigation

[s 73]

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director, the director must decide the extent of, and terms of reference for, the review.

**73 Amendment of s 246B (Terms of reference and extent of review)**

- (1) Section 246B, heading—

*omit, insert—*

**246B Chief executive's review**

- (2) Section 246B(1)—

*omit.*

- (3) Section 246B(2), 'subsection (1)'—

*omit, insert—*

section 246AB(1)

- (4) Section 246B(3), 'Without limiting subsection (1)(b), the terms of reference'—

*omit, insert—*

Also, without limiting section 246AB(1), the terms of reference for the review

- (5) Section 246B(2) to (4)—

*renumber* as section 246B(1) to (3).

**74 Insertion of new s 246BA**

After section 246B—

*insert—*

**246BA Litigation director's review**

- (1) Without limiting the matters the litigation director may consider in making a decision under section 246AB(2), the terms of reference for the review may include any of the following—



- (a) considering whether the office of the litigation director complied with legislative requirements, guidelines made by the director under the *Director of Child Protection Litigation Act 2016*, section 39 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 mentioned in paragraph (a) for performing litigation functions;
  - (c) commenting on whether sufficient evidence was made available to the office of the litigation director for the purposes of making decisions under the *Director of Child Protection Litigation Act 2016*;
  - (d) making recommendations relating to the matters mentioned in paragraphs (a) to (c) and suggesting strategies to put into effect the recommendations.
- (2) In this section—  
*policies* include procedures, protocols, standards, systems and guidelines.

**75 Amendment of s 246C (Chief executive may seek information from entities)**

- (1) Section 246C, heading, after ‘entities’—  
*insert—*  
**for chief executive’s review**
- (2) Section 246C, ‘the review’—  
*omit, insert—*  
the chief executive’s review

[s 76]

---

**76 Insertion of new ch 7A, pt 1, div 4, hdg**

Chapter 7A, part 1, before section 246D—

*insert—*

**Division 4                      Preparing report for, and  
review by, review panel**

**77 Replacement of s 246D (Report to be prepared and given  
to review panel)**

Section 246D—

*omit, insert—*

**246D Report about review**

- (1) This section applies if the chief executive or litigation director is, under division 2, required to carry out a review.
- (2) As soon as practicable, and not more than 6 months, after the triggering event for the review, the chief executive or litigation director must—
  - (a) complete the review; and
  - (b) prepare a report about the review; and
  - (c) give the following documents (the ***original review documents***) to the review panel to which the review is allocated under section 246HF—
    - (i) a copy of the report under paragraph (b);
    - (ii) any documents obtained by the chief executive or litigation director and used for the review.
- (3) If both the chief executive and litigation director are required to carry out a review for the same child, when complying with subsection (2)(c), the chief executive and director must also give a copy

of the report about the review to each other.

(4) In this section—

*triggering event* means—

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

**78 Amendment of s 246DA (Review panel may obtain further information)**

(1) Section 246DA(1), after ‘chief executive’—

*insert—*

or litigation director

(2) Section 246DA(2), after ‘chief executive’—

*insert—*

or director

(3) Section 246DA(2), after ‘this Act’—

*insert—*

or the *Director of Child Protection Litigation Act 2016*

[s 79]

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## 79 Replacement of ss 246DB and 246DC

Sections 246DB and 246DC—

*omit, insert—*

### **246DB Review panel to conduct further review**

- (1) After receiving the original review documents, the review panel must—
  - (a) review the chief executive's or litigation director's review (the *original review*); and
  - (b) decide the extent and terms of reference for its review.
- (2) The matters that the review panel may decide to consider in its review include the following—
  - (a) a matter within the terms of reference of the original review;
  - (b) for reviewing the chief executive's review—
    - (i) ways of improving the department's practices relating to the delivery of services to children and families; and
    - (ii) ways of improving the relationship between the department and other entities with functions involving children or families; and
    - (iii) whether disciplinary action should be taken against a public service employee of the department in relation to the department's involvement with a child;
  - (c) for reviewing the litigation director's review—
    - (i) ways of improving the guidelines made by the litigation director under the *Director of Child Protection Litigation*

*Act 2016*, section 39 and any other relevant policies; and

- (ii) ways of improving the relationship between the office of the litigation director and the department; and
  - (iii) whether disciplinary action should be taken against a member of the director's staff in relation to the staff member's performance of a litigation function.
- (3) The review panel must complete its review as soon as practicable, but not more than 6 months, after receiving the original review documents.
- (4) However, if both the chief executive and litigation director are required to carry out a review for the same child, the review panel must—
- (a) review the chief executive's and litigation director's reviews at the same time; and
  - (b) complete its review not more than 6 months after receiving the last original review document relating to the reviews.

#### **246DC Report of panel's review of chief executive's review**

- (1) After reviewing the chief executive's review, but within the time required for completing its review under section 246DB, the review panel must prepare a report about its review and give the report to the chief executive.
- (2) The chief executive—
  - (a) may give a copy of the report to the litigation director; and
  - (b) must give a copy of the report to the Minister if—

[s 80]

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- (i) the chief executive's review was carried out at the request of the Minister under section 246A(2); or
  - (ii) the Minister asks for a copy.
- (3) If the Minister is given a copy of the report and the report includes a matter concerning the litigation director, the Minister must give a copy of the report to the Minister administering the *Director of Child Protection Litigation Act 2016*.

#### **246DD Report of panel's review of litigation director's review**

- (1) After reviewing the litigation director's review, but within the time required for completing its review under section 246DB, the review panel must prepare a report about its review and give the report to the litigation director.
- (2) The litigation director—
  - (a) may give a copy of the report to the chief executive; and
  - (b) must give a copy of the report to the justice Minister if the justice Minister asks for it.
- (3) If the justice Minister is given a copy of the report and the report includes a matter concerning the department, the justice Minister must give a copy of the report to the Minister.
- (4) In this section—

*justice Minister* means the Minister administering the *Director of Child Protection Litigation Act 2016*.

#### **80 Amendment of s 246H (Chief executive to give reports to State Coroner)**

- (1) Section 246H(1)—

*omit, insert—*

- (1) This section applies if—
  - (a) a report is—
    - (i) completed by the chief executive or litigation director under section 246D; or
    - (ii) given to the chief executive or litigation director by a review panel under section 246DC or 246DD; and
  - (b) the report relates to a child whose death is a reportable death under the *Coroners Act 2003*.

- (2) Section 246H(2), after ‘chief executive’—

*insert—*

or litigation director

## **81 Amendment of s 246HA (Appointment)**

- (1) Section 246HA(3)—

*insert—*

(aa) has expertise in litigation relating to child protection proceedings or proceedings of a similar nature; or

- (2) Section 246HA(3)(aa) and (b)—

*renumber* as section 246HA(3)(b) and (c).

## **82 Amendment of s 246HE (Establishment)**

Section 246HE, after ‘chief executive’s’—

*insert—*

or litigation director’s

[s 83]

---

**83 Amendment of s 246HF (Allocation of reviews)**

Section 246HF(1)—

*omit, insert—*

- (1) For each review carried out by the chief executive or litigation director under part 1, the Minister must establish a review panel or nominate an existing review panel to carry out a review of the chief executive's or director's review.

**84 Amendment of s 246HH (Membership)**

Section 246HH(2)—

*insert—*

- (d) if the panel is established for reviewing a review by the litigation director—at least 1 person who has expertise in litigation relating to child protection proceedings or proceedings of a similar nature.

**85 Amendment of s 246HJ (Quorum)**

- (1) Section 246HJ—

*insert—*

- (aa) if the panel's review relates to a review by the litigation director—at least 1 member who has expertise in litigation relating to child protection proceedings or proceedings of a similar nature; and

- (2) Section 246HJ(aa) and (b)—

*renumber* as section 246HJ(b) and (c).

**86 Amendment of s 246HK (Disclosure of interests)**

Section 246HK(6)—

*omit, insert—*



- (6) If a disclosure under subsection (2) is relevant to a review the panel is conducting under section 246DB, the disclosure must be recorded in a report about the review prepared by the panel under section 246DC or 246DD.

## 87 Amendment of sch 3 (Dictionary)

- (1) Schedule 3—

*insert—*

*litigation function*, of the litigation director, means the following—

- (a) a function that is or relates to dealing with a child protection matter under the *Director of Child Protection Litigation Act 2016*;
- (b) a function mentioned in section 9(1) of that Act.

- (2) Schedule 3, definition *original review documents*, ‘section 246D(1)(c)’—

*omit, insert—*

section 246D(2)(c)

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

### 88 Act amended

This division amends the *Child Protection (International Measures) Act 2003*.

### 89 Amendment of s 7 (Circumstances in which Queensland court may exercise jurisdiction)

- (1) Section 7(1)(a), ‘department or the’—

[s 90]

---

*omit, insert—*

department, litigation director or

- (2) Section 7(2), ‘department’—

*omit, insert—*

department, litigation director

- (3) Section 7(2), editor’s note—

*omit.*

**90 Amendment of s 8 (Application of this part)**

- (1) Section 8, heading, ‘this’—

*omit.*

- (2) Section 8(1) and (2), ‘or the department’—

*omit, insert—*

, the department or the litigation director

**91 Amendment of s 9 (Matters relating to jurisdiction for the person of a child)**

Section 9(2)(b)(iv) and (v) and (c)(iii) and (iv), ‘the Queensland authority’—

*omit, insert—*

a Queensland court or the department

**92 Amendment of s 11 (Limitations concerning prior proceedings in a Convention country)**

Section 11—

*insert—*

- (4) If the Queensland authority is the litigation director, before the director exercises the jurisdiction, the director must be satisfied the department has used its best efforts to consult with

the competent authorities 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.

**93 Amendment of s 12 (If a Queensland authority is asked to assume jurisdiction)**

Section 12(1), after ‘A Queensland authority’—

*insert—*

other than the litigation director

**94 Amendment of s 23 (Action on receipt of foreign personal protection measure)**

(1) Section 23(2)—

*insert—*

(ca) refer the matter to the litigation director for the director to exercise the director’s jurisdiction under part 2;

(2) Section 23(2)(ca) to (e)—

*renumber* as section 23(2)(d) to (f).

(3) Section 23(5)—

*omit, insert—*

(5) A person who is interested in the following may apply to the court to be joined as a party to the proceeding—

(a) an application to a Queensland court made by the litigation director following a referral by the department under subsection (2)(d);

(b) an application to a Queensland court made by the department under subsection (2)(e).

[s 95]

---

## 95 Amendment of s 30 (Functions of department)

- (1) Section 30(1)(c), ‘or applying for,’—

*omit, insert—*

applying for or referring to the litigation director to consider applying for,

- (2) Section 30(1)(h)(ii)—

*insert—*

*Note—*

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 litigation director if a referral is made to the director under the *Director of Child Protection Litigation Act 2016* following consideration by the department as mentioned in paragraph (c).

## 96 Amendment of sch 4 (Dictionary)

- (1) Schedule 4, definition *Queensland authority*—

*omit.*

- (2) Schedule 4—

*insert—*

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

***Queensland authority*** means—

- (a) for a Queensland personal protection measure relating to a child—
- (i) a Queensland court; or
  - (ii) the department; or
  - (iii) in the case of a Queensland personal protection measure for which the litigation director may perform a function or exercise a power under the

---

*Director of Child Protection Litigation Act 2016*—the litigation director;

- (b) for a Queensland property protection measure—a Queensland court or the public trustee.
- (3) Schedule 4, definition *Queensland personal protection measure*, examples, paragraph 3, ‘, section 243’—  
*omit.*

## **Division 4                      Amendment of Childrens Court Act 1992**

### **97      Act amended**

This division amends the *Childrens Court Act 1992*.

### **98      Amendment of s 21A (Definitions for div 4)**

- (1) Section 21A—

*insert—*

*chief executive (child safety)* means the chief executive of the department responsible for administering the *Child Protection Act 1999*.

- (2) Section 21A, definition *relevant person*—

*insert—*

(fa) if the proceeding is a child protection proceeding under the *Child Protection Act 1999*—the chief executive (child safety); or

(fb) the public guardian under the *Public Guardian Act 2014*; or

- (3) Section 21A(1)(fa) to (g)—

*renumber* as section 21A(1)(g) to (i).

[s 99]

---

**99 Amendment of s 21D (Application for closed proceedings)**

(1) Section 21D(1)(b) and (c)—

*omit, insert—*

(b) the chief executive (child safety).

(2) Section 21D(3)—

*omit.*

**Division 5 Amendment of Family and Child Commission Act 2014**

**100 Act amended**

This division amends the *Family and Child Commission Act 2014*.

**101 Amendment of sch 1 (Dictionary)**

(1) Schedule 1, definition *relevant agency*—

*insert—*

(ca) the Director of Child Protection Litigation under the *Director of Child Protection Litigation Act 2016*;

(2) Schedule 1, definition *relevant agency*, paragraphs (ca) and (d)—

*renumber* as paragraphs (d) and (e).

**Division 6 Amendment of Public Service Act 2008**

**102 Act amended**

This division amends the *Public Service Act 2008*.

**103 Amendment of sch 1 (Public service offices and their heads)**

Schedule 1—

*insert—*

Office of the Director of Child  
Protection Litigation under the  
*Director of Child Protection Litigation  
Act 2016*

Director of Child Protection  
Litigation

## Schedule 1      Dictionary

### section 3

**chief executive (child safety)** means the chief executive of the department responsible for administering the *Child Protection Act 1999*.

**child in need of protection** see the *Child Protection Act 1999*, section 10.

**child protection matter** see section 15(2).

**child protection order** means a child protection order under the *Child Protection Act 1999*, chapter 2, part 4, including—

- (a) an order extending, varying or revoking a child protection order; and
- (b) an interim order under section 67 of that Act in relation to a proceeding for a child protection order.

**child protection proceeding** means a proceeding under the *Child Protection Act 1999* for the making, extension, amendment or revocation of a child protection order.

**confidential information**—

- (a) includes information about a person's affairs; but
- (b) does not include statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.

**director** means the Director of Child Protection Litigation appointed under this Act.

**information**, for part 4, division 2, see section 22.