



Director of Child Protection Litigation Act 2016

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Queensland

Director of Child Protection Litigation Act 2016

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Director of Child Protection Litigation Act 2016

An Act to establish the Director of Child Protection Litigation and for related purposes

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, both through childhood and for the rest of his or her life, 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;

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- (e) each principle stated in the *Child Protection Act 1999*, section 5BA for achieving permanency for 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;
 - (f) each additional principle applying in relation to an Aboriginal or Torres Strait Islander child stated in the *Child Protection Act 1999*, section 5C.
- (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.
- (4) In this section—
permanency, for a child, see the *Child Protection Act 1999*, section 5BA(3).

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.

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—

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- (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; or
- (c) if—
- (i) a permanent care order is in force for the child; and
 - (ii) the chief executive (child safety) is satisfied—
 - (A) the child's permanent guardian under the order is not complying, in a significant way, with the permanent guardian's obligations under the *Child Protection Act 1999*, section 79A; and
 - (B) the order is no longer appropriate and desirable for promoting the child's safety, wellbeing and best interests.
- (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.

permanent care order see the *Child Protection Act 1999*, section 61(g).

permanent guardian, of a child, see the *Child Protection Act 1999*, schedule 3.

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—

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- (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) for a matter mentioned in section 15(1)(c), a brief of evidence about the child that includes the reasons why the chief executive (child safety) is satisfied—
 - (i) the child's permanent guardian is not complying, in a significant way, with the permanent guardian's obligations under the *Child Protection Act 1999*, section 79A; and
 - (ii) the order is no longer appropriate and desirable for promoting the child's safety, wellbeing and best interests;
 - (d) supporting documents for the matters mentioned in paragraph (a), (b) or (c) available to the chief executive (child safety), including, for example, affidavits;
 - (e) 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.

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- (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.

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).

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- (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

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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.

- (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.

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).

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- (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
 - (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—
 - (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 copy of each guideline made under section 39 in force during the financial year.
- (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.

Part 7 **Transitional provisions**

Division 1 **Transitional provisions for Act No. 23 of 2016**

43 **Meaning of *pre-amended* for this division**

A reference in this division 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—

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- (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, 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.

Division 2 Transitional provision for Child Death Review Legislation Amendment Act 2020

48 Annual report

- (1) Despite its amendment, former section 40(2) applies to the report for the financial year starting on 1 July 2019.
- (2) In this section—

former section 40(2) means section 40(2) as in force immediately before the commencement of the *Child Death Review Legislation Amendment Act 2020*.

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.