

# Hypothetical

## Participants

<b>Facilitator:</b>	<b>Murray Green</b>
<b>Child Safety Officer:</b>	<b>Bridget Condon</b>
<b>Court Coordinator:</b>	<b>Tracey Barrett</b>
<b>Expert Witness:</b>	<b>Dr Chris Lennings</b>
<b>Private Counsel:</b>	<b>John Selfridge</b>
<b>Childrens Court Magistrate:</b>	<b>Magistrate Pam Dowse</b>
<b>QCAT Representative:</b>	<b>Julie Ford</b>
<b>Federal Magistrate:</b>	<b>TBA</b>
<b>Legal Aid Queensland:</b>	<b>Nigel Miller</b>

## Scenario

### Family Constellation

<b>Name</b>	<b>DOB</b>	<b>Relationship</b>	<b>Sex</b>	<b>Indigenous Y/N</b>
Abigail Moore	12/05/10 (4mths)	Subject child	Female	Y
Reece Moore	02/05/07 (3yrs)	Subject child	Male	Y
Tristan Carter	11/08/04 (6yrs)	Subject child	Male	Y
Linda Carter	23/08/85 (25yrs)	Mother	Female	Y
Adam Moore	30/01/71 (39yrs)	Father (Abigail & Reece) [Current partner of Linda]	Male	N
Robert 'Rocco' Price	09/03/85 (25yrs)	Father (Tristan) [Previous partner of Linda, whereabouts unknown]	Male	Y

### Background Information

The family are living in rental accommodation in Kingaroy in QLD, having recently (May 10 2010) moved from Grafton in NSW.

Tristan attends a local state school, and Reece is enrolled at ABC Child Care 4 days a week.

Mother's family are from NSW. The family have no connections to the area, having moved here for Mr Moore to find work.

NSW Police and the Department of Community Services were involved with the family whilst they resided in NSW with a history of concerns relating to domestic violence (both physical and verbal) being noted.

On 11 June 2010, the Queensland Police Service (QPS) were called to a domestic disturbance at the home of Linda Carter and Adam Moore (33 Honour Rd, Kingaroy).

The following details were recorded:

- When officers attended the home they heard yelling by a male (later identified as Mr Moore) and the sounds of an altercation. Officers entered the home to find Mr Moore trying to force a door open to a bedroom. Ms Carter was inside the bedroom seeking shelter and was found to have serious bruising to the face. Tristan and Reece were located in another room hiding. The baby, Abigail, was crying in her cot inside the bedroom.
- Police removed Mr Moore from the home and apply for a Domestic Violence Order (DOV) on behalf of the Mother and all three children. Mr Moore was placed in the watch house overnight.
- The Mother refused medical care saying she was 'ok' and was not prepared to make a statement against Mr Moore for assault.

At this time, Mr Moore is temporarily staying with a friend. The Mother has remained in the home with the children but has indicated she may move back to her family in NSW. She has made repeated enquiries into Mr Moore's wellbeing.

A Child Protection Notification (CPN) was sent to the Kingaroy Child Safety Service Centre (CSSC) via the After Hours CSSC for action.

**Child Safety Officer (CSO) – you have been asked by your Team Leader to follow-up:**

- Can you tell me what your initial plan would be in terms of assessing the notification?
- What are the inquiries you would be making? E.G Enquiries with QPS, Interstate Liaison Officer with regard to obtaining information as to the NSW history on the family, ABC Child Care, Tristan's school, etc.
- What information is important to obtain (e.g. history of DV, previous injuries recorded, etc)?
- When obtaining this information how is this done (e.g. is the interview done at school)?
- How is the information recorded during the investigation to ensure it is contemporary?
- What consideration is given to other factors, e.g the Child Placement Principle?
- What other consultation occurs, e.g. consultation with the Recognised Entity?
- Are there any referral processes which occur, e.g. referral to SCAN?

## **Facilitator**

New information provided to panel members:

- Based on current departmental investigations, it can be advised:-
  - The Mother minimises the issues and has not acknowledged any issues whilst living in NSW.
  - The Mother is difficult to engage, displays a flat affect, and is quite evasive.
  - The Mother acknowledges previous incidents of DV and advises that the way of dealing with these is to lock herself in the baby's room until Mr Moore cools down or goes to sleep.
  - The Mother has significant bruising to her cheekbone and to the side of her neck.
  - The door to a bedroom is damaged from an incident the previous evening.
  - Tristan is observed to be withdrawn and very thin. Feedback from his school is that Tristan has been difficult to engage and looks down when you speak to him.
  - The school further advises that they are still getting to know the family and are yet to receive Tristan's paperwork from his previous school.
  - On observation of Tristan, he has significant bruising on his calf area and is walking with a limp. His Mother claims that he fell out of bed onto a toy, however when interviewed, Tristan said that he fell off his bike.
  - Tristan further informed officers that Mr Moore hits his mother "lots" and that he is scared of him. Tristan says that when Mr Moore gets angry he takes Reece and hides.
  - Feedback from ABC Child Care is that Reece is very aggressive to other children during his time there as a result, is in 'time out' daily - often on more than one occasion.
  - Child Care staff further report from observations that the Mother seems unable to manage Reece's behaviour.
  - The Mother has advised that she is not prepared to commit to access support and when questioned about what she would do if Mr Moore came back to the house on a permanent basis, she was unable to provide a response except, "its his home too".
  - The Mother is refusing to seek medical assistance or assessment in relation to Tristan's leg and is of the view that it is not serious.
  - The Mother has indicated that she wants to move back to Armidale in NSW and that she has family support there.

## **CSO:**

- Can you identify the risks in this case as they relate to all the children and what your next step would be in trying to work with this family to address any identified risks?
- What further information do you need/want to be able to assess the level of harm/risk?
- Discuss the options for obtaining child protection and criminal histories in relation to the family.
- What type of order is best sought at this time and why?

- Would you consider it unreasonable to work with the family in a voluntary capacity particularly in light of the Mother's current views in relation to Mr Moore and the domestic violence?

**Dr Lennings:**

- Are concerns relating to exposure to or at risk arguments significant given no direct harm has occurred?
- If you were contacted in relation to the concerns identified in relation to this family what information would be important for the department to obtain/further assessments to be made around given the identified concerns for the younger children relate to exposure to domestic violence (or at risk) as opposed to direct harm?

**Facilitator**

New information provided to panel members:

The day progresses and it is now 4:00pm and you eventually connect with your Team Leader, who has been in a Family Group Meeting and the Court Coordinator who has been at Court. Following consultation it is decided to apply for a Temporary Assessment Order (TAO) on all 3 children. A placement is located for the children with an experienced foster carer. The closest placement is near Nanango and is a 20 minute drive from Kingaroy. Whilst the children are indigenous, the carer is not and furthermore, the carer has 2 other young children living in the house.

**Court Coordinator:**

- How do you assist the CSO to make this application?
- What information/evidence do you advise them to ensure is included in the application?
  - Prompt –
    - what investigations/assessments need to occur – e.g. obtaining NSW history; obtaining criminal and DV history in relation to the Mother and Mr Moore, obtaining whereabouts of Tristan's father, Mr Price, etc?
    - why the order is required for the investigations/assessments to occur?
    - have enquiries been made to obtain consent of 1 of the child's parents or if not, why it is not practicable?
    - current concerns held?
    - evidence why provisions sought are required – e.g. why custody is required, directive regarding contact, whether a medical assessment is required, etc]?
    - consultation with the RE – where appropriate?
    - what are the current contact arrangements and placement options?
- Do you see any potential issues/problems with the application?
- Is this application made by normal means (i.e. us s30 used to assist)?

**Legal Aid:**

In your experience as a Separate Representative, how do you think the department could best use the disclosures made by the children (i.e. Mr Moore hits the Mother 'lots' and Tristan is scared of Mr Moore)?

### **Magistrate:**

- You are considering the application for a TAO before you in relation to all 3 children. Can you advise what you expect to see in the application to support the order sought?
- How would you weight the various pieces of information, that is, what would be considered as the most significant and what would be considered the least significant?
- Are there differences in the way you would approach the application for the different children?

**Outcome: The TAO is granted in relation to all 3 children and they are placed in the care of a foster carer under the custody of the Chief Executive (CE).**

### **Facilitator**

New information provided to panel members:

- The department has yet to complete all assessments in relation to determining whether the children are in need of protection.
- Medical assessments are still be finalised however the SCAN Dr has made an initial view that the bruising on Tristan is deep tissue and would have been the result of significant force. Full skeletal surveys are being recommended.
- A decision is made to apply for a Court Assessment Order (CAO).
- The Mother and Mr Moore have advised that they will be contesting custody in relation to all 3 children.
- The Mother's solicitor has further advised that she is breast feeding Abigail (along with supplemental formulae) and the mother needs to be with her for this to continue. The Mother states that the current care arrangements are too difficult and that as a result, her bond with Abigail is suffering.

### **CSO:**

- Outline what attempts can be made to locate Mr Price.
- How will the assessment over a 4 week CAO period progress?
- Is custody still required for the children at this time?
- What would prevent you working on a voluntary basis with this family?

### **Court Coordinator**

- If the Mother and Mr Moore advise 'last minute' that they are willing to consent to the assessments occurring – how would the department respond?

### **Other questions to consider:**

- Discuss the need to keep the directives:  
Considerations:
  - Is there a need to maintain the directive around supervised contact, that is:
    - are the parents likely to try and remove the children?
    - would the children be at risk if they had unsupervised contact with their Mother and/or Mr Moore?

- how can contact between Mr Moore and Tristan be addressed given he does not meet the definition of parent but is a family member?

#### **Court Coordinator:**

- In the CAO application would you expect to find information about what it is the department expects the parents to do?
- What information would you expect to find in the CAO application – e.g. further assessments required to be completed, why order is required for this to occur, current concerns held, why custody of the child is required, why other directives sought are required (e.g. directive re contact, medical assessment, etc), why length of the order is required, etc?
- How would you manage the filing of each parent’s criminal history?

#### **Private Counsel (John Selfridge):**

- What are your views on the sharing of various adult persons criminal histories in these types of proceedings – should they be entitled to know each other’s past indiscretions? Would this be the same if Tristan’s father had been located and was served with this application?

**[NOTE - Follow up with Magistrate Dowse & FM Slack on the same issue if required.]**

#### **Private Counsel (John Selfridge):**

- In contesting the application, what gaps would you be looking for in the department’s evidence/assessments?
- What matters would you be raising with the Court to secure the children are provided back into the Mother’s care.
- Would you take the position you could represent both parents? If not, what would you see as the most ethical response.

#### **QCAT Representative/FM:**

The ability for a victim of family violence to properly represent their interest in the presence of the “maltreater” is something that must come up in QCAT a bit especially given that leave must be sought for applicants to be represented. How would you deal with a parent who is clearly a victim of violence when they appears before you and appears to be compromising their own (and the children’s interest) in favour of the “maltreating” other applicant (partner, grandparent etc)

#### **Dr Lennings:**

- Given Abigail’s age and the potentially unexplained injury to her sibling – what would your opinion be of the risks?

### **Magistrate:**

- Would you hear the applications separately given that Mr Moore is the step-father of Tristan?
- Would you grant the application as sought (that is – 4 week CAO with custody to the CE, directive that contact be supervised and a medical examination/treatment)? What would you do based on the information to date?
- Given the parents are opposing custody, especially in relation to Abigail is their enough information before you for the department to maintain custody of all 3 children, if not, what further information would you require to see?
- What family contact considerations would you have?

**Outcome: The CAO is granted in relation to all 3 children, however, custody of Abigail is not granted and she returns to the care of her Mother with a directive that the Father's contact is to be supervised; and authorising a medical examination and/or treatment of the child. Custody is granted in relation to the 2 older children with a directive that the Father's contact (in relation to Reece only) is to be supervised. Reece and Tristan remain in their placement in the care of foster carers.**

### **Facilitator**

New information provided to panel members:

#### Medical Information:

A medical assessment has been sought and obtained in relation to Tristan. It reports that Tristan has recent bruising to his lower back and buttocks and a hairline fracture to his forearm.

A medical assessment was also sought in relation to Reece, however, Reece is very aggressive towards the doctor and she was unable to complete a comprehensive assessment. The doctor reports that Reece was agitated and physical lashing out by kicking, pushing and punching and would not cooperate under any circumstances. As such, a full examination was not possible.

#### QPS Information:

QPS advise that they withdrew the application for a DVO due to lack of cooperation by Ms Carter.

#### Information in relation to the Mother and Mr Moore:

The Mother becomes hostile towards the CSO as she wants the children returned to her care and feels that she is not being treated fairly by the department. As such, a working relationship with the Mother becomes difficult.

NSW Criminal History for Mr Moore and Child Protection History has returned and raises significant concerns.

#### Information in relation to Mr Price:

During this time, the department locates the father of Tristan – Robert (Rocco) Price. The Mother indicates that she has recently received some paperwork from Mr Price but does not really know what it all means.

This paperwork is in fact Federal Magistrates Court documents whereby Mr Price and his parents have made an application to seek contact with Tristan. The matter was first mentioned on 13 June 2010 and a copy of the order of the Court from this day (which is included in the documentation) grants a location order in relation to Ms Carter; and adjourns the matter to 10 August 2010 for Ms Carter to be served.

During casework by the CSO, Tristan has indicated that he wants to see his Father however he has limited recollections of him. Mr Price works in Brisbane and currently resides with his parents, Mr Percy and Mrs Pia Price.

Mr Price is a truck driver and spends 3 out of 7 nights interstate. Mr Price's parents own the trucking company and are well respected and financially very secure. Percy and Pia Price are in their late 50's and the company is largely managed by their son-in-law.

The Mother is opposed to Tristan having any contact with his father and the Price family. She is of the view that Mr Price uses drugs and says that mutual friends have indicated that he is using his job with the trucking business to courier drugs interstate. Mr Price has a criminal history for various drug offences and has previously been incarcerated. Mr Price's last recorded conviction was 12 months ago. The Mother also alleges that Mr Price treated her and Tristan poorly and that he has not changed.

The Mother is very much opposed to any placement with Mr Price on this basis - but also feels the children should be together rather than separated. The Mother wants all the children to reside with her and repeatedly says she will relocate back to NSW if that will help her get the children back.

When contacted by the CSO via the solicitor Mr Price claims that he has tried to have contact with Tristan but the Mother would not let him. He claims that the Mother has not been truthful and has known of his whereabouts.

#### Information in relation to Tristan and Reece:

The children's foster carers report that Reece and Tristan are very close and often Tristan is the only one able to communicate with Reece when his behaviours "explode". Both children have made disclosures to the carers about the frequency of domestic violence in the home.

Reece is displaying very aggressive behaviour (yelling at the female carer and his day care teacher).

Feedback from the school and day care is that Tristan and Reece are doing well (with the exception of the occasional outburst from Reece). They have both been enrolled in a local school and day care given the travel time between Nanango and Kingaroy.

### **The CAO is about to expire.**

#### **CSO:**

- Given the CAO is about to expire, are you making any further applications in the Childrens Court for either an extension of the CAO or a Child Protection Order (CPO)? If not, why not? If so, why?
- Are there any further considerations that need to be taken into account?

**Assume that a CPO application will be made seeking custody of all 3 children be granted to the Chief Executive for a period of 2 years.**

**CSO:**

- What proposals would you consider for contact at this time with each of the children and their parents – would these differ for Abigail?
- Would you recommend that an assessment be considered for Mr Price and/or his parents as a potential placement option for Tristan and/or as it relates to contact?

**Court Coordinator:**

- Is there any other Court proceedings on foot that the department needs to consider?
- What evidence would need to be included to support an application for a 2 year custodial order?
- What would the applicant need to consider when making this application – e.g. custody vs guardianship, rationale for 2 years vs a shorter timeframe, etc?
- What relevance if any does the Family Court documents potentially have on your application

**Dr Lennings:**

- Do you have any comments in relation to contact considerations over the period of the proposed order?
- How would you suggest assessment be framed to determine if Reece's behaviour is a product of his environment – is it not possible that he may have some organic reason for his acting out?

**Facilitator**

New information provided to panel members:

During the CAO the following information is established:-

- Tristan's medical report;
- Disclosures in placement;
- Any events at contact; and
- Father back in house.

At the first mention Mr Price turns up with his parents and a solicitor purporting to represent them all. The solicitor advises that he is going to ask the Court to place Tristan with his father and paternal grandparents under the child protection legislation.

The following information is provided:

- Mr Price's legal representative advises that they have instigated parallel proceedings in the Federal Magistrates Court. Mr Price advises that he wants Tristan to be with him and his parents.
- Percy and Pia Price want to be heard as non parties under s113 of the Child Protection Act 1999 and attend the next mention with legal representation. Mr Price is supportive of his parents.

- The Mother and Mr Moore are opposing any orders and want all the children returned to their care. They have instructed their legal representative to oppose the child protection application.
- The Mother and Mr Moore demand more contact and want the children placed closer to them if they are not returned to their care.

#### **Court Coordinator:**

- What are your submissions in support of temporary custody of all 3 children?
- Why can't the Paternal Grandparents be granted temporary custody of Tristan, e.g. suitability?
- Does the Court need to be aware of the proceedings before the Federal Magistrates Court?
- Is there a requirement to serve the Paternal Grandparents if they seek leave to be non-parties under s113? [No]
- Are there any legislative requirements or process involved in relation to the placement decisions, e.g. reviewable decision letters, etc?

#### **Private Counsel (John Selfridge):**

- What are some of the reasons you would be arguing for Mr Price to have care of Tristan?
- What are some of the reasons you could argue for the Mother and Mr Moore to have all the children in their care?

#### **Legal Aid:**

- Is this a case where you would consider it appropriate to seek the appointment of a Separate Representative, if not, why not or if so, why?
- Given the family constellation can you make a comment about what processes you think would be involved for the Separate Representative to ensure that a holistic assessment is made?

#### **Dr Lennings:**

- In your opinion is Abigail at more or less risk than her siblings? Can this be differentiated?
- How would you articulate the risk for the children and put these concerns before a Court?

#### **Magistrate Dowse:**

- Would it be appropriate to have the applications joined or would they be heard separately?
- What is your view on non-party submissions under s113?
- What considerations would you give to granting temporary custody to a family member?
- What consideration would you give to contact and placement issues?

**Outcome - Temporary custody of all 3 children has been granted to the Chief Executive pursuant to s67 of the *Child Protection Act 1999*. The matter was**

**adjourned for a period of 4 weeks to allow for a Family Group Meeting (FGM) to occur.**

**Facilitator**

New information provided to panel members:

For the purposes of continuing the scenario, we can assume the following:

Abigail is placed in the care of departmental carers with her brother's in Nanango. Within 1 week an alternative placement is found for Abigail, however her brother's remain in Nanango as the alternative carer cannot take all 3 children. Abigail's placement is in Kingaroy.

The Mother, Mr Moore and Mr Price are contacted and informed of the current placement arrangements and of the need to change contact times.

Contact for the Mother and Mr Moore with Tristan and Reece will now be supervised every Tuesday and Friday from 4 – 5pm due to children's school and day care arrangements. This contact has been reduced by ½ an hour.

## FEDERAL MAGISTRATES COURT Component

### **Facilitator**

New information provided to panel members:

Percy and Pia Price own a large family home in Kenmore and are eager for Tristan to be placed in Mr Price's and their care. Pia Price is willing to assist Mr Price in the day to day care of Tristan. Pia and Percy Price acknowledge previous drug issues with Mr Price but believe this is no longer a concern as he has settled over the past 9 months and they have given him a chance to prove himself by providing him with a job in the family business and allowing him to move back into the family home.

On 10 August 2010, Robert Price and his parent's application returns before the Federal Magistrates Court with evidence Ms Carter has now been located and serviced.

The application seeks interim and final orders for Mr Price and Mr Percy and Mrs Pia Price to spend time with Tristan, however the legal representative for the Price's has advised that given recent information and the involvement of the department, it is likely that the application will be amended to seek lives with orders for Tristan.

### **Court Coordinator:**

- How do you see the department most effectively responding to the Price's application in the Federal Magistrates Court, given it was initiated prior to the department's involvement and thus the department is not recorded as a party.
- Would the department want to intervene?
- What should the CSSC do in the first instance upon becoming aware that they are proceedings in the Federal Magistrates Court?
- What information would the department need to provide or what material would the department need to prepare for these proceedings (e.g. assessments in relation to Mr Price, assessments in relation to the Paternal Grandparents, assessments in relation to the Mother, views on 'lives with'/'spends time with' orders, etc)?

### **Federal Magistrate:**

- Would you expect the department to be added as a respondent to the proceedings? If not, what would be the process (e.g. s91B order)?
- If the department appears before the Court what information would you expect to be provided to assist you as Federal Magistrate?
- Would this be a matter for the Magellan List? If not, why not (e.g. what is the criteria for a Magellan matter)?
- Would you make any order given the department's current involvement?
- If you were of a mind to adjourn the application to allow the department to complete its assessment what sort of information would you want to see at a future point (e.g. issues around separation of sibling group, etc) and what timeframes do you as an FM think are reasonable and in the best interests of the child?)?
- Would this be the sort of matter (given the possible separation of siblings) that you would seek specialist reports?

**Dr Lennings:**

- What are your thoughts in relation to these issues, in particular the separation of the sibling group?

**Legal Aid:**

- As an ICL how would you manage the competing interests of the siblings?

**Legal Aid; Private Counsel; FM:**

- Would you have a view about material used for the Childrens Court proceedings being released and relied on in other jurisdictions such as the Federal Magistrates Court to assist proceedings there?

**The Federal Magistrate Court proceedings are adjourned for 8 weeks in order for the department to assess the situation to determine which jurisdiction is appropriate for this matter and an order made under s69ZW to enable information to be provided back to the FMC.**

# QUEENSLAND CIVIL & ADMINISTRATIVE TRIBUNAL (QCAT) Component

## **Facilitator**

New information provided to panel members:

Ms Carter and Mr Moore as well as Mr Price are in regular contact with the CSO and frequently express dissatisfaction with the nature and progress of the current Case Plan

## **Private Counsel (John Selfridge):**

Given your clients are unhappy with decisions made by the department:

- What would your advice be for options/avenues for appeal?
- Would you wait for the department to provide all the relevant paperwork?

## **Facilitator**

New information provided to panel members:

On 17 August 2010, the legal representative for the Mother and Mr Moore files a Notice of Review in the Tribunal seeking review of a number of decisions made by the department, including:

- the department failed to seek their consent to change Reece's day care or Tristan's school when they were placed in the department's care;
- they are unhappy with the level of contact they have been provided with by the department and want more and claim that the current level of contact limits their ability to prove to the department that they have the ability to care for the children; and
- they are unhappy that the children have been placed in separate placements and want the children placed together and closer to them.

On 19 August 2010, Mr Price files a Notice of Review expressing his unhappiness at the department's delays in assessing his parents to be kinship carers for Tristan, the limitations placed on his contact with Tristan, and the department's failure to consider a placement for Tristan closer to Brisbane so that his contact can be increased.

## **QCAT Representative:**

- What current decision/s made by the department would you see as reviewable decisions whereby Ms Carter and Mr Moore could be rightfully considered aggrieved persons?
- Do you think QCAT will be able to assist these parents with the remedy they are looking for?
- Is this the type of matter that can be dealt with quickly?
- Is this a matter where legal representation may be considered and if so, why?

**Court Coordinator:**

- When, to whom and where should have decision letters been sent? [Note the difference for a s86(2) of the *Child Protection Act 1999* decision when there is an assessment order in force as opposed to a Child Protection Order.]
- How many applications could this matter potentially have?
- Does s99M of the *Child Protection Act 1999* apply to this matter given the Childrens Court and FMC component?

**QCAT Representative:**

- Does Mr Moore have a right of review in relation to Tristan?
- Does Mr Moore have an automatic right to join in the Mother's application if he wants more contact with Tristan?
- Does Mr Price have a right to be joined to the application of the Mother and/or Mr Moore as it relates to Tristan?
- What would be some considerations given by QCAT when an application is made to join proceedings? E.g Would information be sought from the other parties as to their views about the proceedings being joined?

# Risk Assessment in Domestic Violence

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# Child abuse?

- Child abuse occurs when a person entrusted with the care of a child inflicts or allows to be inflicted on a child physical injury or deprivation which may cause or create a substantial risk of:
  - Death
  - Disfigurement
  - Impairment of physical or emotional health or development
  - Or create or allow substantial risk of injury other than by accident

# Types of Child abuse

- Higgins and McCabe (1998) identify five broad categories of abuse
  - including sexual abuse,
  - physical abuse,
  - psychological maltreatment,
  - neglect, and
  - exposure to domestic violence.
    - Abuse types rarely exist in isolation, but largely co-occur. In general, studies find that 90% of abused children have experienced more than one type of maltreatment

# Myths

- Domestic violence is not real abuse because the child does not get hurt
  - This is ultimately an empirical question.
  - Children exposed to family conflict and violence are between 3 to 10 times more likely to be referred for psychological treatment
  - DV Does Not occur in isolation and results in affect dysregulation and emotionally volatile environments, alterations to routine and resource depletion. In many cases accidental or even deliberate injury can occur to a child.

# Effects of abuse

- A huge literature, but in brief
  - Distinguish between direct effects such as:
    - Anxiety & depression (between 3 to 10 more likely)
    - Modeling inappropriate parenting behaviours
    - Hostile interpersonal relationships
    - Desensitising children to feelings of others
    - Physical harm and death
    - etcetera

# Indirect effects

- Vulnerability factors that reduce a child's ability to cope with other stressors
  - E.g. the child who presents as school failure but the problem remains one of the household.
  - the “generational effect”.
    - Abused children develop abusive parenting styles and parenting dysfunction and may themselves end up as targets of child protection investigations.

# Effects of abuse

- Sexual Abuse
  - Behaviour – both increases in external and internalising problems
  - Emotions (e.g. fear, self-deprecation, guilt, shame, and depression)
  - Cognition and self-concept – disturbances in gender identity and self-esteem
  - Sexuality
  - Social functioning – passivity, withdrawal, school failure, genital trauma
  - Somatic complaints – including sleep and eating disturbances, and PTSD
- Physical abuse – similar to sexually abused children
  - Elevated levels of aggression
  - Disturbances of relationships
- Domestic Violence
  - similar problems to those that experience physical abuse, but generally of weaker intensity

# Continued

- Neglect – particularly deficient in
  - Self-esteem and agency behaviours
  - Positive affect
  - Generally the most unhappy of all groups of abused children
  - And most likely to be “chronic victims” of abuse in later life
- Psychological maltreatment –
  - believed to be the core trauma of all types of abuse and neglect with the potential to be more damaging to children’s adjustment than other types of maltreatment alone
  - Disturbances in developing attachment
  - Significant problems in relationship formation especially in adolescence

# Facts and Figures

- Lehman (2000) reviewed 34 studies of retrospective reports of child abuse (domestic violence),
  - 50% of of studies dealt with Uxoricide.
  - Traumatization experiences averaged between 60% to 80% of sample
  - In most cases any act of DV was associate with having observed previous DV.

# Myth 2

- DV when children are young (under two) goes unnoticed by the child.
  - In fact abuse and exposure to DV and associated problems of neglect and emotional abuse has greater not lesser impacts in the first few years of life.

# Biological impacts

- early experience of abuse or neglect results in changes to neurotransmitter sensitivity or even hard-wiring changes in the infant brain that impact on emotional regulation and attachment
- There is some suggestion that early abused children show reduced left hemisphere functioning, impacting on their ability to utilise internal speech as an affect regulation strategy.

- Changes in the HPA axis (regulating fight and flight, and stress hormones) can occur as a result of prolonged stress at early ages, and can leave life long patterns of maladaptive responses to stress as a result.
- In general, the child's nervous system grows most, and is most sensitive to environmental influence, in the first three years of life.
  - Hence changes in both hormonal and nerve pathway activity can be most significant if it occurs in this critical developmental phase.

- It is thought that abuse, especially associated with attachment disorder in this early period can permanently impact on the child through “internalising” the approach-avoidance elements of abusive care-givers. Thus abuse can lead to problems in affect regulation, how one represents the self and others internally, attachment style adaptation to stress and capacity for intimacy and empathy

# Specific Effects of Abuse in early childhood

- Maltreated children develop a kind of PTSD syndrome characterised by increased hypervigilance, exaggerated startle response, anxiety, and emotional detachment from others.
- At a neurological level specific pathways form as a consequence of abuse. Easy activation of these pathways “canalization” occurs, such that there is preferential activation of pathways confirming abuse like states and linking cognitive and affective states.

# Neuro and endocrine changes

- Early childhood is a period of rapid brain growth (myelination and dendrite expansion). Hence abuse and influences on brain development in childhood is far more likely to produce serious and relatively permanent changes in function than in adolescence. Importantly research indicates that relational stress are more injuring than aversive events
- Stress of maltreatment may alter the HPA axis (Hypothalamus-pituitary-adrenal).

# Altered emotional reactivity

- Maltreated children are sensitised to certain emotional cues as a function of learning.
  - For example, anger recognition becomes strongly developed in physically abused children (including those exposed to DV), whereas neglected children appear to become insensitive to facial communication of emotion across the board. Both can lead to deficits of perspective taking, an important precursor to the experience of empathy.

# Distorted perceptions of others

- Exposure to violence in and of itself desensitises children to it. In a corollary children may be sensitised by the indirect experience of violence (hearing about violence, violence within the media, news, family reports) and seek to form alliances in order to gain protection after having established a belief system “the world is dangerous” what they call a “negative perceptual bias”.

# Domestic Violence

- Heyman and Smith Slep (2001) make the point that clinical guides need to be developed for the specific variants of the behaviour being investigated. Just as there are multiple kinds of child abuse which may have subtle and obvious differences in effect and predictors, family violence also consists of differing kinds of behaviours, for which some variables are more salient than others.
- Heyman and Smith Slep (2001) note that even as late as 2001 there was still an insufficient research base to develop an appropriate model of risk and protective factors that has utility for developing interventions. (c.f. VRS)
  - Heyman, R. E. & Smith Slep, A. M. (2001) Risk factors for family violence: introduction to the special series. *Aggression and Violent Behaviour*, 6, 115-119.

# A model of parenting risk of harm assessment

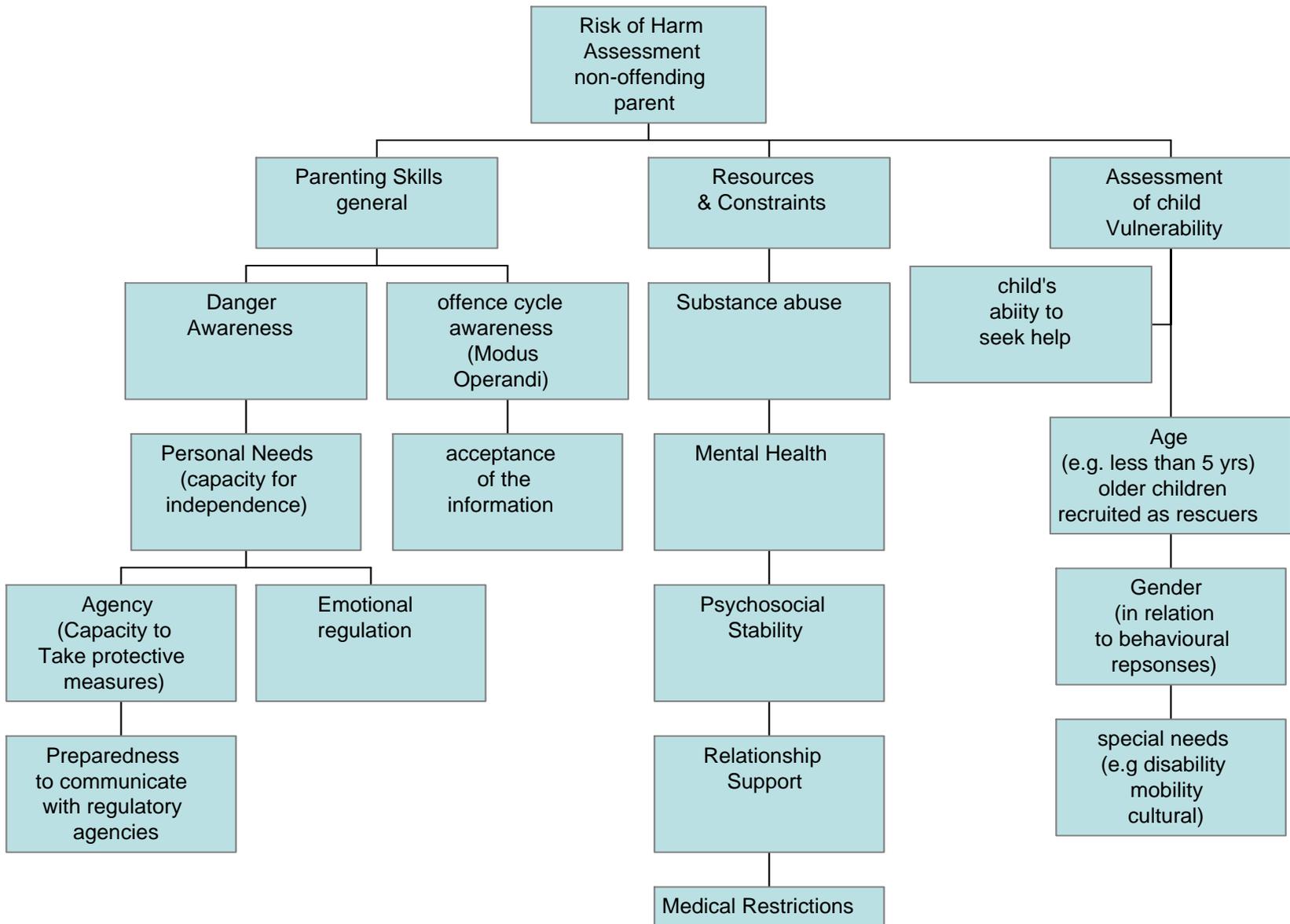
- Most parenting models are concerned with describing models of appropriate parenting.
- Elements of health family functioning
  - safety, open communication, self-care, individualised roles, continuity, respect for privacy, and focussed attention. (Cermak)
  - mechanisms of good family adjustment: appropriate boundary setting, good conflict resolution, appropriate openness, communication (Olsen).

# Risk Models

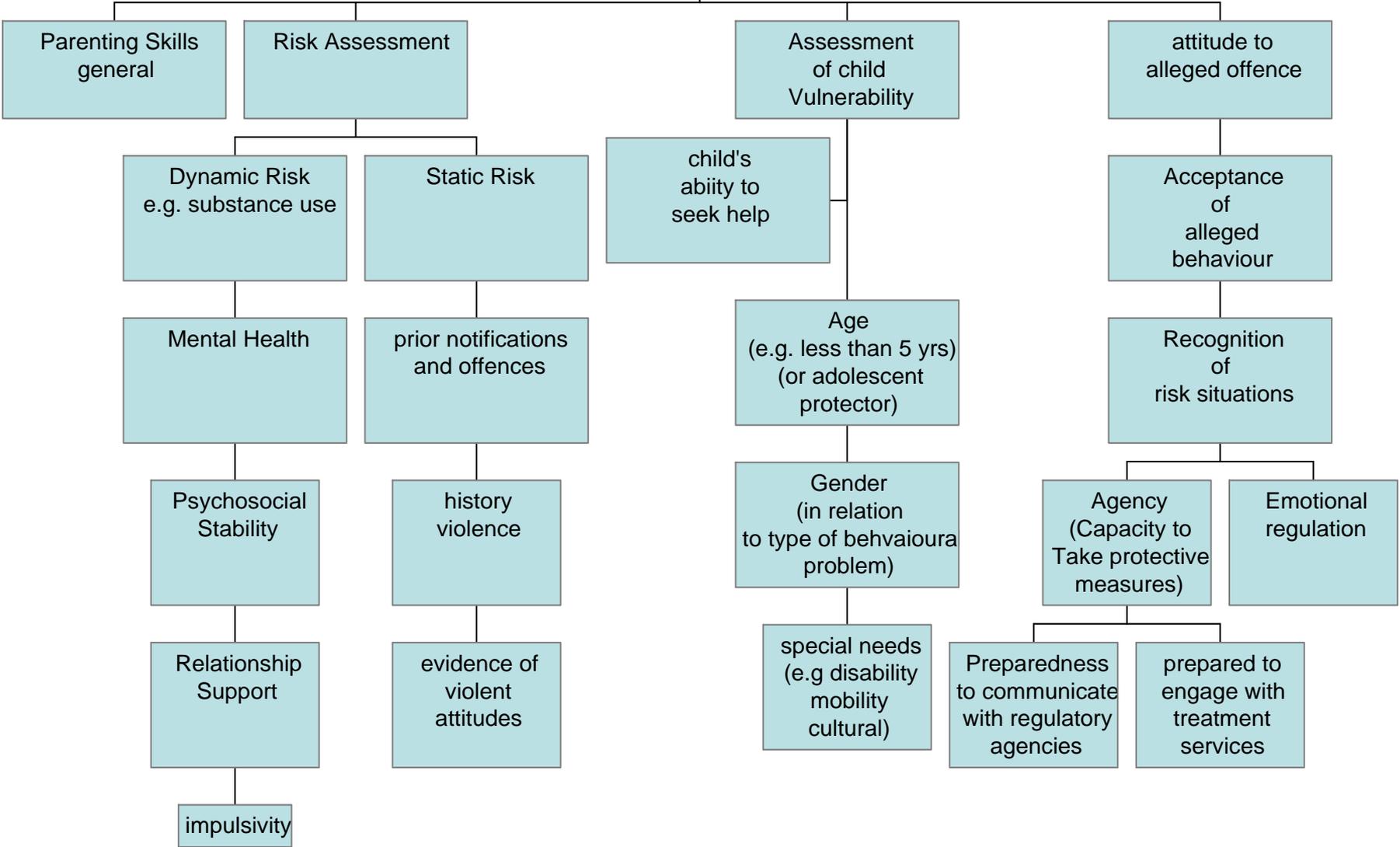
- In the initial development of models of risk of harm in assessment, authors have sought to place models in the context of risk
- E.g. Finkelhor
  - Utilises a risk assessment approach and then integrates it into whatever other assessment process is taking place.
  - It remains a risk assessment however, rather than a parenting assessment.

# Higgins & Macabe

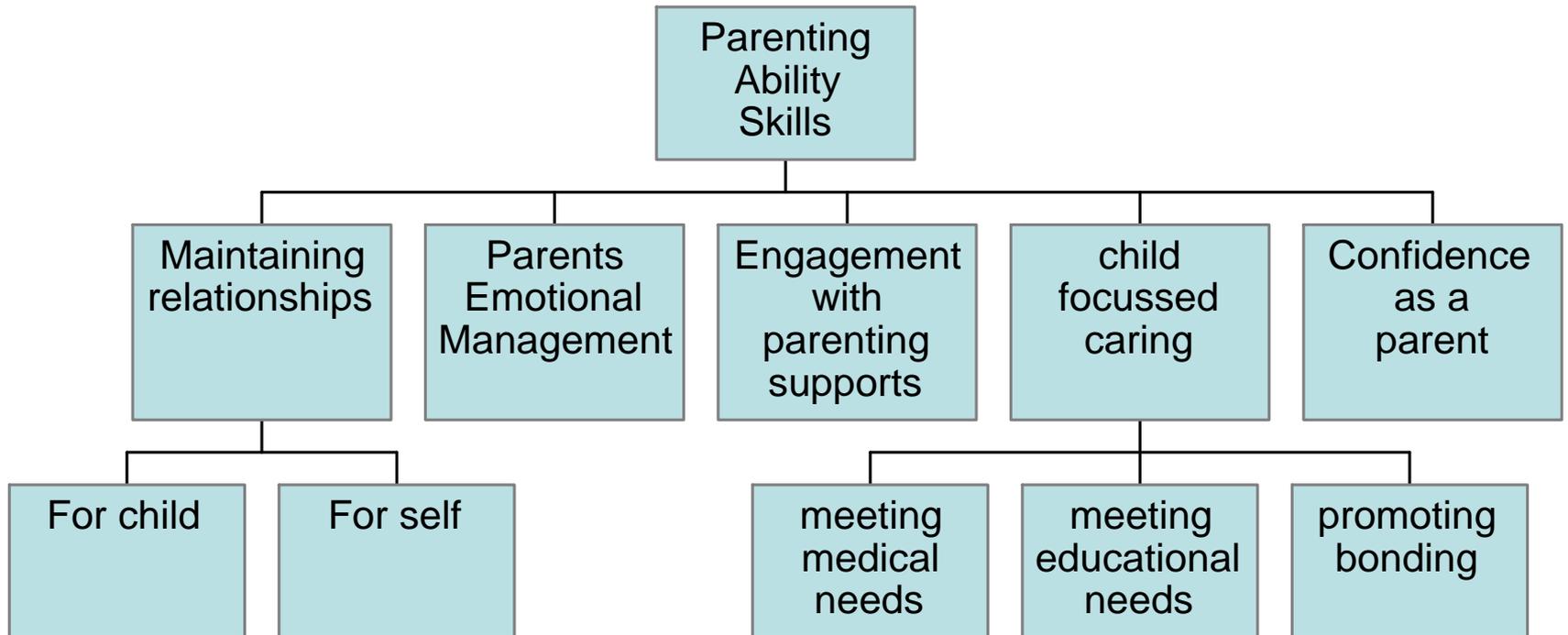
- Simple Assessment framework
  - Borrowed from Hamilton & Finklehor
  - Number of incidents X number of perpetrators
  - Weighted for nature of abuse



Risk of Harm  
Assessment  
offending  
parent



# Parenting Skills



# Typical approach

- Parenting Assessment combined with risk assessment
- Risk assessment
  - Actuarial assessment
  - Dynamic risk assessment
  - Specific DV risk assessment

# Assessment Tools

- Parenting assessments can make use of
  - Interview
  - Observations
  - Collateral
    - (affidavits, other reports, contact visit reports etc)
  - Psychometric tools
    - Specific (e.g. PBI, CAI, Bene Anthony)
    - General (e.g. parent report of the MMPI-2; PAI)
  - Structured Assessments

# Spousal Assault Risk Assessment Guide (SARA)

- Kropp, Hart, Webster & Eaves 1995
- Structured (guided) clinical instrument
- Similar in process to HSCR-20 and RSV-20
- 4 sections
- Criminal history Items
  - Past assault of family members
  - Past assault of strangers or acquaintances
  - Past violation of conditional release or community supervision

# Psychosocial Adjustment:

- Recent Relationship Problems
- Recent employment problems
- Victim of and/or witness to family violence as child or adolescent
- Recent substance abuse/dependence
- Recent suicidal or homicidal ideation/intent
- Recent psychotic or manic symptoms
- Personality disorder with anger, impulsivity, or behavioural instability

# Spousal Assault History

- Past physical assault
- Past sexual assault/sexual jealousy
- Past use of weapons and/or credible threats of death
- Recent escalation in frequency or severity of assault
- Past violation of “no contact” (AVO) orders
- Extreme minimisation or denial of spousal assault history
- Attitudes that support or condone spousal assault

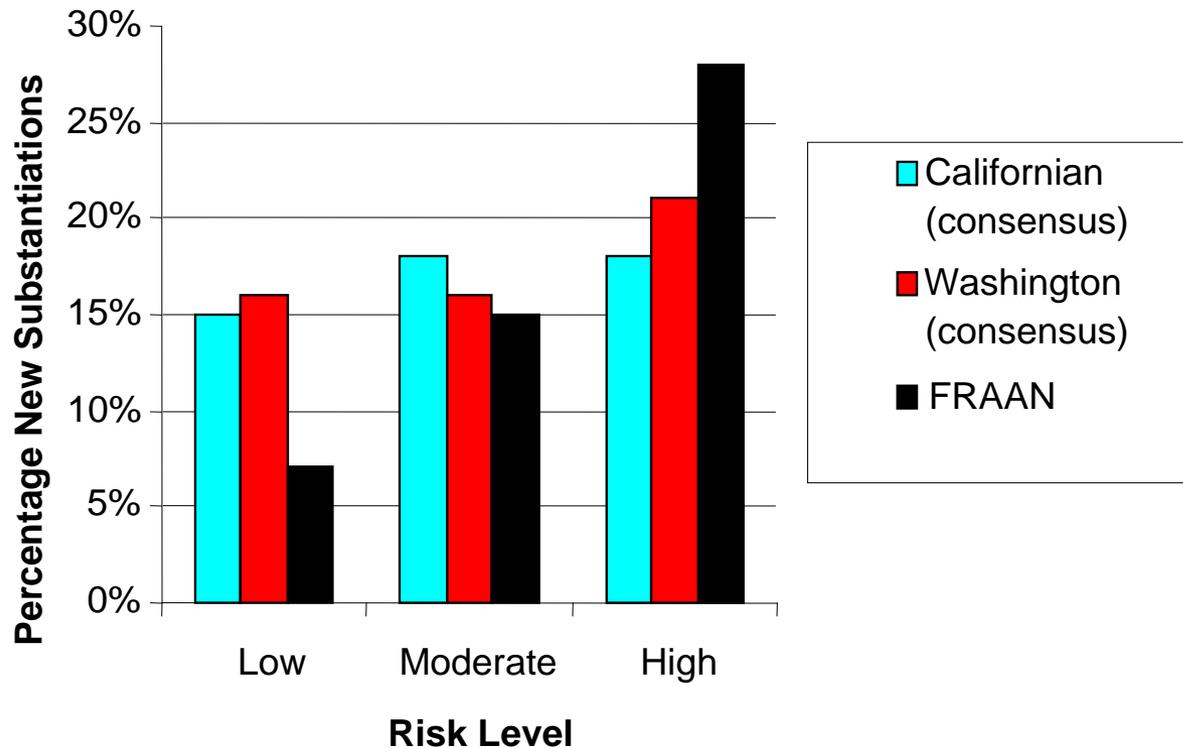
# SARA items

- Alleged (Current) Offence
  - Severe and/or sexual assault
  - Use of weapons and/or credible threats of death
  - Current violation of “no contact” (AVO) order
- Advice to completers of this checklist is to not rely on interview alone, but to make use of structured interviews and self-report questionnaires to supplement clinical impressions.

# Family Risk of Abuse and Neglect (FRAAN)

Investigation type Neglect/Emotional abuse	Investigation type Physical/Sexual abuse
Prior Report	Nature of Prior Intakes
Number of prior intakes	Child characteristics
Age of youngest child in family	Age of youngest child in family
Family with one care giver only	Prior alternate care arrangements
Number children confirmed for abuse	Number children confirmed for abuse
Current investigation found child physically harmed	Age of youngest child found injured/harmed
Care giver has history of domestic violence	Care giver has history of domestic violence
Current or Prior drug or alcohol abuse	Drug/Alcohol contributory to incident
Current or prior parent skill deficit	Current or prior parenting skill deficit
Family received financial assistance	Caregiver cooperated with investigation

# The FRAAN: Distinguishing Ability



- Distinguishes well (relative terms, see Munro, 2004)
- Mic-FRAAN: Superior performance to other models (Baird & Wagner, 2000)

# The SA-FRAAN: Predictive Ability (within 12 months of assessment)

## Risk ratings for the SA-FRAAN (Johnson *et al.*, 2000)\*

Risk Classification	Total score	% Neglect		% Physical/sexual abuse		% At risk of any abuse	
		Notification %	Confirmation %	Notification %	Confirmation %	Notification %	Confirmation %
Low	-2 to 2	8.0	4.3	5.9	2.5	6.8	3.4
Medium	3 to 7	22.7	13.9	21.5	8.8	31.0	18.2
High	8 to 10	36.9	21.3	31.9	11.9	48.4	27.7
Very High	11 or more	63.9	42.6	37.1	25.7	63.6	43.0

\* Notification rates and confirmation rates are shown within each of the risk categories

# SA-FRAAN Limitations

**Static factors:** historic in nature = relatively fixed in risk indication over time and Provides estimates for group membership and not individuals.

**Dynamic factors:**

amenable to intervention

*Stable:* change slowly, e.g. substance abuse

*Acute:* change rapidly, e.g. mood

**Responsivity factors:**

correlates of successful intervention,

e.g. motivation

**Ignores:**

**Needs:**

deficit conditions antecedent to an offence

e.g. parenting skills deficit = application of inappropriate parenting

**Protective factors:**

decrease the likelihood of undesirable target behaviours

e.g. adequate parental income

# Family Strengths and Needs Assessment (FSNA)

- Developed as a case planning tool and NOT as a risk assessment.
  - Originally developed through expert panel, not as yet empirically validated. (But does have evaluation evidence)
- Dynamic risks however represent factors that a person has a “deficit” in, and hence identifying a person’s needs represents ipso facto dynamic risk/need assessment
- Has the advantage of identifying strengths that may help moderate the actuarial risk assessment.

# Derivation.

- Dynamic factors are necessary as families change over time and in response to intervention
- Non structured Risk assessment and Family Assessment show high inter-rater variability and are inconsistent
- “Experts” vary in training, experience and ideological baggage and reduce the consistency with which assessments are undertaken.
- Risk assessments need to do more than identify risk - they need to direct the allocation of resources.

# Items

- Originally consisted of 13 needs, variously weighted which has largely been equalised by fiat.
  - Emotional and Mental Health, Parenting Skills, Substance Abuse, Housing Environment\*, Family Relationships, Child characteristics, Social support systems, Caregivers Abuse and Neglect Hx, Communication & Interpersonal Skills, Caregiver Life Management Skills, Physical Health\*, Employment & Income Management, Community Resource Utilisation,
- Asterisked items represent specific needs and have their weights adjusted accordingly.

## From need assessment to risk assessment

- Calculate the balance of strengths vs needs.
- What are the critical needs for this context?
  - Are any so critical they “over ride” the assessment
- Ask yourself
  - How sustained have the risk factors been?
  - If there is change, how long term is it?
  - Influence the risk factors have within the current situation?
- Assign risk Low, Moderate, High & Very High

# Why?

- Correlated but not the same.
  - Prior research shown that FRAAN and FSNA share about 10% of the variance, hence, moderate correlation indicative of assessing overlapping but sufficiently different domains of risk to be separate indicators of risk.
- Presumption of change
  - actuarial risk indicators do not allow change, and dynamic indicators are necessary to assess response to interventions

# Structured Decision Making

- Actuarial indicators sample a small sub set of items, needs sample a broader range
  - Modifies the need to use policy over-rides for which often political rather than evidentiary support exists.
- Accountability and transparency
  - Use of heuristics for decision making allow for effective monitoring of the elements of risk in an experts mind, and for challenging the decision on an evidence rather than a personal basis.
  - Should ensure greater consistency

## Actuarial Risk Assessment

F  
S  
N  
A

		<b>low</b>	<b>Moderate</b>	<b>High</b>	<b>VeryHigh</b>
<b>Low</b>	<b>low</b>	low	low	moderate	<b>moderate</b>
<b>Moderate</b>	<b>low</b>	low	<b>moderate</b>	moderate	high
<b>High</b>	<b>moderate</b>	moderate	moderate	<b>high</b>	Very high
<b>VeryHigh</b>	<b>moderate</b>	high	high	Very high	<b>VeryHigh</b>

# Concluding Comments

- Establishing risk of harm is about combining parenting competence, and risk assessments with specific assessments for the behaviour under consideration.
- Risk assessment provides a structure to the assessment, but has to be combined with “usual practice”
- Such approaches remain novel in child protection in Australia, but only because the remains reluctance by statutory authorities to prove access to date that would validate the use of such instruments.

# WELCOME

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HYPOTHETICAL PANEL DISCUSSION:  
AT RISK & FAMILY VIOLENCE CASE  
SCENARIO

# Panel Members:

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- Mr Murray Green
  - Ms Bridget Condon
  - Ms Tracey Barrett
  - Dr Chris Lennings
  - Mr John Selfridge
  - Her Honour, Pam Dowse
  - Ms Julie Ford
  - His Honour, Keith Slack
  - Mr Nigel Miller
  - Facilitator
  - Child Safety Officer
  - Court Coordinator
  - Expert Witness
  - Legal Counsel - parents
  - Childrens Court Magistrate
  - QCAT representative
  - Federal Magistrate
  - Legal Aid Queensland
-

# Family Constellation:

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- Abigail Moore (4mths) subject child
- Reece Moore (3yrs) subject child
- Tristan Carter (6yrs) subject child
- Linda Carter (25yrs) mother
- Adam Moore (39yrs) father of Abigail & Reece
- Robert Price (25yrs) father of Tristan

Whereabouts unknown

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# What we know:

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- ❑ The family are living in rental accommodation in Kingaroy having recently moved there from Grafton, NSW.
  - ❑ The family have no connections to the area. They moved so that Adam could find work.
  - ❑ Tristan attends the local State School and Reece is enrolled at ABC child care 4 days per week.
  - ❑ Mother's family are from NSW.
  - ❑ Police and the Department of Community Services were involved with the family whilst they were living in NSW.
  - ❑ There is a history of concerns relating to domestic violence with Linda requiring medical treatment.
-

## More information:

---

- ❑ On 11 June 2010, the Queensland Police Service advise that they have attended the family home due to a domestic disturbance.
  - ❑ When officers attended they heard Mr Moore yelling and the sounds of an altercation. They entered the home to find Mr Moore trying to force open a door to a bedroom.
  - ❑ Ms Carter was in the room seeking shelter and was found to have serious bruising to the face. The children, Tristan and Reece were hiding in another room. Abigail was crying in her cot.
  - ❑ Officers removed Mr Moore from the premises and have applied for a protection order for Ms Carter and the children.
  - ❑ Mr Moore was placed in the watch house overnight. He was going to stay with a friend.
-

## Information continued:

---

- ❑ Ms Carter refused medical care saying she was ok, and refused to make a statement against Mr Moore for assault.
  - ❑ Ms Carter remains in the family home with the children, and has indicated that she may move back to her family in NSW.
  - ❑ Ms Carter has made repeated enquiries as to Mr Moore's well-being.
  - ❑ A child protection notification was raised by the After Hours Child Safety Service Centre and has now been forwarded to your CSSC.
-

11 June 2010

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Child Protection Notification  
received

12 June 2010

---

Temporary Assessment Order  
application

---

15 June 2010

---

File Court Assessment Order  
application

---

25 June 2010

---

CAO – First mention

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25 July 2010

---

File Child Protection Order  
application

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5 August 2010

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Child Protection Order – 1<sup>st</sup>  
Mention

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10 August 2010

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Federal Magistrates Court  
Mention

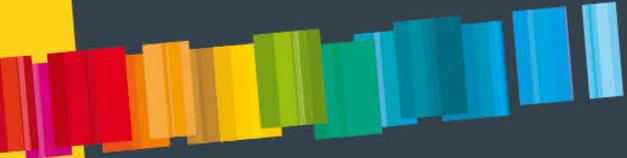
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17 August 2010

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QCAT notice filed

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# Obtaining evidence in rural and remote areas

Difficulties, considerations and strategies



View from Thursday Island branch  
office

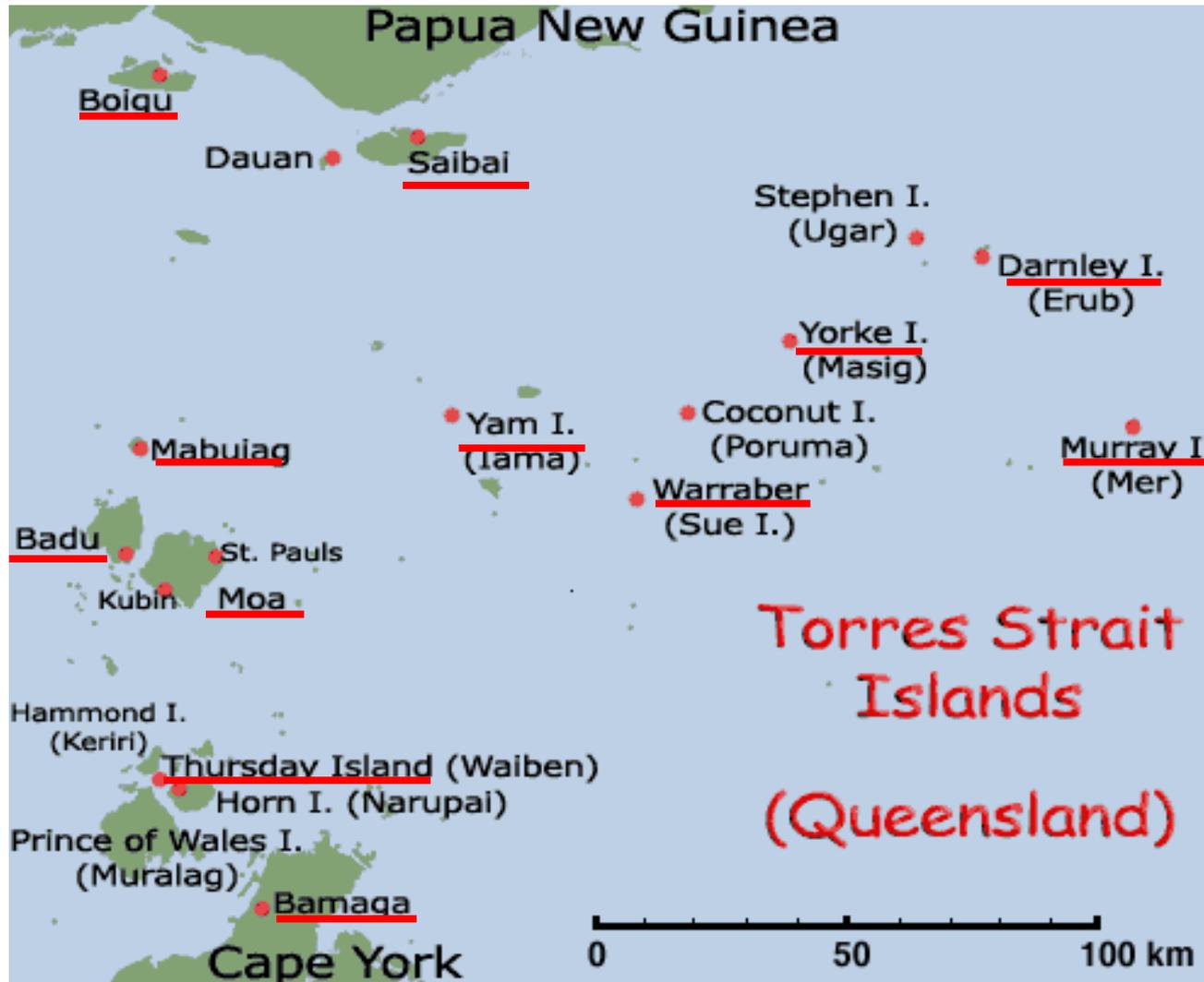




Runway Yorke Island



## Torres Strait Islands



Torres Strait  
Islands  
(Queensland)

                      
= court  
available



Charter plane



AURUKU





## Contextual information – remote

- Weipa and Thursday Island branch offices are only carrying Ongoing Intervention cases. The investigation and assessment team operates out of Cairns;
- All teams are required to spend significant periods of their working time travelling either by boat, car, plane and helicopter. This involves complex planning and approval processes;
- There are limited basic support services available in these remote areas; specialist support will have to be sourced from Cairns.



# Thursday Island Courthouse





"Closed" Court on Yorke Island



**Childrens Court on Mabuiag**



## Contextual information – remote courts

- There is a pool of 8 different Magistrates appearing in Childrens Courts around Cape York, Torres Straits Islands and Cairns.
- LAQ have one solicitor based in Cairns who is servicing the Torres Strait Islands and the Northern Peninsula Area. Queensland Indigenous Family Violence Legal Service have two solicitors based in Cairns servicing the Cape York area.
- No contested hearings have occurred in the last three years and a minimal amount of decisions have been appealed in the tribunal;



## **CP Act 1999 and working in remote and isolated areas**

- 1) Sections 23, 37, 51F, 52, 67(3), 117(3), 205 and 242 *Child Protection Act 1999*; these definitions of a parent do not acknowledge persons who are regarded as parents under Island custom or Aboriginal tradition;
- 2) Sections 6 and 83 *Child Protection Act 1999*, difficulties in complying with extra provisions around Aboriginal and Torres Strait Islander children;
- 3) Section 87 and 88 of *Child Protection Act 1999*; What constitutes as “as often as is appropriate in the circumstances” and/or “not reasonably practicable in relation to providing contact between a child and its family?; and
- 4) Section 195(3) and (4) *Child Protection Act 1999*; What constitutes “reasonably practicable” and/or “reasonable inquiries” while serving documents in remote vs urban settings?

## Evidence gathering – case example

- A 13 year old boy from Dauan Island, who was traditionally adopted at birth, is believed to be at immediate risk of harm.
- The CSO who is currently on the Island has advised you that a TAO is needed to ensure his safety.
- The child protection concerns relate to ongoing and escalating domestic violence of the traditional adoptive parents to which the child is exposed.
- The whereabouts of the biological parents are unknown and they have no input in the child's life. The boy does not know he is traditionally adopted.



**Border Saibai Island – Papua New**





WELCOME  
TO  
DANUANILO

*The Northern Tip of O'ld, Australia*

## Case example - continued

- Dauan Island is located approximately 150km from mainland Australia and has a population of approximately 100. The Island has 1 health worker, 2 teachers but no permanent police officer.
- The Island has no runway and is accessible by helicopter from Horn Island at a cost of \$1850 for 2 workers; the workers who are based in Cairns are able to catch a flight at a cost of \$1800 for return flights to Horn Island.
- Having to be at the Cairns airport at 7am the workers will arrive on Dauan Island at 12:30pm the earliest. They are required to leave the Island at 4:30pm due to flight restrictions.

## Case example - continued

- The CSO has further informed you that it is likely that an application for a CPO will be made.
- During the initial stages of the investigation no suitable placements have been located on Dauan Island or surrounding Islands and the child will need to be placed in the Cairns area, approximately 1150km away.
- There is no Recognised Entity available for the area.
- The nearest court on Saibai Island sits three times a year; a monthly court sits on Thursday Island 120km away.



# Evidentiary considerations

- How do we provide evidence that the child has no *parent* willing and able to protect?
- How do we gather evidence to demonstrate significant risk of harm to the child given the lack of services and infrastructure available?
- How do we use possible evidence provided by the health worker and teachers without compromising their safety on the island?



## Evidentiary considerations - continued

- How do you gather evidence from people in remote areas of whom English is their third language?
- Can we rely on hearsay evidence from community members and Departmental staff?



# Procedural considerations

- How do you evidence “immediacy” when using section 18?
- How do we ensure appropriate service of the documents and can the traditional adoptive parents be served?
- How do we comply with section 6 and 83?
- How do we comply with section 87 and 88?







# Eromanga







## Eromanga – Case example

- A baby was initially removed from Eromanga due to concerns raised by a local police officer. No actual harm had been suffered by the baby. Subsequently a TAO and CAO were sought and granted
- The parents involved are a married couple who live with the maternal grandmother. The father is often away working on oil fields in the West.
- The baby was placed 300 kms east of Eromanga in Charleville. This placement proved expensive and resource intense, it further compromised Department's ability to assess the parents in interaction with the baby due to the few opportunities for supervised contact.

## Case example – continued

- Mum is intellectually impaired and assessed at level approximating a 12 year old girl. She has recently taken a 'set against dad' and wants to physically fight him every time he is present.
- She can not care and protect for the baby herself – for example she has to be supervised bathing baby so she does not drown it.
- Baby has previously been properly cared for by maternal grandmother and/or father, but now father faces the added problem of domestic violence.

## Case example – continued

- Grandmother says she can't cope with mother's behavioural deterioration particularly when father is away due to her rapidly advancing frailty.
- The assessment has been completed and father has been assessed as a parent who is willing however not able to protect the child given mother's behaviours.
- The CSO is considering an IPA or PSO but there are no services available to support or service a case in Eromanga. The parents are adamant they don't want to move away from where their family and friends are. They have lived in the town all of their lives.



## Considerations

- If the assessment is considered right what type of ongoing intervention would be appropriate? (IPA/PSO or directive order?)
- What about our obligations under section 73 to take reasonable and practicable steps to help the child's family? Does this apply to a directive order?
- Would an application for a custodial order be appropriate simply because the family does not have access to services? Does the family have an obligation to move 300 kms east to access support services?



## Identified key difficulties - evidence

- 1) Limited availability of services and access to services – no easy fix and does effect quality of applications;
- 2) Difficulties in gathering quality evidence due to language and cultural barriers - need to be realistic; and
- 3) Overreliance of hearsay evidence due to staff turnover and need cost effective travel of staff.



## Identified key difficulties – procedural

- 1) Difficulties in filing and serving court material;
- 2) Lack of participation and attendance in court by parties involved;
- 3) In practice the threshold for the Department to be notified about CP concerns is often much higher in rural and remote locations; and
- 4) Difficulties in complying with specific sections of the CP Act around Aboriginal and Torres Straits Islander families.



## How to overcome?

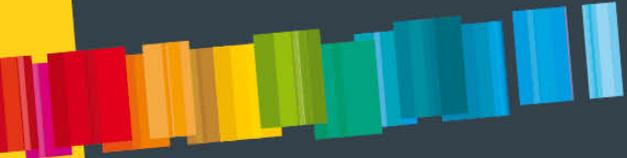
- 1) Community engagement and development to create awareness of Child Safety Services and its role in Childrens Court, especially around notification processes and need for direct evidence.
- 2) Lobby for more services/education in communities
- 3) Purchase of video conferencing, boat and aircraft.
- 4) Use of community members as interpreters



## How to overcome?

- 5) Broad interpretation of section 105 – rules of evidence. Also use of section 113 – inclusion of persons as non-party in court proceedings
- 6) Use creative ways of serving material.
- 7) Establishment of Safe Houses throughout Cape York and Thursday Island. Out-of-home care workers based in branch offices in an attempt to recruit more local foster carers.





# WELCOME TO THE COURT COORDINATOR CONFERENCE 2010

Unacceptable risk and family violence – how can  
we evidence this?

# HOUSE KEEPING

- Starting times
- Agenda for the 2 days
- Suggestion board
- Breaks:
  - Morning tea 10:30 -10:45am
  - Lunch 12:30 – 1:15pm
  - Afternoon tea 2:45 – 3:00pm

# House keeping continued

- Evaluation sheets
- This year information will be disseminated via email.
- Please have your mobile turned off or on SILENT.  
Please do not take calls in the room.
- Messages – can be left at reception
- Toilets
- Emergency exits



# Court Coordinator Conference

## Adoption Services Queensland





# Services provided by Adoption Services Queensland

- Programs Team
- Services to Children Team
- Queensland Adoption Team
- Intercountry Adoption Team
- Services to Adults Team



## Legislation and Changes - Legal authority for adoption

***Adoption Act 2009*** and ***Adoption Regulations 2009*** commenced 1 February 2010

- The main objective of the Act is to promote the wellbeing and best interests of the adopted child, both through childhood and the rest of his or her life, to support efficient and accountable practice, and to comply with Australia's obligations under the Hague Convention.



## Introduction of *Adoption Act 2009*

- Improve the information and support provided to birth mothers and fathers considering adoption for their child.
- Allow for more openness between all those involved in an adoption.
- Introduce court orders for adoption.
- Mean changed eligibility criteria for those applying to adopt a child
- Provide birth parents and adopted people with access to information.



## COURT ORDERS

- Adoption orders now made by the Childrens Court.
  - Queensland was the only Australian jurisdiction in which Adoption Orders were made administratively by a Public Servant.
  - Adoption Orders involve serious long-term consequences for the child, members of the child’s birth family and the adoptive families.
  - A court makes an independent decision based on all information that is provided and ensures the actions taken by the Department or other parties comply with legislation.
- 
- Court Coordinators and Court Services Advisors have a delegation to appear in the Childrens Court

# COURT ORDERS

- **Dispensing with the need for the consent of a parent to an adoption**  
(Local and step parent)
- **Proceedings about whether a parents have consented**  
(Local and step parent)
- **Interim adoption orders**  
(Local and intercountry)
- **Discharge of Interim adoption orders or ending custody**  
(Local and intercountry)
- **Final adoption orders**  
(Local, intercountry and step parent)
- **Restricting access to identifying information**  
(Local)
- **Discharge of final adoption order (Supreme Court)**  
(Local, intercountry and step parent)



## Consents required for a child's adoption

- The Act requires a child's mother and father and every person who is a guardian of the child (other than the chief executive if the child is subject to an order granting guardianship to the chief executive):
  - to freely and voluntarily consent to the child's adoption before a child can be adopted, or
  - for the need for their consent to be dispensed with by the Childrens Court.



## Dispensing with the need for the consent of a parent to an adoption

### **Section 39 *Adoption Act 2009***

(local and step parent)

- If application is made by a step-parent department may apply to be a respondent
- Used when a parent is unknown, can not be located, lineal relative of the child's mother, the child's conception was a result of an offence committed by the relevant parent, there would be unacceptable risk of harm to the child or mother if the relevant parent were made aware of the child's birth or proposed adoption
- Parent does not have capacity to give consent
- Parent is not and will not be within a reasonable timeframe willing and able to protect the child from harm and meet the child's need for long-term stable AND is unreasonably withholding consent OR refuses to engage with the Department in relation to the issue of consent



## **Interim adoption order (local)** **Section 183 *Adoption Act 2009***

- Prospective adoptive parents are respondents to this application
- Department needs to give notice of the application to those who provided consent
- The Court needs to be satisfied that the child is in Queensland, the proposed order will promote the child's wellbeing and best interests, the prospective adoptive parents were selected in accordance with the Act, they are suitable having regard to the Act, the female prospective parent is not pregnant
- The prospective adoptive parents will only meet and take custody of the child once an interim order made.
- Once an order is made the child is in the custody of the prospective adoptive parents, chief executive retains guardianship, the Department must supervise



## **Discharge of Interim adoption orders (local) s186 *Adoption Act 2009***

- If concerns exist about a placement an application can be made to discharge the interim order
- The Court needs to be satisfied it would not be in the child's wellbeing and best interests to be adopted by the prospective adoptive parents having regard to those matters that the Court would need to be satisfied of to make a final order

## Final Adoption Orders

- Department will generally be the applicant
- Prospective adoptive parents (child is in their custody) can apply directly to the court for a final order if the child has been in their care for a period of 12 months and 30 days if Adoption Services Queensland has not applied for a final order.
- For step parent adoptions, it is the responsibility of the step parent to lodge the application directly with the court.



## Final Adoption Orders (Local) *s189 Adoption Act 2009*

- Either an interim order has been in force for 1 year or the child's prospective adoptive parents have been the child's approved foster carers for 1 year
- The Court must be satisfied that the child is in Queensland, the proposed order will promote the child's wellbeing and best interests, the parents are adults, Australian citizens, resident or domiciled in Queensland and are suitable, and while the child has been in their custody the prospective adoptive parents have demonstrated their willingness and ability to meet the child's needs, committed to any adoption plan and maintained the child's cultural identity



## Final Adoption Orders (Intercountry) *s200 Adoption Act 2009*

- Child has been in the custody of the prospective adoptive parents for 1 year either through an interim order or through an authority from the Department
- The Court must be satisfied that the child is in Queensland, the child is not prevented from residing permanently residing in Australia, the competent authority has advised that arrangements for the adoption have been made under the law of the country/ the Hague convention, the competent authority has agreed to the adoption, the proposed order will promote the child's wellbeing and best interests, the parents are adults, Australian citizens, resident or domiciled in Queensland and are suitable, and while the child has been in their custody the prospective adoptive parents have demonstrated their willingness and ability to meet the child's needs and maintained the child's cultural identity



## Final Adoption Order (Step-parent) *s208 Adoption Act 2009*

- The step-parent and their spouse must apply jointly to the Court for the final adoption order when they have made application under the Act, has been assessed as suitable pursuant to the Act and has received a suitability report from the Department.
- The applicant must serve the department and give notice to anyone who has consented
- The Court must be satisfied the child is in Queensland, the step-parent is an adult and resident or domiciled in Queensland, Australian citizen, the step parent is suitable pursuant to the Act, an order would better promote the child's wellbeing and best interests than another court order or no court order, there are exceptional circumstances that warrant the making of the order.



## Effect of final adoption orders

- Once order has been made the adoptive couple are the legal parents of the child. The child's birth certificate will be amended to reflect the change in legal status.

## Interface – CSSCs and ASQ

- ASQ – CSSC requests:
  - See chapter 10.9 Child Safety Practice Manual
- Adoption as a permanency option for children in care
  - The Act makes provision for adoption to be used to secure a permanent family for a child subject to a child protection order. Adoption would be considered where:
    - the case plan goal for a child is to cease attempts to reunify the child with the birth parents/family because the child cannot return to live safely with his or her family, and
    - adoption has been identified as the most appropriate option for securing the child's permanent care because of the child's specific needs and circumstances

## Number of local adoptions of non-relative children

2002 – 03	23
2003 – 04	14
2004 – 05	13
2005 – 06	8
2006 – 07	14
2007 – 08	17
2008 – 09	21
2009- 10	10

## Adoptions by country of origin from 2003 - 2009

Country of origin	03-04	04-05	05-06	06-07	07-08	08-09	09-10
India	0	0	2	1	5	1	1
Philippines	6	7	9	8	5	10	10
Sri Lanka	0	0	1	0	1	0	1
China	7	18	7	7	0	15	0
Ethiopia	14	16	8	13	9	7	7
Fiji	1	0	0	0	0	0	0
Hong Kong	0	0	1	0	0	0	1
South Korea	19	14	20	15	9	8	7
Taiwan	2	6	5	12	13	9	8
Thailand	0	4	8	7	4	0	3
Other	0	0	0	0	1	0	0
<b>TOTAL</b>	<b>49</b>	<b>65</b>	<b>61</b>	<b>63</b>	<b>47</b>	<b>49</b>	<b>38</b>

## Step Parent adoption

<b>2007 – 08</b>	23
<b>2008 – 09</b>	14
<b>2009 - 10</b>	13



# Child Protection and Other Acts Amendment Bill 2010



# Improving Decision-Making to Promote Children's Safety and Wellbeing

Strengthening the paramount principle

New division, Purpose of Act and principles for its administration

- new ss 5 to 5E
- 'safety, wellbeing and best interests' paramount
- framework of principles decision-makers must take into account in applying the paramount principle



# Improving Decision-Making to Promote Children's Safety and Wellbeing

Strengthening the paramount principle

- New s 104 requires the Court to have regard to ss 5A, 5B and 5C and state its reasons for decisions.



# Improving Decision-Making to Promote Children's Safety and Wellbeing

## Recognition of cumulative harm

- *S 9 What is harm* – new subsection (4) will recognise that harm can be cumulative over time by specifying that it can be caused by a single act, omission or circumstance or a series of acts, omissions or circumstances.

# Enhancing the Department's Ability to Secure Children's Safety

A new temporary custody order

- S 18 – when a child is taken into custody to avert an immediate risk an authorised officer must apply for a TAO or a TCO
- New Part 3AA (Ch 2) ss 51AA to 51AM, Temporary custody orders will allow the department to take a child into safe custody, for up to 3 business days, without the need for assessment. The Court to be satisfied the child is at immediate risk and, during the term, the chief executive will decide child's ongoing protection and care needs and state taking that action.
- A TCO may be extended until the end of the next business day if the applicant intends to apply for a CPO during the extended term



# Improving Decision-Making to Promote Children's Safety and Wellbeing

Separate representatives in court proceedings

- S 110 – new ss (4), (5) and (6) will clarify the role of a separate representative – they are not a party but have the obligations and rights of a party and their role ends when an application is decided or withdrawn or when any appeal is decided or withdrawn.



# Enhancing the Department's Ability to Secure Children's Safety

Provisions of court assessment orders – supervised family contact

- S 45 – new subsection (2) inserted to require the Court to consider the department's submissions about a contact order, specifically whether contact should be supervised and the duration and frequency of contact during the term of a court assessment order.

# Enhancing the Department's Ability to Secure Children's Safety

Departmental contact with child during adjournment of court hearing for CAO or CPO

- S 67 - The court will be able to order that an authorised officer may have contact with a child, who remains in their parents' or a relative's custody during the adjournment, and may authorise entry and search powers to enable contact.

# Enhancing the Department's Ability to Secure Children's Safety

## Entering into an assessment care agreement

- S 51ZE – The department may enter into an assessment care agreement with only one of the child's parents if it is impractical to obtain both consents or a reasonable attempt has been made to obtain both consents. After the agreement is made the department must still attempt to give the other parent a copy of the agreement and seek their consent.
- However, an agreement may not be made with one parent if the other parent refuses consent.
- S 51ZI – the other parent may end the agreement on 2 days notice.



# Gathering and Sharing Information

Obligation to inform police of criminal offences

- S 14 – clarify the department’s obligation, i.e. to inform police when an allegation of harm may involve a criminal offence whether or not the department takes any action regarding the allegation.



## Gathering and Sharing Information

Report about person's criminal history etc.

- S 95(1)(b) - “proposed carer” changed to “proposed individual” and an example i.e. relatives as part of a plan for reunification
- S 95(3) – remove reference to section 14 so that the department can obtain criminal histories of parents and household members when making a decision under the Act at any stage of the child protection continuum

# Improving Stability for Children

## Transition orders

- New ss 65A – 65D create a transition order when the Court decides not to extend an order or grant a new order or when a child protection order or long-term guardianship order to a suitable person is revoked or appealed.
- the Court may set an end date for the order not more than 28 days from the decision.
- A transition order will provide a period, when necessary, for the gradual transition of the child to the care of their parents to minimise disruption and distress.
- A transition plan must be prepared after the order is made.



## Improving Stability for Children

Long-term guardianship orders to a suitable relative or other suitable person:

- Definition of 'long-term guardian'
- Definition of 'parent' in ss 23, 37, 51AA, 51F, 52, 67, 117, 205.

# Improving Stability for Children

## Long-term guardianship orders (cont'd.)

- Clarify obligation to contact parents if there is a long term guardian. Treat long-term guardians more like parents in all relevant court processes (TAOs, TCOs, CAOs, CPOs and interim orders).
- Ss 15 – notification and investigation. Tell at least 1 long-term guardian and tell, or make a reasonable attempt to tell, parent subject to conditions.
- S 17 – contact with a child at school, child care. Tell at least 1 long-term guardian.
- S 20 – taking child into custody. Tell a long-term guardian and make a reasonable attempt to tell a parent.

## Improving Stability for Children

### Long-term guardianship orders (cont'd.)

- S 27 – making a TAO. Attempt to obtain consent of at least 1 long-term guardian.
- S 32 - explanation of TAO. Copy of TAO to long-term guardian and make reasonable attempt to provide copy to parents.
- S 41 – notice of application for CAO. Serve copy on long-term guardian and serve, or make a reasonable attempt to serve, parent.
- S 51AK – explanation of TCO. Copy of TCO to long-term guardian and make reasonable attempt to provide copy to parents
- Reasonable attempts to be documented if unsuccessful.

# Improving Stability for Children

## Long-term guardianship orders (Cont'd)

### S 51VA – review of case plan – child with long-term guardian

- Contact at least every 12 months
- At any time, child or guardian may request review of case plan
- Report about the review as per s 51X
- Declining a review is a reviewable decision

# Improving Stability for Children

Long-term guardianship orders (Cont'd)

S 65 – revocation of a child protection order

- provide additional guidance to the Court about revocation of a long-term guardianship order to suitable relative or person - the Court will be required to consider the child's need for emotional security and stability.
- amend to omit “necessary to protect the child” and insert “appropriate and desirable for the child's protection”.

# Improving Stability for Children

## Long-term guardianship orders (Cont'd)

- S 159 – Amend 159(1) to include payment to long-term guardians.
- S 80A – Insert to require long-term guardians to advise chief executive in writing if the child leaves their care, and where the child is living (if known), and the chief executive will be required to determine what further action may be necessary to meet child's care and protection needs.

# Improving Stability for Children

## Case planning and working with families

- S 51YA – insert so that anything said or done in a family group meeting will not be admissible in criminal proceedings, unless all participants agree or the proceeding is for an offence committed during the meeting.
- S 51YB – insert so that anything recorded in a case plan is inadmissible in a criminal proceeding unless all persons mentioned in the plan agree.
- 51Q – case plans to be endorsed within 10 business days after a case planning meeting (currently 7 days).
- S 59(3)(renumbered) – insert failure to reach agreement on a case plan will not be relevant to whether a case plan is appropriate for an application for a child protection order.



## Gathering and Sharing Information

### Information sharing before investigation

- S 159C(1)(a)(ii) – amend “relevant information” definition to enable service providers to share information with the department at the pre-notification stage to help the department take action or decide if there is a reasonable suspicion a child is in need of protection, i.e. whether the threshold for a notification under section 14 has been met.



## Enhancing support for unborn children and their mothers

### Information sharing

- S 159C(1)(b)(ii) & (iii) (renumbered) - insert to allow for service providers to share information about unborn children at risk, subject to the woman's consent.

### Recognised entity involvement in notifications

- S 21A(3) & (4) – insert to require consultation with recognised entities in cases of unborn Aboriginal or Torres Strait Islander children, subject to the mother agreeing to the recognised entity's involvement.

## Additional amendments

- On 8 June 2010 the Helping Out Families initiative was announced.
- The Helping Out Families initiative includes the department bolstering secondary services to deliver the right type of support to vulnerable families as early as possible to ensure children have the opportunity to remain in a stable, functioning family environment.

## Additional amendments

- There are three key elements to the Helping Out Families initiative:
  - A more effective Regional Intake Service model and method for referring families, to non-government services for effective intervention, who are the subject of Child Concern Reports; and both substantiated and unsubstantiated child protection notifications, but who do not meet the threshold for statutory intervention.
  - Strengthened non-government early intervention and family support capacity through the establishment of a Family Support Alliance non-government organisation, and a network of service providers.
  - Work with partner agencies to develop strategies to change the referral patterns and, in the medium term, development of new models to facilitate referral pattern change.

## Additional amendments

- The Helping Out Families initiative includes Child Safety Services referring families for secondary support services, to a Family Support Alliance non-government organisation (service provider).
- Those referrals from Child Safety Services to service providers will be referred without consent. The amendments provide for the sharing of information for the purpose of such a referral. To ensure that this referral information remains confidential, minor amendments to the *Child Protection Act 1999* are required to ensure that all information Child Safety Services receives is confidential information.

## Additional amendments

- The Bill will include amendments to:
  - Chapter 5A, Part 1 (s159B, ns159BA, ns159C(1)(c), s159F, s159G) & Part 4 (s159M). Information sharing provisions to include referrals to service providers under “relevant information” and introduces the term “relevant child” to include a child in need of protection and the cohort of children for whom referrals to the FSA will include; and
  - Chapter 6, Part 1 (s187). Confidentiality provisions to ensure that all information received by the chief executive is to be treated as confidential information.

## Additional amendments

### Child death reviews and confidentiality

- S 246A – amend to clarify that the requirement to conduct a child death review arises if the chief executive is aware of the child, within 3 years before its death, in the course of performing functions under or relation to the administration of the CP Act.
- S 246E – enhance the protections for persons providing information for a child death review in response to a request under s 246C.

## Minor and technical amendments

- S136D - Continue authorities for provisionally approved carers with new spouses until the end of the provisional approval period
- S 126 – Amend the criteria for approval for licences to provide care services to require applicants to have a primary function relating to care of child in need of protection in the custody or guardianship of the chief executive
- Ss 129A & 130 – place responsibility for licensed care services on the licensee and limit responsibility for nominees
- Dictionary – insert new definition of ‘member, of a person’s household’ to persons who live in the household or whose contact with a child may create unacceptable risk to the child and to exclude a child’s parents living in the household.

## Discontinued

- Amendments to the CPA and the *Education (General Provisions) Act 2006* to allow the Department to enrol a child in school when the child is in the chief executive's temporary custody and the parent is unable or unwilling to make that decision. This can be done under existing provisions.
- Court making directive orders against a person who assumes an aspect of parental responsibility for a child or who may reside with the child. This amendment did not have support during consultation.
- Children on assessment care agreements to be covered by relevant provisions for a child in the custody or guardianship of the chief executive. The agreement is for a maximum of 30 days and the department is in regular contact conducting an assessment.

## Discontinued

- Safety and security of staff:
  - penalty for obstructing authorised officers to include six months imprisonment.
  - new offence prohibiting certain items, including weapons, being brought onto departmental premises

Provisions of the criminal law adequately cover these issues.

# Discontinued

- Transfer (and update) provisions from the *Family Services Act 1987* to the Act re funding NGOs and obtaining criminal histories of employees.
- Departmental funding policy is being considered in light of machinery of government changes.
- Criminal history screening amendments were made through the *Criminal History Screening Legislation Amendment Act 2010*.

**COURT COORDINATOR CONFERENCE**  
**13 & 14 SEPTEMBER 2010**

Theme: *Unacceptable risk and family violence*

**DAY ONE – 13 September 2010**

Time	Content	Presenter/s
9:00 – 9:10am	Welcome / Housekeeping.	<b>Bernadette Smith</b> , Manager, Court Services Unit
9:10 – 9:30am	Discussion: Australian Law Reform Commission – Review of the National/State initiatives in the Child Protection/Family Law Context.	<b>Megan Giles</b> , A/Director, Child & Family Policy
9:30 – 10:30am	<i>“Unacceptable risk in the realm of family violence and how to best evidence this before the Children’s Court”.</i>	<b>Dr Chris Lennings</b> Senior Lecturer Faculty of Health Science University of Sydney
<b>10:30 – 10:45am</b>	<b>MORNING TEA</b>	
10:45 – 12:30pm	Hypothetical	Facilitator: <b>Murray Green</b> , Counsel  <u>Panel:</u> <ul style="list-style-type: none"> <li>• Departmental representative on behalf of Child Safety Officer – <b>Bridget Condon</b>;</li> <li>• Departmental representative on behalf of Court Coordinator – <b>Tracey Barrett</b>;</li> <li>• Childrens Court Magistrate – <b>Her Honour, Pam Dowse</b>;</li> <li>• Representative from Legal Aid Queensland – <b>Nigel Miller</b>;</li> <li>• Representative as an Expert Witness - <b>Dr Chris Lennings</b>;</li> <li>• Representative as Legal Counsel for the Respondent Parents – Counsel, <b>John Selfridge</b>;</li> <li>• Federal Magistrate – <b>Keith Slack</b>;</li> <li>• QCAT – Ms Julie Ford</li> </ul>

<b>12:30 – 1:15pm</b>	<b>LUNCH</b>	
1:15 – 2:45pm	Workshops [run concurrently]: A) Risk assessment in domestic violence – how to assess change and provide evidence for Court.  B) Obtaining evidence in rural and remote areas	<b>Dr Chris Lennings</b>  <b>Jim McKenzie</b> , Court Coordinator, Roma/Charleville Child Safety Service Centre / <b>Eelco Vulgs</b> , Court Coordinator, Cape Torres Child Safety Service Centre
<b>2:45 – 3:00pm</b>	<b>AFTERNOON TEA</b>	
3:00 – 4:30pm	Workshops [run concurrently]: B) Obtaining evidence in rural and remote areas  A) Risk assessment in domestic violence – how to assess change and provide evidence for Court.	<b>Jim McKenzie</b> , Court Coordinator, Roma/Charleville Child Safety Service Centre / <b>Eelco Vulgs</b> , Court Coordinator, Cape Torres Child Safety Service Centre  <b>Dr Chris Lennings</b>
4:30 – 5:00pm	Wrap up / Evaluation.	<b>Bernadette Smith</b> , Manager, Court Services Unit

**SOCIAL EVENT: 5:00pm - Kedron Park Hotel**

**DAY 2 – 14 September 2010**

Time	Content	Presenters
9:00 – 9:15am	Welcome Back / Housekeeping.	<b>Bernadette Smith</b> , Manager, Court Services Unit
9:15 – 10:30am	Information Session / Workshop – Court Work Project.	<b>Anna Maxwell</b> and <b>Julie Gardner</b> , Court Work Project Officers, Court Services Unit
<b>10:30 – 10:45am</b>	<b>MORNING TEA</b>	
10:45 – 11:45am	Information Session – <i>Child Protection &amp; Other Acts Amendment Bill 2010</i> .	<b>Therese Storey</b> , Senior Advisor – Legislation, Child Safety Youth & Families Policy & Performance
11:45 – 12:10pm	Information Session – Queensland Civil & Administrative Tribunal (QCAT).	<b>Helen Tooth</b> , Team Leader, Court Services Unit
12:10 – 12:30pm	Information Session – Adoption Services Queensland (ASQ).	<b>Soraya Fellows</b> , Court Coordinator, Adoption Services Queensland (ASQ)
<b>12:30 – 1:15pm</b>	<b>LUNCH</b>	
1:15 – 2:45pm	Workshops [run concurrently]: C) How to negotiate effectively with others.  D) How to draft written submissions for Children’s Court proceedings.	<b>Kylie Burton</b>  <b>Rhiannon Helsen – Crown Law</b>

2:45 – 3:00pm	<b>AFTERNOON TEA</b>	
3:00 – 4:30pm	Workshops [run concurrently]: D) How to draft written submissions for Children’s Court proceedings.  C) How to negotiate effectively with others.	<b>Rhiannon Helsen - Crown Law</b>  <b>Kylie Burton</b>
4:30 – 4:45pm	Evaluation / Close	<b>Bernadette Smith</b> , Manager, Court Services Unit

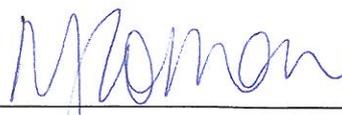
### Attachment Marking

The preceding 92 pages is the annexure mentioned and referred to as ATTACHMENT 4b  
in the statement of Kenneth Dagley taken on 25/10/2012



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Signature of witness to Inquiry



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Signature of person witnessing statement

### Court Coordinator - Induction

<b>Financial Year</b>	<b>Date</b>	<b>Attendance Numbers</b>	<b>Resources</b>
2011-2012 Financial Year	8 – 10 Aug 2011	12 Frontline Staff	1 x Resource Material Folder 2011 updated October 2010
	27 – 29 Feb 2012 (NB: Last Induction run)	10 Frontline Staff	1 x PowerPoint Presentations Folder 2011 (electronic version)  1 x Induction Resource 2011 (this material was provided as an attachment to Brad Swan's statement dated 19 Oct 2012 in response to summons # 2017771) Marked as attachment 5a

### Court Coordinator - Conference

<b>Financial Year</b>	<b>Date</b>	<b>Attendance Numbers</b>	<b>Resources</b>
2011-2012 Financial Year	14 – 16 Sept 2011 (NB: Last Conference run)	49 Frontline Staff	Agenda + PowerPoint Presentations Marked as attachment 5b

# **Court Coordinator Induction Training**

## **Resource Material**

**2010**



# **Court Coordinator Induction Training Program**

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**This resource package is to provide information  
and learning material to support the Court  
Coordinator role within Child Safety Service  
Centres**

**Prepared by:  
Court Services Unit  
Updated October 2010**



**Queensland Government**  
Department of **Communities**

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## New adoption laws for Queensland

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The new *Adoption Act 2009* commenced on 1 February 2010.

The *Adoption Act 2009* reflects current community standards, best practice and brings Queensland in line with the practice of other Australian states and territories.

The *Adoption Act 2009* makes a number of major changes to adoption practices in Queensland that support contemporary, child-focused and efficient adoption practices in Queensland.

The *Adoption Act 2009* and explanatory notes are available on the Queensland Government's Legislation website.

### **The key changes**

- Improve the information and support provided to birth mothers and fathers considering adoption for their child.
- Allow for more openness between all those involved in an adoption.
- Introduce court orders for adoption.
- Mean changed eligibility criteria for prospective adoptive parents adopting a child from Queensland or from overseas.
- Allow couples to express an interest in adopting a child at any time.
- Provide birth parents and adopted people with access to information.
- Protect the privacy of those who do not want to be contacted. More information on balancing privacy and access is available.

## Considering adoption for a child in Queensland

### **Consents required before a child can be adopted**

The consent of a child's mother and father and every person who is a guardian of the child must freely and voluntarily be given, or the need for the consent dispensed with, before the Childrens Court can make an order for a child to be adopted.

The department must take reasonable steps to establish the identity and location of a child's father so he has the opportunity to participate in decisions about the child's adoption or other long-term arrangements for the child.

After identifying and/or locating a child's father, the department is required to inform him about how he can consent to the adoption, take steps to establish whether he is the child's father, or apply for a parenting order for the child in the Family Court of Australia.

### **Dispensing with the need for a consent**

Although the consent of both a child's mother and father, regardless of their marital status, is needed before a child's adoption may proceed, there are some situations where adoption is in a child's best interests and can proceed, despite one or both of the child's parents having not given their consent.

In some situations, an application can be made to the Childrens Court seeking dispensation of the need for a parent's consent, in order for arrangements about the child's adoption to continue to proceed.

This might occur, for instance, if the child was conceived as a result of a criminal offence committed by the father, or where there would be an unacceptable risk of harm to the child or mother if the father was made aware of the child's birth or proposed adoption.

Other grounds for dispensing with the need for a person's consent include:

- if, after making all reasonable inquiries, the identity of the parent cannot be established or the parent cannot be found
- the parent does not have the capacity to give the consent, either because of the parent's young age or an intellectual impairment
- the parent is not, and will not be within a timeframe appropriate for the child's age and circumstances, willing and able to protect the child and meet the child's need for long-term stable care and is unreasonably withholding his or her consent to the adoption, or
- there are other special circumstances for giving the dispensation.

The court may dispense with the need for a parent's consent only if also satisfied it is in the child's best interests for the proposed adoption arrangements to continue to be made.

### **Making sure consent is informed and voluntary**

The *Adoption Act 2009* includes measures to ensure a person's consent to a child adoption is informed and is given voluntarily. These include requiring:

- the department to give parents written information about adoption and alternatives to adoption, to help them make a decision about consenting to their child's adoption
- the department to arrange for a parent to receive counselling about the alternatives to adoption and the possible emotional effects of adoption
- the department to provide information and carry out counselling in a way that enables the parent to understand
- if a child is an Aboriginal or Torres Strait Islander child, counselling to be carried out in a way and at a place appropriate to Aboriginal tradition or Island custom and, in part, by an appropriate Aboriginal or Torres Strait Islander person (except if the parent declines to receive the counselling in a way, or by a person, appropriate to Aboriginal tradition or Island custom)
- the person who counsels a parent to give a sworn statement that, in the counsellor's opinion, the parent understood the effect of giving consent and the effect of adoption
- 30 days to pass after a child's birth, 14 days to pass after a person is given information and 14 days to pass after a counsellor has formed the opinion that a person understands the effect of giving consent and of adoption, before a parent is able to consent to a child's adoption

- the department to take extra measures where the parent is not an adult, or there is reason to know or suspect the parent does not have the capacity to consent to the adoption, to determine whether the person is capable of consenting.

### **Revoking a consent**

A parent or guardian who has consented to a child's adoption can revoke the consent within 30 days by giving written notice of the revocation to the department.

### **Considering a child's views in the adoption process**

Where a child to be adopted is able to form and express views about the adoption, the child must be given information to help him or her form views about the adoption. This must include information about the adoption process and options other than adoption for the child's long-term care. The child must also receive counselling.

The child's age and ability to understand must be considered when information and counselling are given to the child to ensure the child can understand the information and take part in counselling to the appropriate extent.

If a child is an Aboriginal or Torres Strait Islander child, counselling must be carried out in a way and at a place appropriate to Aboriginal tradition or Island custom and may be by an appropriate Aboriginal or Torres Strait Islander person. This requirement does not apply if the child declines to receive the counselling in a way, or by a person, appropriate to Aboriginal tradition or Island custom.

The Childrens Court must consider a child's views before deciding whether or not to make an adoption order for the child.

### **Providing support for a child in the adoption process**

The department may appoint a qualified person, such as a social worker or lawyer not employed by the department, who has the necessary expertise or experience to support the child during the adoption process.

If the Childrens Court considers it necessary and in the child's best interests, the court may order that the child be separately represented during adoption proceedings by a lawyer and may make any orders necessary to secure separate legal representation for the child. The court may also order the department to appoint a qualified person to support the child if necessary.

### **Expressing preferences for a child's placement when giving consent**

Parents can express preferences about the type of adoptive family with whom they would like their child to be placed. Parents may want to express preferences about the religion, cultural background, age and lifestyle of the couple the department selects to adopt their child. Parents may also express preferences about having ongoing contact, either directly or through non-identifying correspondence, with the adoptive parents.

The department must have regard to preferences expressed by parents when selecting the couple best able to promote the child's wellbeing and best interests. The department must also have regard to a number of other matters when selecting a couple to be a child's adoptive parents, including the child's particular needs and the characteristics of couples assessed as suitable to be adoptive parents.

## Balancing privacy and access

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The new law balances people's right to information about their birth parents or child who was adopted with the right of others to maintain their privacy.

It also enables information to be released to, and about, birth fathers who have acknowledged or can prove paternity. Under the new law, it will not matter whether the birth father consented to an adoption, or had his consent dispensed with.

Who will be affected?

- Adopted people or birth parents with an objection to the release of identifying information in place.
- Adopted people or birth parents who have been unable to obtain identifying information because an objection to its release was in place.
- Adopted people or birth parents seeking information about an adoption that has occurred in Queensland.

### **What are the main changes?**

Once the adopted person is 18 years of age, they and birth parents will have the right to obtain information about other people associated with the same adoption.

The privacy of those who do not want to be contacted will be protected.

Adopted people and birth parents will be able to register a *contact statement* expressing their wishes about contact, including their wish not to be contacted by another person.

When the new law commences, all existing objections to the release of identifying information will automatically become *contact statements* expressing a desire for no contact.

Where there is an existing contact or objection in place (lodged before the new law commences) identifying information will only be released once the person applying for the information has met certain conditions.

The department will be able to contact parties to an adoption to request up to date medical information, or to pass on up to date medical information, on behalf of a person who is prevented from contacting another party.

**Form 25**  
*Childrens Court Act 1992*  
*Child Protection Act 1999*

**AFFIDAVIT**

**CHILDRENS COURT OF QUEENSLAND**

**REGISTRY: Brisbane**

**NUMBER:**

**Child/ren: Peter Jones – (DOB:16/12/02)**

**Applicant: Amanda Hall**

**AND**

**[First] Respondent: Barry Jones**

**AND**

**[Second] Respondent: Mary Bell**

I, Anthony Mark Lewis, Paediatric Intensivist, of the Mater Children's Hospital, Annerley Road, South Brisbane, in the State of Queensland, make oath and say as follows:-

**Qualifications**

1. I hold a Bachelor of Medicine degree with First Class Honours from the University of New South Wales. I graduated with this degree in 1980.
2. I have held a Fellowship from the Royal College of Physicians, United Kingdom since 1984. I was registered as a Consultant Paediatrician in Queensland in

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Sheet 1

Deponent

Affidavit

Filed on behalf of the Applicant

A Justice of the Peace/Commissioner for declarations

Amanda Hall  
30-40 Quay Street, Brisbane

1987. I have held a fellowship from the Australian College of Rehabilitation Medicine since 2000.

3. I am currently employed as a Paediatric Intensivist at the Mater Children's Hospital, South Brisbane.
4. This affidavit is sworn in support of the application by Amanda Hall for a child protection order granting custody of Peter Jones to the Chief Executive of the Department of Child Safety for a period of two years.

**Report**

5. On the 7<sup>th</sup> December, 2007 I prepared a medical report in relation to Peter Jones (born 16 December, 2002). Exhibit A to this affidavit is a true copy of the medical report.

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

Sworn by Anthony Mark Lewis on the 10<sup>th</sup> December, 2007 at Brisbane in the presence of:

(signed by deponent)

(signed by Justice of the Peace/Commissioner)

Deponent

Justice of the Peace/Commissioner for declarations

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Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Filed on behalf of the Applicant

Amanda Hall  
30-40 Quay Street, Brisbane

## **AFFIDAVIT WRITING:**

The purpose of an affidavit is to provide sworn, factual information, to assist the magistrate in making a decision in relation to the application before the court. The *Childrens Court Rules 1997* dictate what an affidavit should look like, and the information that it should contain.

A Form 25 is the prescribed form for Childrens Court matters. In most cases a departmental officer is the applicant, and the information provided in an affidavit is aimed at supporting the application.

**It is the responsibility of the CSO, in consultation with a court coordinator, to provide an acceptable standard of evidentiary material and ensure the most relevant information is before the court to inform their decision.**

### **When is an affidavit required?**

An affidavit is always required when an application for a child protection order is filed with the Childrens Court. An affidavit may also be required after an initial application and supporting affidavit have been filed in the following circumstances:

- updating the court on any relevant assessments or change in circumstances, during an adjournment period, including but not limited to:
  - changes in applicant status (for example, when another CSO assumes case responsibility for a matter)
  - proposed dates and/or outcomes of family group meetings
  - attempts to locate and/or serve parents with court documents
  - a new case plan and/or updates (review) of an existing case plan
- in preparation for a child protection hearing, in response to affidavits filed by respondents, including but not limited to:
  - affidavits (written and filed separately to departmental affidavits) by witnesses, that the department intends to rely and/or call at the hearing
  - attaching relevant documents informing the other parties as to the evidence the department intends to rely at the hearing
- when an application is made to revoke a child protection order
- when an application is made to revoke a child protection order and make a new order
- in support of extending a CAO, for the purpose/s of outlining the reasons for the need to extend the order, including but not limited to:
  - the additional information and assessment that is required to make a decision as to whether the child is in need of protection
  - what attempts have been made by the department to ascertain the required information (for example, a scheduled professional assessment)
  - the likelihood of information becoming available during the course of the extension of the CAO
- responding to applications filed by parents (for example, an application by the parents/respondents to revoke a child protection order)

- where a party has initiated an appeal of a decision made by the court.

### **Writing an affidavit**

An affidavit outlines the evidence of the case to the court. It is important to set the scene and to ensure the evidence is written in a clear manner, without departmental jargon, so that the child's parents, the court and all relevant legal representatives are able to understand the content.

The following information is provided to guide and assist departmental officers in the process of completing an affidavit:

### **Purpose of an affidavit**

When drafting an affidavit, the CSO needs to keep in mind:

- that an affidavit tells the story of a matter to someone who knows nothing about it, and who has little time to get across the relevant and pertinent issues
- wherever possible, the affidavit must always be simple to read and easy to follow
- that the reader does not have the same level of knowledge of the case that you do, and therefore, the affidavit must 'set the scene'.

### **Establishing the grounds of the application**

The CSO will outline in the affidavit the following evidence, taking into consideration the *Child Protection Act 1999*, section 9, 10, 59 and 61.

1. What are the child protection concerns? Wherever possible, this should be 'new' information and should not merely duplicate 'old' information. The court is interested only in what justifies the current application and not what was used to justify a previous application.
2. Why the child is in need of protection.
3. Why the order sought is the least intrusive (for example, the most appropriate, taking into account all the circumstances).
4. The case plan for the child.
5. The evidence you are relying on to support your decision-making.
6. Wherever possible, the child's views and wishes in regards to the child protection order sought.

Where the application is in relation to an Aboriginal or Torres Strait Islander child, the CSO will also include evidence, having considered the *Child Protection Act 1999*, section 6 and 83.

### **Do's when completing an affidavit**

- Ask yourself, why do you want that information before the court?
- Why is it relevant?
- What does it tell the court?
- Is the information your best evidence, or do you need to seek further reports, affidavits or assessments?
- Consider seeking affidavits from persons who have direct knowledge about the matter. At the time of seeking these affidavits, advise the author of their likelihood to be subpoenaed, or required for cross examination by other parties should the application proceed.
- Inform the other parties (parent/s legal representatives and the separate representative) of the department's assessment, and what order you are seeking.

## Do not's when completing an affidavit

- Do not simply include a paragraph by paragraph summary of events on the file since you have had responsibility for the matter.
- Do not only attach or include a case history (for example, a copy and paste case notes) of a family into an affidavit without ensuring relevance and whether it supports the application.
- Do not identify notifier details in the affidavit, in accordance with the confidentiality provisions of the *Child Protection Act 1999*, section 186.

## Contents and structure of an affidavit

### 1. Basic chronology

A chronology is a good starting point for working on your affidavit. A basic timeline (which you should be able to establish from your file notes) will give you the skeleton outline of what you need to cover.

At this point, a CSO needs to:

- establish who, what, why and how
- outline relevant dates, names of parties and places.

The above details are what lawyers and the court will be interested in. If it is not there, you will be asked about it.

**Note:** If you do not have **direct** knowledge of this information, then the chronology should be exhibited to your affidavit, with a brief summary contained in the body of the affidavit, linking the relevance of the chronology to the application.

### 2. Headings

Use headings to assist in understanding, but carefully consider whether headings placed at random (for example, family group meetings) actually break the flow of the story and make it disjointed.

Other options could be to bold the words family group meeting where they appear in the text of the affidavit to make them easy to find or cross refer the reader to other paragraphs of the affidavit where you deal with family group meetings. Requiring the reader to move all over the document should be avoided.

### 3. Family trees (genograms)

Ask the question, with complex family units, do you need to exhibit a family tree? The answer is **yes** because:

- you are telling the other parties, and ultimately the decision-maker, 'who is who' in this family
- providing this detail from the outset helps, especially with issues like sibling or extended family member contact.

**Note:** Wherever possible, provide full names, dates of birth, ages and clearly define relationships between family members (for example, biological father, half brother or step sister).

## Case plans

A CSO must:

- attach a current case plan for the child and summarise the key points to ensure you explain why you seek the current proposed order
- ensure that the affidavit clearly outlines the rationale for the case planning and the order sought
- ensure that the case plan goal, outcomes and actions match the child protection order sought and address the stated child protection concerns detail:
  - the particulars for how the case plan will be implemented
  - whether the services noted and/or sought are available
  - whether the case-plan has been discussed with the parents
  - consideration of the viability and/or workability of the plan?

**Note:** The *Child Protection Act 1999*, section 59, requires that an order should not be made without a case plan. A case plan will evolve over time and may need to change and adapt to the family's progression. A thorough and detailed case plan may mean that a matter can settle and will get the support of the parent's legal representative and the separate representative, so that a hearing is unnecessary and the application can be dealt with in a timely manner. For further information, refer to the procedures on case planning.

## Rational for current application being the 'least intrusive' order

A CSO must:

1. Be clear that 'least intrusive' does not mean that you should not be seeking a long-term order. Be realistic, and with thorough case planning, it will be easier to determine the appropriate order to seek.
2. Remember that the ultimate question is whether the order you seek addresses the child protection concerns, and clearly justify why that is so. The principles of the *Child Protection Act 1999*, section 5, need to be addressed, and ultimately ask, what is in this child's best interests?

## Completing an affidavit

When completing an affidavit:

1. The applicant for a matter is responsible for the completion of an affidavit as supporting material for the application.
2. The CSO with case responsibility, is responsible for the completion of an affidavit for subsequent mention dates, to assist the court with updated evidence during the adjournment period (for example, a 'supplementary affidavit').
3. **The court co-ordinator is responsible for ensuring:**
  - the correct structure and format are used
  - the content provides the best evidence and is consistent with the nature of the order applied for.
4. The team leader is responsible for approving the content of the affidavit.

## Filing of an affidavit

The applicant **must ensure** that the supporting affidavit is filed:

- with an application (without exception)
- **on or before the expiry** of an existing order
- for supplementary affidavits, a minimum of **three business days** before the next mention.

**Note:** The information contained in the application form for a child protection order is an unsworn document and is not considered evidence. Therefore, the applicant can **not** rely solely on it. Further, and **only** where necessary (for example, where something relevant and/or significant has occurred necessitating updating the court) for a subsequent mention date, the CSO will file an affidavit outlining any updated evidence during the adjournment period.

### **Service of an affidavit**

All affidavits must be served on the respondents (*Child Protection Act 1999*, section 23, 37 and 52) and the separate representative. The *Childrens Court Rules 1997*, rule 22, requires a Form 22 Affidavit of Service to be filed in the court, as proof of service, as soon as possible following service of the documents.

Natural justice requires that affidavits must (**without exception**) be served on the respondents and, where applicable, the separate representative, **three business days** before the initial mention of the matter in the Childrens Court.

**RE: Peter JONES**  
**Date of Birth: 16 December 2002**  
**MCH Ur No 93456003**

To Whom it May Concern:

I, Dr Anthony Mark Lewis, am a qualified medical practitioner registered in the state of Queensland, and employed full-time as a medical officer at the Mater Children's Hospital.

I attended the above patient at the Mater Children's Hospital, on 9 August to 15 August 2007. The following injuries were documented by clinical examination and further investigation as required.

1. Severe cerebral oedema, particularly of the right cerebral hemisphere with some subdural collection of blood.
2. Bruising to the left facial cheek with 2 distinct marks of about 1x2cm in size.
3. Bruising to the left leg with near circumferential nature at the level of the upper thigh.

Peter was retrieved from the Redcliffe Hospital Emergency Department on the morning of 9 August 2008. He was intubated and ventilated at this time. He had presented with significant right sided focal seizures. He had been investigated with a CT scan with demonstrated significant underlying cerebral oedema. He was retrieved by a specialised paediatric retrieval team. Upon arrival to the Mater Children's Hospital he was reviewed by the Neurosurgeon, Dr Robert Thompson. A decision was made to insert an intracranial pressure monitor to assist in the management of Peter's cerebral oedema. Peter remained in the Intensive Care Unit for 7 days. Over the first 4 days he was managed with inotropic support of his blood pressure, therapeutic cooling, sedation and ventilation as well as anti-convulsant medication. On day 5 he was rewarmed and his pressure monitoring ceased. On day 6 he was extubated without problem. On day 7 Peter was transferred to the ward for further care. At the time of discharge from the Intensive Care Unit Peter was not moving the left side of his body very well at all. He was not able to feed himself and he was still very drowsy. During his admission Peter had a repeat CT scan. This demonstrated that the severe cerebral oedema that was present on the original CT scan had reduced but not resolved completely. There was evidence of a collection of blood on this CT scan that could not be seen on the previous scan.

In view of the acute nature of Peter's injuries it is difficult to say with certainty the long-term prognosis in his case. It is very likely that he will have some motor dysfunction on the left side of his body. He may have difficulty in walking. He may have some long-term learning problems and he may have some difficulty with fine motor problems with his left hand in the long-term. His prognosis will become more apparent after 1-2 months of rehabilitation. If he had not received medical attention when he did Peter would have died.

In view of his CT scan results and his clinical course in the Intensive Care Unit, it is most likely that Peter suffered a severe blow or blows to his head at some time in the 24-48 hours before his presentation at the Redcliffe Hospital. It could be that the severe swelling on the right cerebrum could have been caused by a severe blow or blows up to approximately 72 hours before presentation but this would be less likely.

Dr Anthony LEWIS FRACP  
Paediatric Intensivist  
Mater Children's Hospital

training document

## Legal Aid Queensland Tips for Affidavit Writing

### Tip 1: It is not that tricky all an affidavit does is tell the story:

- Remember from the outset that an affidavit tells the story of a matter to someone who knows nothing about it and who has little time to get across the issues.
- Make it easy to read and easy to follow.
- Don't assume the reader has the same level of knowledge of the case that you do. You may know who Jack is in the story but they don't so make sure you set the scene.
- Precedents are useful but don't rely on the precedent to the detriment of the story telling.

### Tip 2: Establish your case with reference to the evidence and the case plan:

- It should establish your case:
  - what are the child protection concerns?,
  - why is this is a child in need of protection?,
  - why is the order sought the most appropriate?,
  - what is the case plan?
  - what **evidence** are you relying on to support your decision making?
- It should address the issues set out in s 9,10,59 and 61 of the Child Protection Act 1999 and for indigenous families remember s 6 and 83. Always keep those sections in mind when you are drafting or critiquing an affidavit. Print a copy of the sections off and have them next to you when you are going through the affidavit.
- Simply doing a paragraph by paragraph summary of events on the file since you have had it is not enough. Simply attaching a care history of a family is not enough. Why do you want that information before the court? **Why is it relevant?** What does it tell you? Is it your **best evidence** or do you need to seek further reports or affidavits or assessments?
- Letting the other parties (parent's legal reps and the Sep Rep) know what your case is, what order you are seeking and a well reasoned, researched and detailed case plan could mean you can settle a matter and not end up in a fully contested trial. Ultimately too it could mean a better and more timely result for the **child** (and for their family) which should be the aim for all parties.

### **Tip 3: Start with a Basic Chronology**

- A chronology is a good way to start working on your affidavit. This basic timeline (which you should be able to establish from your file notes) will give you the skeleton outline of what you need to cover and provides a good starting point.
- But remember this is the starting point and will evolve over time.
- Keep thinking whether you have established who, what, where, why and how. Dates, names, places, details are what lawyers are interested in. If it is not there you will be asked about it.

### **Tip 4: Your story should flow in chronological order**

Use headings to assist in understanding but carefully consider whether arbitrarily placed headings (eg family meetings) actually break the flow of the story and make it disjointed.

Other options could be to bold the words **family case planning meeting** where they appear in the text of the affidavit to make them easy to find or cross refer the reader to other paras of the affidavit where you deal with family meetings. But remember you don't really want to send your reader all over the document!

### **Tip 5: Family Trees**

- With complex family units do you need to exhibit a family tree?
- Remember you are telling the other parties and ultimately the decision maker "who is who" in this family. It makes life a lot easier for everyone.
- Working all this out from the outset helps especially with issues like sibling or extended family member contact.
- Full names if you have them, dates of birth if you have them, state the age and state the relationship eg biological father or half brother or step sister.

### **Tip 6: CASE PLAN/ CASE PLAN/ CASE PLAN**

- What is the case plan? Why do you seek the order? Does your affidavit clearly set out the rationale for case planning and the order sought?
- Remember the amendment to section 59 says an order should not be made without a case plan. But don't be afraid of that be prepared for it so that it doesn't happen to you and the best way is to make sure your plan is reasoned, researched and detailed- will it work?

- Case Plans should be detailed with the particulars for how this is all going to occur. How is this going to occur? What does it all involve? Are the services you seek available? Have you discussed all this with the parents?
- A case plan will evolve over time it is a living document, a moveable feast. It can be hard to manage but if the work and preparation is there then adapting it will be easier over time. You may have to change the game plan.
- Again remember that a detailed and well organised and researched case plan may mean that a matter can settle and will get the support of the parent's legal rep and the sep rep so that a full blown trial is unnecessary.

#### **Tip 7: Least Intrusive Order**

- Least intrusive does not mean that you should not be seeking a long term order.
- Be realistic and with well reasoned and researched case planning it will be easier to determine the appropriate order to seek.
- A long term order might be the most appropriate rather than 12 month or 2 year orders when you come back to get another order every time putting the child through the trauma of another separate representative another report writer.
- The ultimate question is whether the order you seek addresses the child protection concerns then clearly justify why that is so.
- Remember to that the principles in s5 are what need to be addressed and ultimately ask ***what is in this child's best interests?***

## AFFIDAVIT WRITING

### *Introduction*



In your capacity as a statutory, departmental worker, no doubt you will be required at some stage in your career, to produce an affidavit for the Children's Court. Most likely, you will be the applicant of a Child Protection Order due to a child experiencing unacceptable harm, or at risk of significant harm by either or both parents.

You will find that prior planning and preparation for writing your affidavit will assist in the process. Prior to starting to draft your affidavit, ensure that you have clear, up-to-date records about the factual events that have occurred, that you have a clear assessment of the child protection concerns and the risks to the children, and that you also have a clear plan for future involvement with the family. This future planning should include specific information about how you will meet the department's legislative responsibility to work with families, and what casework should occur with the family to address the concerns.

The aim of this document is to assist you in the process of completing your affidavit.



### *Purpose*

Essentially, the purpose of an affidavit is to provide sworn, factual information to the court, to assist the Magistrate in making his/her decision in relation to the application before the court. In most cases the department is the applicant, therefore the information provided in your affidavit is aimed at supporting your application.

Your affidavit is your 'evidence in chief', that is **relevant** information which is sworn/affirmed with respect to the application. Fundamentally, 'relevance' is determined by what you have to prove to obtain the order you seek.



### *Body*

Microsoft Word (home/share directory/cp act resources/samples of court documents/sample affidavit) provides an example of an affidavit format for Childrens Court applications. This example includes suggested headings relevant to our statutory work and indicates the approved form (Form 25) as legislatively required under the *Children's Court Rules 1997*, section 8.

You should write your affidavit on the assumption that the application will be contested and you will be rigorously cross-examined on the information included. As such, you should always ensure that your information is grounded in facts, and that you check that your information is accurate and consistent throughout. You should also make sure that any opinions expressed are clearly marked as opinions and are within your expertise. Also, always include information about the basis on which you have formed the opinion.

Affidavits need to be clearly formatted, reader-friendly and include specific and relevant content.

Essentially, you have to prove three things:

- 1) The existence of the child protection concerns, for example, that the child has been subjected to harm, domestic violence, physical abuse etc;
- 2) That the order which you seek is the least intrusive order which can be made in the circumstances; and
- 3) That the department has taken reasonable steps to keep the family together before seeking the order in which you seek.



### How do you do this?

Section 105(1) of the *Child Protection Act 1999* provides –

“In a proceeding, the Childrens Court is not bound by the rules of evidence, but may inform itself in anyway it thinks appropriate.”

You can prove this information, particularly in relation to the child being harmed or at risk of significant harm in the following ways:



### *Direct Evidence*

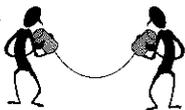
This is evidence of the facts in issue themselves, documentation given by a person of events, which they have personally observed or, of matters of which the person has personal knowledge. For example obtaining an affidavit from a neighbour who witnessed an incident of domestic violence. That neighbour will simply say what they saw and heard – therefore this is direct evidence.



### *Admissions*

These are direct statements by the respondent parent, for example the mother may have admitted to you that an episode of domestic violence occurred. As far as relevant, you need to put the details of the conversation which you had with the mother in your affidavit, including the details of when, where and very briefly, under what circumstances the conversation took place.

If your recollection is accurate, or if you have kept notes of the conversation, preferably you would set out the relevant part of the conversation verbatim, using the direct speech used. Failing that, you would set out the gist of the conversation to the best of your recollection.



### *Hearsay Evidence*

Hearsay evidence is evidence of something reported to the court indirectly. For example if someone tells you ‘something’ and in your evidence you report that ‘something’ to the court, as an item of evidence, that ‘something’ may be hearsay evidence – given it has not been provided directly to the court by the person with that information. Consequently, as an item of proof, Children’s Courts are bound to give hearsay evidence less credence than that which they give to direct evidence.

## Hearsay and the evidence of children

In practice children are not called to give evidence in child protection proceedings. The evidence of a child who is subject to a proceeding will be hearsay. A child's evidence should be put to the court, without embellishment, using the words which in making the disclosure, the child used itself. It should be reported to the court in an affidavit what the child said, using the child's own words and give details of the circumstances under which the disclosure was made, ie when and where and significantly, what if anything, prompted the child to make the disclosure (for example whether the disclosure was spontaneous).

- You should try not to rely on hearsay evidence if you can avoid it and only use it as a last resort.
- Use the personal pronoun – I did this or I contacted the Police and they told me (as opposed to the Police were contacted and it was reported..)
- Ensure to identify the source of the hearsay – I spoke with Mr Smith from...and he gave me the following information...



### *Witnesses*

The applicant relies upon material (usually affidavits) filed in the court and served upon the respondent. Generally speaking the applicant will not call people to give oral evidence. However the respondent may nominate any person named in the applicants material and that person may be cross-examined by the respondent, as to the evidence which he/she has given.



### *Points to remember*

- Be accurate and factual
- Use plain English
- Be clear in expressing your case
- Consider headings, where relevant to separate issues and events
- Avoid lengthy sentences or making the document too wordy
- The material should be relevant to the issues
- Try to avoid the use of hearsay
- Avoid the use of jargon unless it is necessary to express the point. Where jargon is used an attempt should be made to explain its meaning in clear terms.

Remember, the more familiar you are with the requirements of the court, the better guided you are in completing your affidavits.

## **Hallmarks of a professionally drafted affidavit**

In drafting affidavit material the goals to keep in mind are as follows:-

- (a) Be accurate and factual;
  - (b) Use plain English;
  - (c) Clarity of expression;
  - (d) Consider headings, where relevant to separate issues and events;
  - (e) Avoid prolixity (lengthy, tediously wordy);
  - (f) The material should be relevant to the issues;
  - (g) Try not to use hearsay, unless there is some very good reason for doing so;
  - (h) Avoid the use of jargon unless it is necessary to express the point. Where jargon is used an attempt ought to be made to explain its meaning in clear terms.
- In other words, a professionally drafted affidavit efficiently and effectively communicates the evidence to be given by the witnesses.
  - Bear in mind however that it is acceptable for the evidence of children to be given by another person. This licence is specifically discussed in the case of Dale -v- Scott. For completeness it should also be noted that hearsay can be used when it is difficult to bring the evidence before the Court by direct means. Again, reference should be made to Dale -v- Scott as this is not a blanket exemption from the Rules of Evidence.



## **APPEAL PROVISIONS:**

### **Appeals**

An appeal is the process by which an original decision is examined by a higher court. To win an appeal, it must be shown that the Magistrate or Judge in the original hearing made an error that affected the outcome.

If the original application was heard in the Children's Court, the appeal is heard in the Children's Court of Queensland, or the District Court presided by a Children's Court of Queensland Judge.

### **Relevant legislative provisions**

Sections 117-121 of the *Child Protection Act 1999* refer to appeals of decisions in relation to assessment orders and child protection orders.

### **Framework for appealable decisions**

#### **What are appealable decisions?**

An appealable decision made by a court may relate to:

- Merits of a case
- Law and/or process

Merits of a case: can include whether or not a child is in need of protection and where the most appropriate order has been made to meet the child's protective needs. Determination of merits of a case incorporates quality and type of sworn evidence and facts provided to the court.

Law and /or process: Errors in law/or in court processes may be a basis to appeal a decision. Legislation and Rules guide courts in their decision making and non-compliance or misinterpretation of the law and court processes may incur an appeal of that decision.

#### **Determinants:**

There are a number of determining factors which influence the merits of an appeal and guide decision-making around whether action will be taken to pursue an appeal. Some of these determining factors include:

Quality of material: whether the information provided to the court is evidence/fact, which supports the application and provides a clear rationale for the order sort.

Safety of the child: where or not the child's safety and protection is immediately affected by the order and/or places them at immediate risk of harm.

Arguments made: whether the Department or other parties raised argument to the decision in court or challenged the decision-making, providing evidence to support their argument.

Setting of precedence: whether the decision is one where a precedent may adversely affect practice and future decision-making.

### **Who may appeal**

Section 117(1) *Child Protection Act 1999 (CPA 1999)* provides that the following parties may apply to appeal against a decision on an application of a TAO:

- The applicant (Department or police)
- The child
- The child's parent/s

Section 117(2) provides that a party to the proceeding for CAO or CPO application may also apply to appeal a Children's Court decision.

### **Jurisdiction for appeal application**

An appeal against a decision is heard by an "appellate court". Appellate court is defined in Schedule 3 Dictionary of the *Child Protection Act 1999*. Where an order is made in the Children's Court, the appellate court is the Children's Court of Queensland (CCQ).

The Children's Court of Queensland currently sits in Brisbane, Rockhampton, Townsville, Cairns, Southport, Ipswich and Beenleigh (these are the locations where Children's Court Judges currently preside). Other regional areas have periodic circuit courts. Depending on the urgency of the matter the appeal application may be initiated at the closest CCQ (or in Brisbane).

### **How to start an appeal**

Section 118(1) *CPA 1999* provides that an appeal may be started by filing a written *Notice of Appeal* with the Registrar of the District (CCQ) court.

Section 118(2) The notice must be served on the respondent/s to the application.

Section 118(3) The notice must be filed within 28 days of the decision being made.

Section 118(4) The court may at any time extend the time for filing.

Section 118(5) The notice must state fully the grounds for the appeal and the facts relied on.

### **Stay application**

Section 119 *CPA1999* provides that the appellate court may stay a decision appealed against. This application is generally heard as a matter of urgency by the appellate court (CCQ). A Stay application determines the interim effect of the order made in the Children's Court until the appeal can be fully heard. Where a Stay application is sought by the Department, these arrangements will be undertaken by Crown Law. A Stay is applied for primarily when a child is considered at immediate risk of harm as a result of the decision.

### **Hearing an appeal**

Section 120 provides that where there is an appeal against the decision of a Magistrate for a TAO, the appellate court is not restricted to the material before the Magistrate.

In relation to a CAO or CPO decision – an appeal must be decided on the evidence and proceedings before the Children’s Court; or the appellate court may hear the matter afresh, in whole or in part.

### **Powers of appellate court**

Section 121 *CPA1999* provides that the appellate court may:

- Confirm the decision appealed
- Vary the decision appealed
- Set aside the decision and substitute another decision
- Set aside the decision and remit the matter to the Magistrate or Childrens Court that made the decision.

### **APPEAL PROCESS:**

**Notice of Appeal to Court Services Unit (CSU):** where another party is the appellant

- CSSC advises CSU of appeal application as soon as possible.
- CSU requests copy of *Notice of Appeal* and/or any material filed with the appeal. CSU also requests a copy of all material filed as part of the Children’s Court proceedings and a summary of events that occurred at the court mention/hearing. The information will assist with briefing Crown Law.
- CSU ascertains when /if the matter is listed before the CCQ and if there is a Stay application as part of appeal proceedings.
- CSU prepares a brief to Crown Law and attached a copy of all material provided by the CSSC.
- CSU schedules an Advice in Conference (AIC) at the earliest opportunity between Crown Law, CSU and the CSSC. The CSSC is to provide and prepare any additional material requested as part of the AIC. Crown Law will initiate contact with the relevant court registry and advise of *Notice of Address* for service, *Outline of Argument* and *Certificate of Readiness*.
- CSSC continues to liaise with CSU re: the preparation of additional material as part of the appeals proceedings (as per contested CP procedures).
- The applicant from the CSSC will instruct Crown Law in the appeal proceedings.
- The Court Coordinators role is to support the applicant and provide regular updates to CSU in relation to outcomes of mentions and hearings.

**Notice of appeal application to CSU:** where application by the Department

- Court Coordinator to contact CSU as soon as possible to discuss the option of an appeal and its merits. CSU requests a copy of all material files as part of the Children’s Court proceedings and a summary of the events leading up to the decision (inclusive on any arguments made in court; whether the parents were legally represented etc)

- CSU may request the Court Coordinator to obtain a copy of the transcript of proceedings.
- CSU will review the material and consider the evidence and determine whether consultation with Legal Services Branch (LSB) and/or Crown Law is required.
- CSU prepares an urgent brief to Crown Law and attaches a copy of all the material provided by the CSSC for the purposes of ascertaining the merits of appeal.
- An urgent Advice in Conference (AIC) scheduled between CSU, Crown Law, CSSC, and relevant regional staff – if appropriate, to discuss the merits and prospects of an appeal. The option of an urgent Stay application is also discussed.
- Should Crown Law consider there are merits to appeal, a memo from the Manager, CSU, will be sent to the DG seeking approval to appeal the decision. The manager of CSU is to also brief the Director, State Wide Services Branch.
- CSSC to provide or prepare any additional material requested as part of the AIC. Crown Law is to initiate Notice of Appeal with the relevant court registry (including preparing the necessary court documentation as part of the commencement of proceedings).
- CSSC to liaise with CSU re: the preparation of additional material as part of the appeal proceedings (as per contested CP procedures).

## APPEALS SCENARIO'S

### Scenario 1:

Indigenous family: where three children (two males and one female) were residing with maternal aunt and her partner on a voluntary arrangement with their mother. Following a substantiated notification of sexual abuse and neglect of the eldest child (female) an application for a child protection order was made and the child was eventually removed from her placement.

A period of time after, and following notifications raised in relation to further risk of sexual harm, emotional harm and neglect, applications for TAO's were taken on the boys and prior to their expiration, CPO's were applied for and made.

The relative carers sought legal advice and filed a Notice of Appeal in relation to the CPO arguing that there was no evidence and the boys were not at risk of harm. They also argued that they were not present at the determination of the applications and wished to make application through section 113 to be a non-party and that consultation with a recognised agency did not occur. Crown Law argued that in accordance with the definition of parent under section 117, the relatives were unable to appeal the decision. The appeal was dismissed.

The solicitor for the relatives then filed a Notice of Appeal on behalf of the children on the abovementioned grounds and the fact that the children "did not want to be under orders, and wanted to reside with their aunt". The matter proceeded to hearing.

Determination of the matter is pending.

This scenario raises a number of practice issues as well as legislative issues, including:

- Lack of consultation with a recognised agency
- Fair and justice processes in relation to the application and final determination at the initial mention
- Section 113 and rights
- Role of separate representative in proceedings
- Who is an appellant
- Quality of evidence and compliance with legislative requirements (section 59).

## **Scenario 2:**

Both mother and father have shared care arrangements of their young daughter as determined through the Family Court. The mother has an intellectual disability.

A notification was received by the Department of Child Safety alleging the mother was stating the father had sexually abused her daughter and was reported to take the child to numerous doctors for the purpose of determining physical evidence.

No substantiated information suggested that her father or any other person had sexually abused the child. Concerns in relation to the emotional harm caused as a result of the mother inflicting numerous intrusive medical procedures on the child were substantiated. As a result of the assessment that the child was in need of protection from her mother and the father's inability to protect due to Family Court orders, an application for a child protection order was made.

The mother consented to the application, as did the father and a CPO granting custody to the CE for a period of six months was made. Following the making of this order, the mother sought legal advice and filed a Notice of Appeal on the grounds that she did not understand what she was consenting to and the implications of the child protection order.

The matter was mentioned in the CCQ and the department conceded to some of the grounds to the appeal and agreed for the matter to be remitted back to the Children's Court to enable a more thorough assessment of the situation and to determine further the mother's intellectual capacity and her ability to follow case plans.

This scenario raises a number of issues, including:

- A thorough assessment of the child protection concerns and 1) whether the child is in need of protection and 2) what the most appropriate order is to protect the child
- There were also issues raised about the decision making in this case and the quality of evidence to support the application
- Case work and court processes where parents have an impaired capacity
- Orders made with consent and requirements of section 59

## APPEALS

### What are the grounds for an appeal?

The Magistrate/Judge(s) made an error of fact or law.

An appeal is defined as an application to a higher court to reconsider or rehear the decision of a lower court, on the ground that there has been an error in the decision of the lower court, available on a question of law only or for mistakes of fact or law.

The right of appeal is created, limited or abolished by statute and exists as a remedy rather than as a common law proceeding. Section 117 of the *Child Protection Act 1999* creates the right of appeal in child protection matters before the Children's Court.

An appeal may be as a right or may depend on the higher court granting leave to appeal.

The higher court may:

- Dismiss the appeal by affirming the decision of the lower court; or
- Uphold the appeal and reverse or modify the decision of the lower court; or
- Remit the matter to the lower court for reconsideration in the light of the principles set out by the higher court.

### Example of an error of fact:

Subject child's half sibling died as a result of inflicted injuries. Medical & other evidence was that the child sustained an inflicted injury whilst in sole care of his father, the subject child's step father. There was also evidence the deceased half sibling had sustained a previous inflicted injury.

The step father of the subject child did not give evidence. On the hearing of an application for a CPO for the deceased child's half sibling, the Magistrate made a finding that the fatal injuries caused to the deceased child by the step father were isolated and out of character.

The Magistrate's finding that the step father's behaviour in injuring the child was isolated and out of character was not open to him to make because:

- a) his finding did not account for medical evidence that the deceased child had experienced two separate, inflicted injuries
- b) the step father gave no evidence and therefore there was no evidence upon which the Magistrate could make findings as to the stepfather's character

No evidence had been put before the Magistrate to enable this finding to be made.

### • Example of an error of law:

The making of an order not permitted by the legislation (e.g. making an order that a child have contact with a parent three times per week on a final order – this is not a valid order as orders relating to contact can only be made under an interim order pursuant to the *Child Protection Act 1999*, section 68(c)).

Note:

The appeal court can only consider the same material that was before the lower court at the time the decision was made. Section 120(1) of the *Child Protection Act 1999*.

If a party seeks to introduce new material, leave is required from the appeal court to do so.

If the Department does seek to rely on further material not filed at the time of the original decision, it may be more appropriate to file further updated material in the court that made that decision and seek that the matter be listed for further mention. This will be possible only where the decision is an interim decision.

However, section 120(3) of the *Child Protection Act 1999* provides that the appellate court may order that the appeal be heard afresh in whole, or part.

An appeal in respect of a TAO is not restricted to the material before the Magistrate, section 120(1) *Child Protection Act 1999*.

**Who makes the decision to appeal on behalf of the Department of Communities Child Safety?**

This decision can only be made by the Director General of the Department of Child Safety Communities.

**Role of Court Services and Crown Law in the decision making process**

Following consultation between the Court Services Unit and the Child Safety Service Centre, Court Services prepares a request for advice from Crown Law on the merits of an appeal.



Crown Law provides formal advice on the merits of an appeal.



Subject to a favourable advice, the Manager of Court Services makes the decision as to whether to brief the DG for approval for an appeal to be lodged. This will involve consultation with the Manager of the CSSC. The brief is prepared by Court Services.



Subject to approval being given by the DG for an appeal to be lodged, Crown Law prepares and files the Notice of Appeal which initiates proceedings in the appellate court.

## Role of the Court Coordinator in an appeal

### When the Department of Communities~~Child Safety~~ is the Appellant

Once a decision has been made that the CSSC wish to consider appealing a decision, the CC will contact a CSA at Court Services.



If possible, the CC will obtain a transcript of the decision the CSSC are seeking to appeal.

NOTE: Not all mentions are recorded, so if it is anticipated that a decision will be appealed, the CC needs to take thorough notes of the decision, and, if necessary, request that the Magistrate provides reasons for the decision.



The CC will email Court Services with a thorough summary of the case, all departmental officers involved, and all facts relevant to the appeal. Due to the time limits on lodging an appeal this must be actioned immediately.



The CC will liaise with a CSA to arrange a case discussion to include all relevant departmental officers.

NOTE: Subject to the decision being made to pursue an appeal and the DG approving the lodging of an appeal, the appeal will be prepared and lodged by Crown Law.

Court Services will arrange an AIC to determine what needs to be actioned and who is to be responsible.



The CC is responsible for ensuring that any action to be taken by the CSSC, as identified in the AIC, is followed through in the relevant timeframe.

### Appeal Process when the Department of Communities~~Child Safety~~ is the Respondent

If Crown Law were involved in the proceedings that resulted in the decision which is the subject of the appeal, the appellant should serve Crown Law directly. Crown Law will then contact Court Services and they will, in turn, contact the CC.

Where the CSSC are served directly (for example, where the decision the subject of the appeal was a decision made at a mention in the Children's Court attended by the applicant and CC or the appellant is not aware of Crown Law's contact details), the CC must advise Court Services immediately and provide a copy of the Notice of Appeal and any other documentation which has been served.

If an appellant approaches the CC to seek advice as to where the Notice of Appeal should be served, the CC should advise that the respondent should be listed at the

DG, Department of ~~Communities~~ Child Safety. It is sufficient for the CSSC to accept service of the Court material.



Court Services will brief Crown Law and arrange an AIC with the CC, to include all relevant departmental officers, to determine what needs to be actioned and who is to be responsible.



The CC is responsible for ensuring that any action to be taken by the CSSC is followed through in the relevant timeframe.

Note: It is not the expectation that CC's attend mentions/the hearing of the appeal, but Court Services is open to the attendance of CC's for professional development, subject to the approval of the Manager of the CSSC.

### **Overview of the Legislation relating to appeals of decisions in the Children's Court (*Child Protection Act 1999*)**

➤ Section 117 –

Potential appellants to a decision in respect of a TAO:

Applicant, child and child's parents

Potential appellants on CAO's and CPO's:

A party to the proceedings

Note: Under the *Child Protection Act 1999*, the appointment of a separate representative does not make the separate representative a party to the proceeding. Accordingly, there is uncertainty about the rights and responsibilities of separate representatives and what a separate representative is able to do during an appeal.

It is anticipated that –amendments will be made to the *Child Protection Act 1999* in the next set of legislative amendments in order to clarify the role of the separate representative.

➤ Section 118 –

Details the procedure for filing of an appeal

Section 118 (3) provides that an appeal must be filed within 28 days of the decision

Section 118(4) provides that the court may extend the time for the filing of the appeal

➤ Section 119 –

Details the limitations of a stay

➤ Section 120 –

120(1) For a TAO, the appeal court is not restricted to the material before the Magistrate

120(2) For a decision other than a TAO, appeal must be decided on the evidence before the Children's Court

120(3) The appellate court may order that the appeal be heard afresh, in whole or part

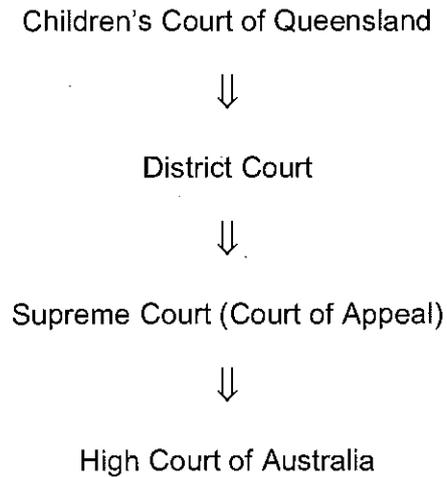
Note:

In accordance with Practice Direction no.5 of 2001 of the District Court, following a Notice of Appeal being filed, the appellant has 28 days to lodge an Outline of Argument.

From the date of being served with this Outline, the respondent has 28 days to provide a response.

The matter is then likely to be set down for mention in the appellate court.

### **Hierarchy of Courts**



Note: Section 116 of the *Child Protection Act 1999* provides that parties to a proceeding in the Children's Court must pay their own costs of the proceeding.

In appeals, the appeal court is able to order costs, in full or part, against any party.

## APPEALS

### **Part 4      Section 117 – 121 of the *Child Protection Act 1999***

#### **Brief Overview**

Once the Childrens Court has made a decision in relation to an application for a Court Assessment Order or Child Protection Order, any party to the proceedings who disagrees with the decision, can lodge an appeal.

An appeal can also be lodged against a magistrate's decision to grant a Temporary Assessment Order. However, only the department, a child or young person or a parent is able to lodge an appeal in these circumstances.

An appeal is started by filing a written notice of appeal in the Childrens Court, either in Brisbane if that is where the decision was made, or if it was outside of Brisbane, it is lodged with the nearest District Court Registry.

The notice of appeal must state the grounds of the appeal and the facts relied on. It is recommended that legal advice is sought when drafting an appeal document.

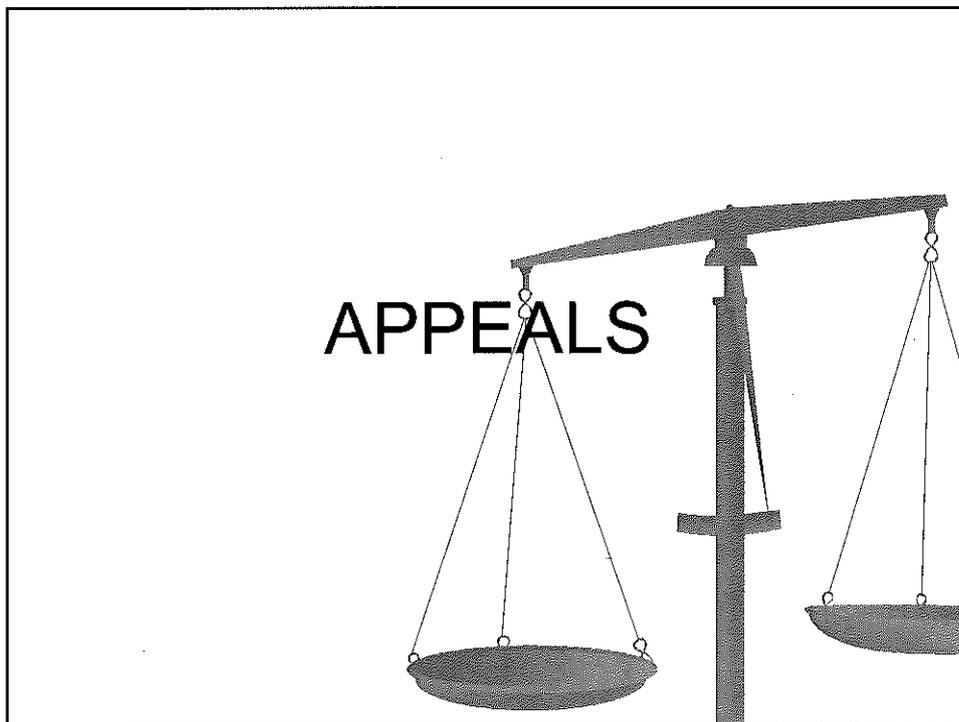
The notice must be lodged within 28 days of the decision being made and each party to the original proceedings must be served with a copy.

In deciding an appeal, the judge may make any of the following decisions:

- confirm the decision appealed against
- vary the decision appealed against
- set aside the decision and substitute another decision
- set aside the decision appealed against and refer the matter back to the Childrens Court for another hearing.

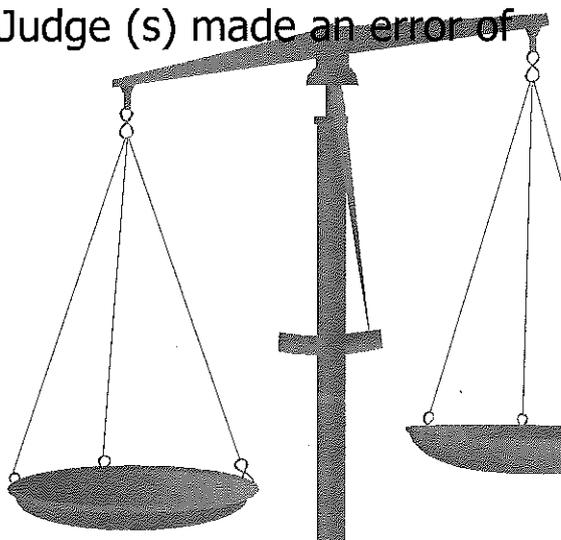
A Childrens Court Judge is an appointed District Court Judge who is commissioned for this purpose and has particular expertise in matters relating to children.

Where a Childrens Court Judge is not available, a District Court Judge can sit as a Childrens Court Judge.



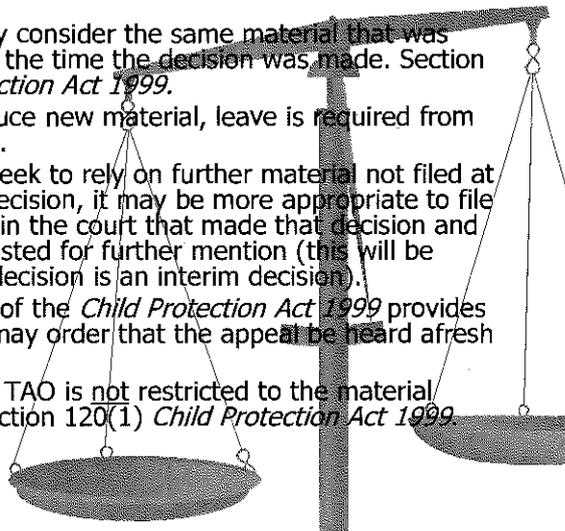
**What are the grounds for an appeal?**

- The Magistrate/Judge (s) made an error of fact or law.



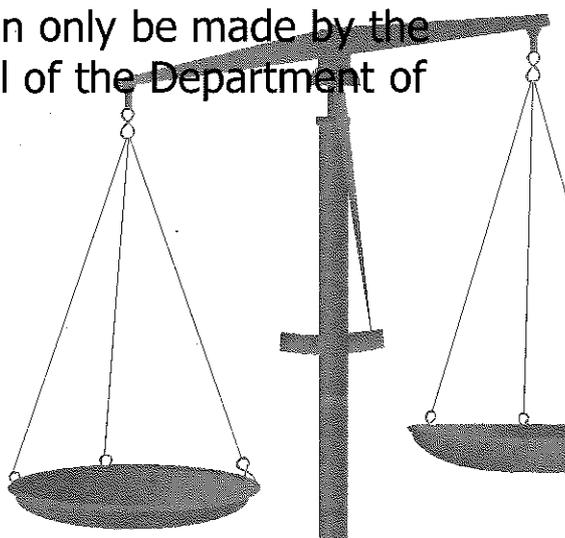
## **What are the grounds for an appeal?**

- Note:
- The appeal court can only consider the same material that was before the lower court at the time the decision was made. Section 120(1) of the *Child Protection Act 1999*.
- If a party seeks to introduce new material, leave is required from the appeal court to do so.
- If the Department does seek to rely on further material not filed at the time of the original decision, it may be more appropriate to file further updated material in the court that made that decision and seek that the matter be listed for further mention (this will be possible only where the decision is an interim decision).
- However, section 120(3) of the *Child Protection Act 1999* provides that the appellate court may order that the appeal be heard afresh in whole, or part.
- An appeal in respect of a TAO is not restricted to the material before the Magistrate, section 120(1) *Child Protection Act 1999*.



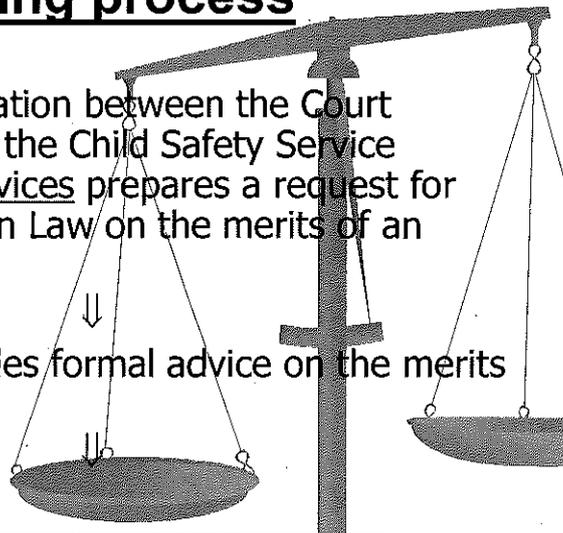
## **Who makes the decision to appeal on behalf of DChS?**

- This decision can only be made by the Director General of the Department of Child Safety.

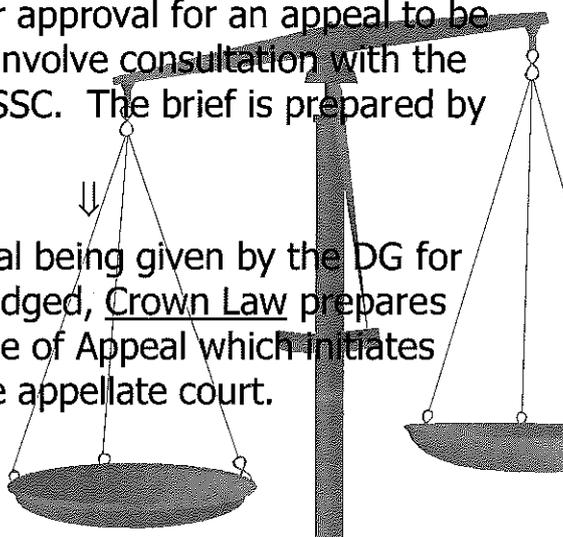


## **Role of Court Services and Crown Law in the decision making process**

- Following consultation between the Court Services Unit and the Child Safety Service Centre, Court Services prepares a request for advice from Crown Law on the merits of an appeal.
- Crown Law provides formal advice on the merits of an appeal.



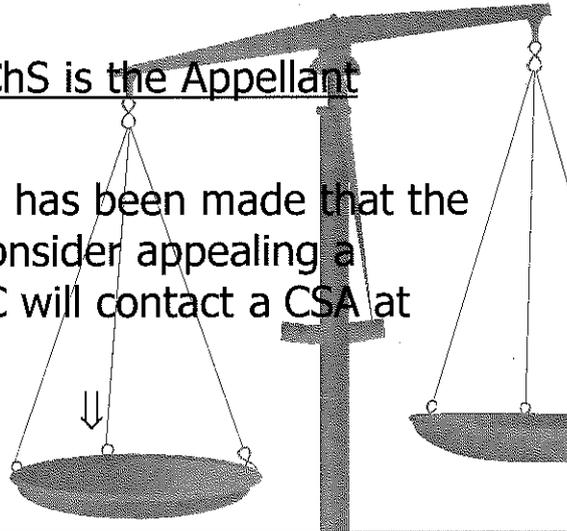
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- Subject to approval being given by the DG for an appeal to be lodged, Crown Law prepares and files the Notice of Appeal which initiates proceedings in the appellate court.



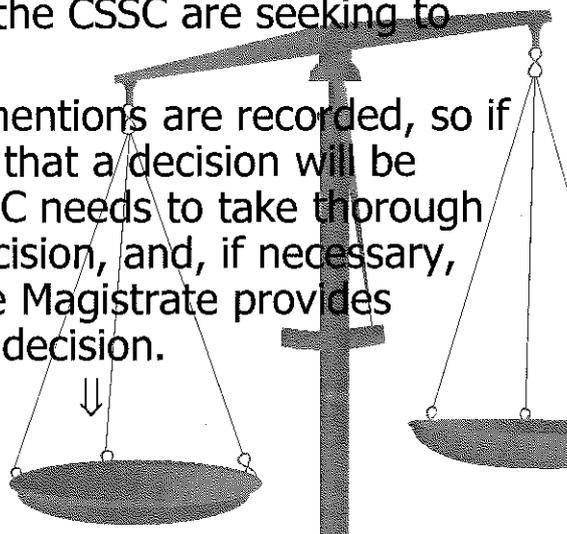
## **Role of the Court Coordinator in an appeal**

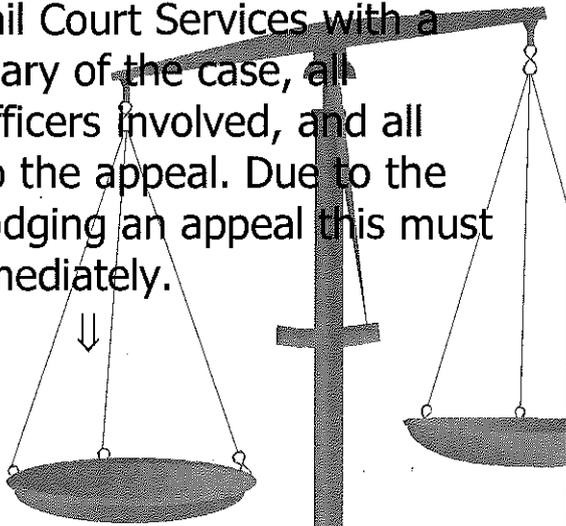
### **When DChS is the Appellant**

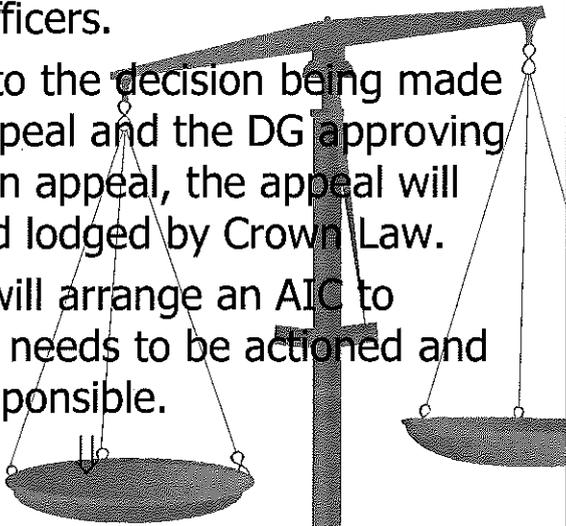
- Once a decision has been made that the CSSC wish to consider appealing a decision, the CC will contact a CSA at Court Services.

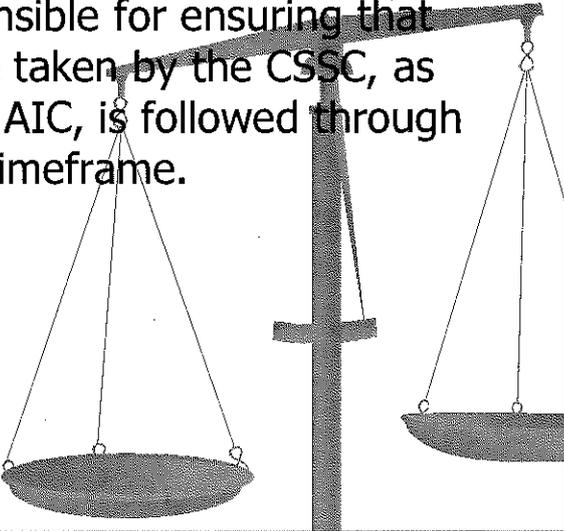


- If possible, the CC will obtain a transcript of the decision the CSSC are seeking to appeal.
- NOTE: Not all mentions are recorded, so if it is anticipated that a decision will be appealed, the CC needs to take thorough notes of the decision, and, if necessary, request that the Magistrate provides reasons for the decision.

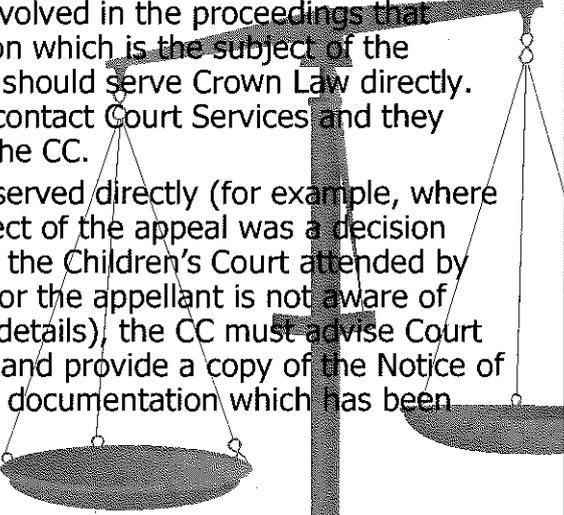


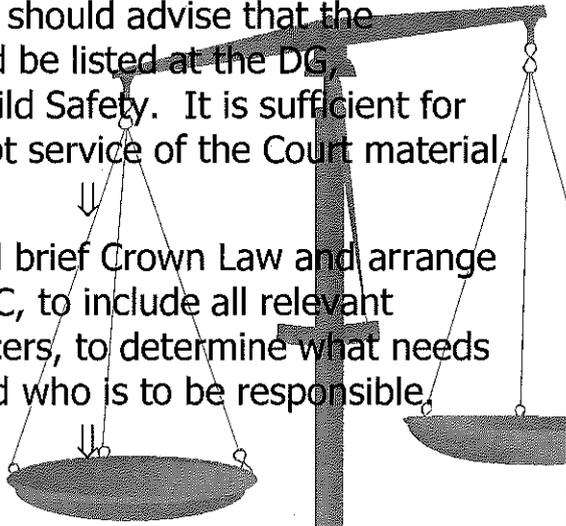
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- A black and white illustration of a balance scale. The scale is tilted to the right, with the right pan being lower than the left pan. A downward-pointing arrow is positioned above the left pan, indicating it is heavier. The scale is supported by a central vertical post.
- The CC will email Court Services with a thorough summary of the case, all departmental officers involved, and all facts relevant to the appeal. Due to the time limits on lodging an appeal this must be actioned immediately.

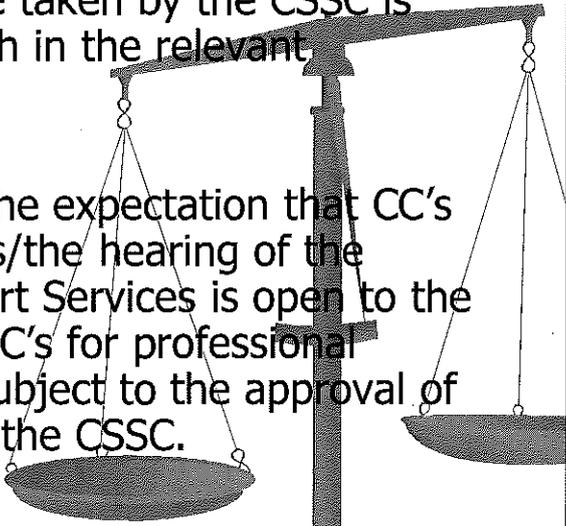
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- A black and white illustration of a balance scale, identical to the one in the first block. The scale is tilted to the right, with the right pan being lower than the left pan. A downward-pointing arrow is positioned above the left pan, indicating it is heavier. The scale is supported by a central vertical post.
- The CC will liaise with a CSA to arrange a case discussion to include all relevant departmental officers.
  - NOTE: Subject to the decision being made to pursue an appeal and the DG approving the lodging of an appeal, the appeal will be prepared and lodged by Crown Law.
  - Court Services will arrange an AIC to determine what needs to be actioned and who is to be responsible.

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- The CC is responsible for ensuring that any action to be taken by the CSSC, as identified in the AIC, is followed through in the relevant timeframe.

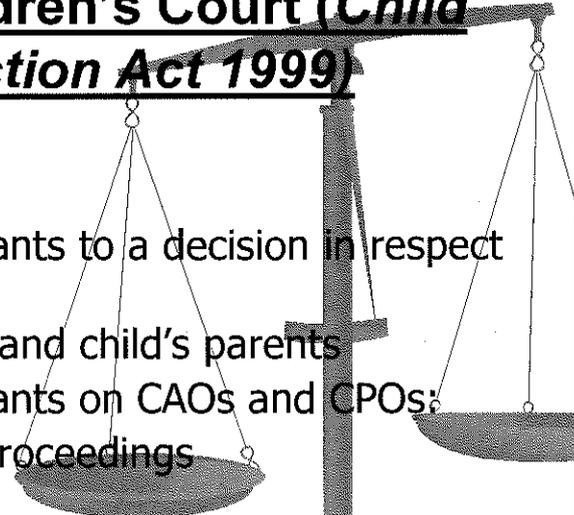
#### Appeal Process when the Department of Child Safety is the Respondent

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- If Crown Law were involved in the proceedings that resulted in the decision which is the subject of the appeal, the appellant should serve Crown Law directly. Crown Law will then contact Court Services and they will, in turn, contact the CC.
  - Where the CSSC are served directly (for example, where the decision the subject of the appeal was a decision made at a mention in the Children's Court attended by the applicant and CC or the appellant is not aware of Crown Law's contact details), the CC must advise Court Services immediately and provide a copy of the Notice of Appeal and any other documentation which has been served.

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- If an appellant approaches the CC to seek advice as to where the Notice of Appeal should be served, the CC should advise that the respondent should be listed at the DG, Department of Child Safety. It is sufficient for the CSSC to accept service of the Court material.
  - Court Services will brief Crown Law and arrange an AIC with the CC, to include all relevant departmental officers, to determine what needs to be actioned and who is to be responsible.

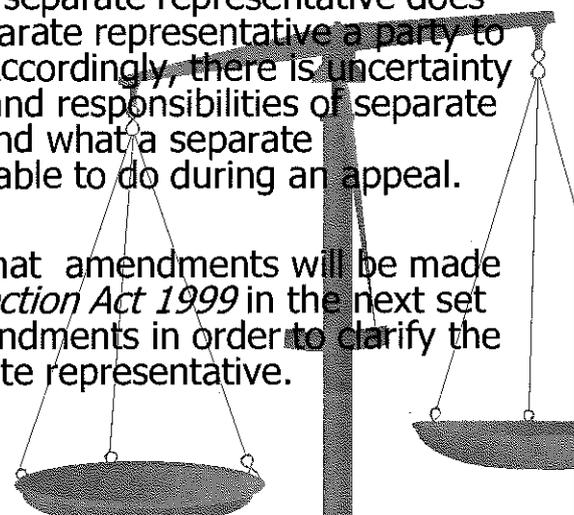
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- The CC is responsible for ensuring that any action to be taken by the CSSC is followed through in the relevant timeframe.
  - Note: It is not the expectation that CC's attend mentions/the hearing of the appeal, but Court Services is open to the attendance of CC's for professional development, subject to the approval of the Manager of the CSSC.

## **Overview of the Legislation relating to appeals of decisions in the Children's Court (*Child Protection Act 1999*)**



### **Section 117 –**

- Potential appellants to a decision in respect of a TAO:
- Applicant, child and child's parents
- Potential appellants on CAOs and CPOs:
- A party to the proceedings

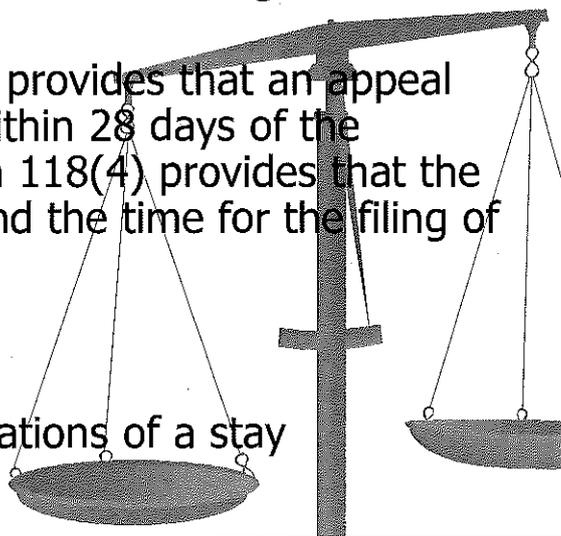
- Note: Under the *Child Protection Act 1999*, the appointment of a separate representative does not make the separate representative a party to the proceeding. Accordingly, there is uncertainty about the rights and responsibilities of separate representatives and what a separate representative is able to do during an appeal.
  - It is anticipated that amendments will be made to the *Child Protection Act 1999* in the next set of legislative amendments in order to clarify the role of the separate representative.
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Section 118 –

- Details the procedure for filing of an appeal
- Section 118 (3) provides that an appeal must be filed within 28 days of the decision Section 118(4) provides that the court may extend the time for the filing of the appeal

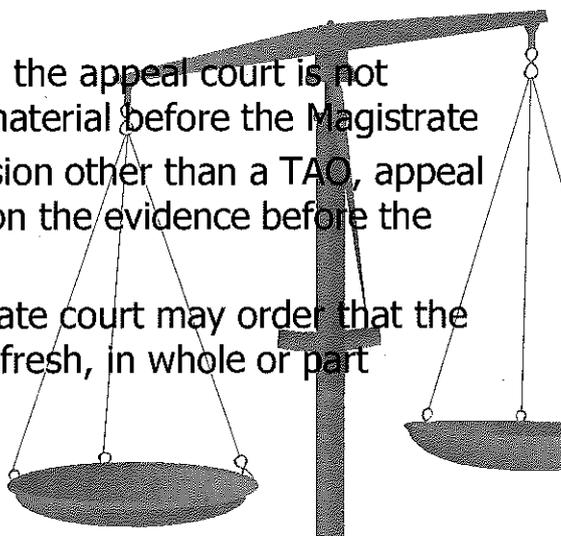
Section 119 –

- Details the limitations of a stay



Section 120 –

- 120(1) For a TAO, the appeal court is not restricted to the material before the Magistrate
- 120(2) For a decision other than a TAO, appeal must be decided on the evidence before the Children's Court
- 120(3) The appellate court may order that the appeal be heard afresh, in whole or part



## Hierarchy of Courts

Children's Court of Queensland



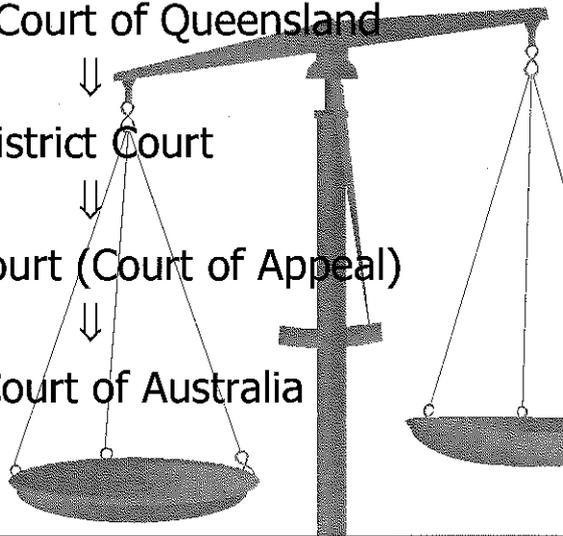
District Court



Supreme Court (Court of Appeal)

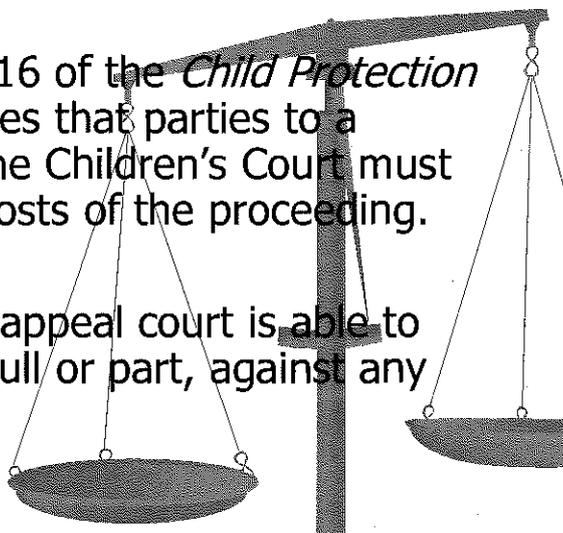


High Court of Australia



## A word on costs

- Note: Section 116 of the *Child Protection Act 1999* provides that parties to a proceeding in the Children's Court must pay their own costs of the proceeding.
- In appeals, the appeal court is able to order costs, in full or part, against any party.



**Child Protection Act 1999**

**INSTRUMENT OF DELEGATION AND AUTHORISATION**

I, NORELLE DEETH, Director-General, Department of Child Safety, do now, under the provisions of Sections 149 and 156 of the *Child Protection Act 1999*.

- 1) authorise the person who is from time to time the holder of the office set out in Schedule A below to exercise and perform the powers, authorities, functions and duties conferred, or imposed on me by, or under the provisions specified in Schedule C below;
- 2) delegate to the person who is from time to time the holder of the office set out in Schedule A below, the powers, authorities, functions and duties arising out of me being made a respondent or party to proceedings under the *Child Protection Act 1999*.

**SCHEDULE A**

Court Coordinator, Child Safety Service Centre

**SCHEDULE B**

Nil

**SCHEDULE C**

*Child Protection Act 1999*, Section 108A.

- I. This Instrument of Delegation and Authorisation revokes any other Instrument of Delegation and Authorisation issued pursuant to the aforementioned Acts and Regulations, held by you.
- II. This Delegation and Authorisation shall be effective from the date of execution of this instrument until revoked.
- III. The exercise of powers, authorities, functions and duties delegated under this instrument are subject to directions issued under my hand from time to time.

Executed at BRISBANE this thirty-first day of January 2008.

**Signed**

Norelle Deeth  
Director-General

## **BACKGROUND**

In January 2004 the Crime and Misconduct Commission (CMC) delivered a report "*Protecting Children: An Inquiry into Abuse of Children in Foster Care*" which contained a number of recommendations specially aimed at improving the lives of children and young people at risk in Queensland.

The CMC recommended that the then Department of Child Safety consider the advantages of specialist Court Workers.

The "*Blueprint*" identified the strategies, plans and processes from implementing the CMC recommendations in order to improve the child protection system in Queensland. It proposed that dedicated Court Coordinator positions be part of the staff establishment of each Child Safety Service Centre, reporting directly to the manager and identified the duties of a Court Coordinator as including:

- representing the Chief Executive Officer (CE) in local non-contested child protection proceedings;
- resourcing and supporting staff and departmental witnesses to prepare court and Tribunal material;
- quality assuring affidavits, statements and other evidence;
- establishment and maintenance of systems to ensure the efficient management of upcoming court and Tribunal proceedings (eg Court Diary, bring-up systems re filing dates, order expiry dates etc);
- training local staff in court related matters; and
- liaising and networking with key local service providers (eg attending Court Management meetings; liaising with Legal Aid).

It was also noted in the *Blueprint* that most of these functions were not then undertaken by Service Centre staff and therefore the introduction of Court Coordinators would:

- represent and enhancement to the quality of service delivery;
- free-up team leaders and enable them to be dedicated to the core functions of case work and case work supervision.

The *Blueprint* further proposed that Court Coordinators be line managed locally, however, be resourced and supported by the Court Services Unit (CSU) to ensure a skilled specialist workforce and consistency of practice statewide.

Court Coordinators are now key positions within the organisation and are heavily relied upon by Child Safety Service Centre Staff AND specialist Courts and Tribunals.

## **ROLE OF THE COURT CO-ORDINATOR**

The role of the Court Coordinator is to assist Child Safety Service Centre staff and the Director General to meet their legal obligations in courts, tribunals and to adhere to various protocols and conventions and promote quality practice that protects children.

Court Coordinators do this by being involved in the following:

1. Actively participate and assist with:

- Childrens Court mentions
- Coordination and preparation of contested child protection matters
- Coordination and preparation of Queensland Civil & Administrative Tribunal (QCAT) matters
- Family Law matters
- Appeals
- Warrants
- Interstate matters
- Judicial transfers of orders interstate
- Interstate transfer of proceedings

2. Undertake and assist others to undertake the necessary interviews, assessments and written material to formulate court submissions and provide post court advice which is consistent with departmental policies and practice standards by actively assisting with and participating in:

- Case discussions with internal and external stakeholders
- Considering the evidence
- Providing a quality assurance role – checking and proofing all material prior to lodgement at court
- “Advice in Conferences”
- Liaising with Separate Representatives
- Working with external witnesses
- Participating in discussions with Recognised Entities as required
- Ensuring departmental staff are aware of the requirements of any interim court orders which need to be followed up eg social assessments, medical examinations
- Completing court outcomes in the Integrated Client Management System (ICMS)

3. Provide information and advice on court and Tribunal related matters, including resourcing and supporting staff and departmental witnesses in the preparation of evidence and quality assuring material for court and QCAT by providing:

- Information and advice on Court and Tribunal matters, including resourcing and supporting staff and departmental witnesses in the preparation of evidence

- Providing quality assurance in relation to TAO, CAO and CPO applications

4. Liaise with a range of internal and external stakeholders including Magistrates, Judges, legal representatives and community organisations to ensure the provision of quality court services at the local level by:

- Being proactive in developing and participating in local court management meetings with key stakeholders involved in the court process
- Actively attempting to resolve local issues at the local level through relationship building with other key stakeholders
- Attending meetings with Legal Aid and other legal representatives as required
- Liaising with CSU in relation to difficult or specific court issues
- Liaising with Separate Representatives
- Providing information and training sessions for key stakeholders
- Attending other forums eg SCAN as required

5. Develop, implement, monitor and maintain office systems in relation to court and QCAT matters to ensure the efficient management of court and Tribunal appearances, timely recording of outcomes and monitoring of relevant trends and issues by:

- Effective use of court diary for matters before the children's court
- Completion of all Client Information / Client Outcome forms
- Developing and coordinating systems to ensure that orders don't lapse without being brought back before the court
- Developing and coordinating systems to ensure timely responses to Children's Services Tribunal matters
- Recording relevant statistics
- Preparing monthly / quarterly reports as required
- Developing systems within the office to record significant decisions

6. Providing a consultancy resource service to department staff and other key local stakeholders in relation to court and Tribunal related matters including the development and delivery of local training initiatives by:

- Mentoring new staff in relation to court processes
- Developing resources
- Identifying local training needs
- Developing and delivering training in relevant areas
- Participating in Management Team Meetings
- Consultation with colleagues throughout the state

7. Monitor and contribute to the development of practice standards, operational guidelines, and review mechanisms to promote effective and efficient departmental services to courts and the QCAT, and actively participate in the Statewide Court Coordinator Network by:

- Actively participating in Regional meetings
  - Being proactive in establishing regional Court Coordinator forums
  - Developing and implementing statistical recording mechanisms
  - Actively participating in forums to contribute to practice development
  - Reporting significant court outcomes to Court Services, particularly where the matter may result in setting precedents which impact upon practice
  - Reporting and recording practice trends to the CSU
  - Sharing resources and tools that enhance best practice via forums such as the Regional meetings or the Court Coordinator Conference.
8. Foster a culture and philosophy of frontline service delivery, cooperation, commitment to excellence and a professional ethic which ensures the CSSC continues to meet the Departments priorities by:
- Promoting best practice – child focused
  - Presenting a professional manner
  - Being accountable
  - Being supportive of other staff
  - Promoting effective working relationships
  - Striving for effective working relationships with external agencies
  - Drawing attention to practice inefficiencies
  - Embracing an open and supportive culture
  - Documenting all decision making processes
  - Having a commitment to ongoing learning
  - Adhere to the principles of being a model litigant

## **INSTRUMENT OF DELEGATION, AUTHORISATION AND APPOINTMENT**

### **Delegations:**

Four groups of Statutes (Acts of Parliament), and delegated powers under those Acts, legally regulate the work of the Department. The group of Acts are those relating to: child protection, adoptions, the public sector/human resources and financial administration.

For the purposes of this resource it is sufficient to refer to the Acts relating to child protection and adoptions, in particular the:

- *Child Protection Act 1999*
- *Family Services Act 1987*
- *Childrens Court Act 1992; and*
- *Adoption of Children Act 1964.*

To authorise actions to give effect to the purposes of these Acts, they each confer powers on the chief executive (CE). As it is not practical to expect that the CE would always exercise those powers (ie perform or authorise particular

actions on a day-to-day basis) the Acts also give the CE power to delegate their statutory powers to officers or categories of officers.

The formal legal instruments for this delegation of authority are written as 'instruments of delegation' signed by the CE which delegate specified powers to particular categories of officer.

### **What is an Instrument of Delegation?:**

The Department of Communities CE implements this policy to ensure staff have the appropriate legal authority to exercise powers and carry out certain actions for which they are personally accountable.

Staff with delegations then have a responsibility when using a delegation to ensure:

- the action is within the **power and limitation** of their delegation; and
- they have followed all relevant departmental procedures.

Under Section 149 of the *Child Protection Act 1999* the Chief Executive may appoint an officer or employee of the Department to be an authorised officer.

### **Authorisation for Court Coordinators:**

The powers of a Court Coordinator are **limited to Section 108A** of the *Child Protection Act 1999*.

#### *Child Protection Act 1999* Section 108A

#### 108A Right of appearance of departmental coordinators

(1) A coordinator may appear in a proceeding.

(2) In this section –

*Coordinator* means an officer or employee of the department who is authorised in writing by the chief executive to appear in proceedings under this Act



## **Child Protection Act 1999**

### **INSTRUMENT OF DELEGATION AND AUTHORISATION**

I, **NORELLE DEETH**, Director-General, Department of Child Safety, do now, under the provisions of Sections 149 and 156 of the *Child Protection Act 1999*.

- 1) authorise the person who is from time to time the holder of the office set out in Schedule A below to exercise and perform the powers, authorities, functions and duties conferred, or imposed on me by, or under the provisions specified in Schedule C below;
- 2) delegate to the person who is from time to time the holder of the office set out in Schedule A below, the powers, authorities, functions and duties arising out of me being made a respondent or party to proceedings under the *Child Protection Act 1999*.

#### **SCHEDULE A**

Court Coordinator, Child Safety Service Centre

#### **SCHEDULE B**

Nil

#### **SCHEDULE C**

*Child Protection Act 1999*, Section 108A.

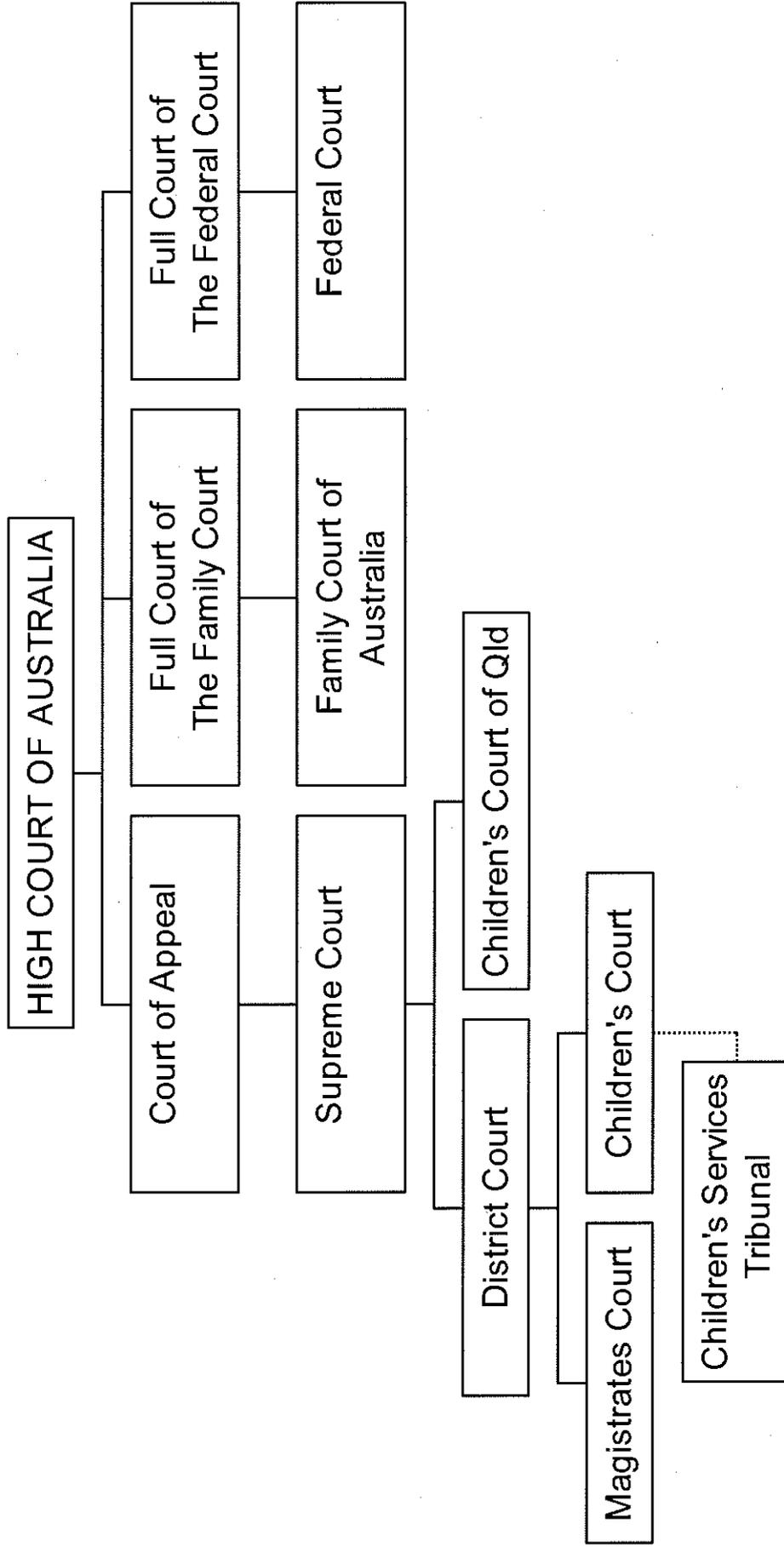
- I. This Instrument of Delegation and Authorisation revokes any other Instrument of Delegation and Authorisation issued pursuant to the aforementioned Acts and Regulations, held by you.
- II. This Delegation and Authorisation shall be effective from the date of execution of this instrument until revoked.
- III. The exercise of powers, authorities, functions and duties delegated under this instrument are subject to directions issued under my hand from time to time.

Executed at BRISBANE this thirty-first day of January 2008.

**Signed**

Norelle Deeth  
**Director-General**

# COURT HIERARCHY



## **COURT ETIQUETTE**

The department has a role in court to provide information which will assist a court in the decision making process in dealing with departmental clients.

In child protection matters a departmental officer duly authorised may apply to a Childrens Court for an assessment order and/or a child protection order pursuant to the *Child Protection Act 1999*.

In court, correct dress, behaviour and language protocol are important in establishing and maintaining credibility with the presiding magistrate or judge and other parties.

### **Correct Dress**

A conservative approach should be adopted in the choice of dress. This will require a reasonably formal standard of dress. Casual dressing is not acceptable. For example, both men and women may wear trousers or pants, however jeans are not permissible.

### **Correct Behaviour**

Stand when the magistrate or judge enters the court.

Stand when addressing the bench unless the presiding judge or magistrate invites you to remain seated. Bow to the bench when entering and leaving the court. If you need to leave the court during the proceedings, stand and bow to the bench. Leave the courtroom without turning your back on the court.

If you need to communicate with the parents, solicitors or the departmental officer with case responsibility, during the proceedings, do so discreetly.

Stand when the court is closed.

### **Correct Language and Protocol**

A magistrate (Children's Court/ Magistrate Court) should be addressed as "**Your Honour**".

A judge (Children's Court of Queensland) should be addressed as "**Your Honour**".

If in doubt "**Sir**" and "**Ma'am**" may also be acceptable.

## **OVERVIEW OF COURT SYSTEMS**

Although Parliament decides what the laws will be, it is the courts' role to decide how these laws will be applied to particular cases.

Some courts, such as the Family Court and the High Court, are a federal court, which means they have been established by the Federal Government.

However, most cases in Queensland are decided in the State courts: the Supreme Court, the District Courts or the Magistrates Courts.

Cases are described as being either criminal or civil. A civil case is one in which a person, a company or the Government claims that another party has acted contrary to the law.

A criminal case is one in which the police or the Government says that a person has broken the criminal law, for example by killing someone or stealing property.

## **STATE COURT SYSTEMS**

### **1. Childrens Court**

A Childrens Court is presided over by a magistrate or two Justices of the Peace (Qualified). The Children's Court has separate jurisdiction from the adult jurisdiction of the Magistrates, District and Supreme Courts. The Childrens Court has the jurisdiction to:

- determine certain offences against young people under 17 years who have offended
- determine child protection matters in accordance with the Child Protection Act 1999.

Childrens Courts are convened in the same locations as Magistrates Courts throughout Queensland - except in central Brisbane where there is a separate Childrens Court building.

The Childrens Court is a closed court and therefore only certain persons are allowed to be present. Those who are allowed to attend court include:

- the magistrate (or judge in the Childrens Court of Queensland)
- court clerk
- representatives from the Department of Communities - applicant and court officer/legal representative
- parents and their legal representative
- the child (if old enough) and their legal representative
- the Separate Representative (lawyer) appointed by the court to represent the child's interests
  
- a representative of a Recognised Entity if the child is an Aboriginal or Torres Strait Islander child or young person
- non-parties who the magistrate would like to hear from.

The child safety officer of the Department of Communities is known as the 'Applicant' in court.

Parents are referred to as the 'Respondents'.

Magistrates in the Childrens Court must be addressed as 'Your Honour'.

**In Summary:**

- presided over by a Magistrate (address as "Your Honour")
- child protection matters
- dispensation of consent to adopt
- children's criminal matters (10-16 years) where it has jurisdiction

**2. Childrens Court of Queensland**

The Childrens Court of Queensland (CCQ) deals with all juveniles who commit criminal offences while under the age of 17 years, unless the court orders that the matter be dealt with in an adult court.

Matters involving children can be heard in the adult District Court of Queensland if:

- the child is charged as an adult
- the proceedings have been committed up to the District Court following an application under the Juvenile Justice Act 1992, for example, if a child is co-accused with an adult.

CCQ matters are usually heard in a closed court. This means that only people who are directly involved in the case can be present. Members of the public are not usually allowed to be in court and no one is permitted to publish identifying information about the accused.

The CCQ is presided over by judges who have been appointed from the District Court. Matters are heard in accordance with the guidelines set down in the Childrens Court Act 1992 and the Juvenile Justice Act 1992.

Matters involving children can also be heard in the Magistrates or Supreme Court. These cases are also heard in accordance with the guidelines set out in both of these acts.

**Child protection matters**

The CCQ also deals with appeals against child protection orders made by a magistrate. In these cases, the court will make a directive to protect a child from harm.

**In Summary:**

- appeals from Children's Court (child protection / youth justice)
- summary of trials / sentences
- appeals on matters of law from CST

**3. Magistrates Court**

A magistrate presides over a Magistrates Court. There is no jury. These courts deal with less serious offences. More serious criminal matters are decided in the higher courts, that is, the District or Supreme Courts.

In less serious criminal cases, the magistrate must decide whether the accused person is guilty or not. If he or she is guilty, the magistrate also fixes the penalty.

If a criminal case is too serious to be dealt with in a Magistrates Court, it must be decided in the District or Supreme Court. However, the accused is first charged in a Magistrates Court and the magistrate must then decide whether there is enough evidence to justify sending the matter for trial in one of the higher courts. This is called a committal for trial.

Magistrates Courts deal with civil matters if the amount in dispute is \$50,000 or less.

**In Summary:**

- presided over by a Magistrate
- adult criminal matters
- family court matters (uncontested)
- orders (exercising federal jurisdiction)
- civil matters up to \$40,000

**4. District Court**

Serious criminal cases, such as rape and armed robbery, are decided in a District Court. A District Court also handles civil disputes where the amount in dispute is between \$50,000 and \$250,000.

Appeals against some decisions of a Magistrates Court may also be dealt with by a District Court.

A District Court judge presides over a District Court. In criminal trials, a jury decides whether the person charged is guilty or not. If the person is found guilty, the judge then decides on the penalty. Most civil cases are decided by a judge sitting without a jury. Some Judges of the District Court also sit in the Planning and Environment Court and in the Childrens Court.

**In Summary:**

- presided over by a Judge (addressed as "Your Honour")
- civil and criminal (middle range offences)

**5. Supreme Court**

The Supreme Court is the highest court in the Queensland court system. It consists of the Chief Justice and two divisions, the Trial Division and the Court of Appeal.

Presiding over the court is a justice (judge) of the Supreme Court. The Supreme Court hears serious criminal offences, such as murder and certain serious drug offences. The Supreme Court hears civil disputes where the amount in dispute is more than \$250,000.

Like the District Courts, the Trial Division of the Supreme Court must use a jury to determine guilt or innocence in criminal cases. Civil cases are usually decided by a judge without a jury.

In certain circumstances, parties may dispute the decision of a court or the sentence imposed through a process called an appeal. Most appeals are

heard in the Court of Appeal. It is part of the Supreme Court and handles only appeals; it does not decide cases initially. The Court of Appeal does not have a jury. Three justices of the Supreme Court make the decisions.

**In Summary:**

- presided over by a Judge
- serious criminal matters (adults and children)
- civil matters (eg custody / guardianship issues)
- appeals are dealt with by 3 x Supreme Court Judges
- sits in Brisbane, Townsville, Rockhampton. The Judge also travels on circuit to other major cities.

**FEDERAL COURT SYSTEMS**

**1. Family Court**

The Family Court of Australia was created by the *Family Law Act 1975 (Cth)* to interpret and apply that law to individual cases. The Family Court has registries in Brisbane and Townsville and sub-registries in Rockhampton and Cairns. This initiative was aimed not only at improving the manner in which separation and marriage dissolution were managed but also aimed at providing specialised facilities and services concerned with the welfare of children of the separating couples.

The Court also has jurisdiction in some matters under other legislation such as the *Marriage Act 1961 (Cth)* and the Child Support legislation. The jurisdiction and the administration of the Court has changed over time as a result of changes to the Family Law Act, in response to recommendations of reviews both internal and external, and the creation of the Federal Magistrates Court.

The Family Law Act defines the jurisdiction of the Family Court and of the State Courts which may also exercise some jurisdiction under it. For example, the Family Court has jurisdiction to hear matters related to divorce whereas the Federal Court does not have this power because these matters are not within its jurisdiction.

The Family Court's jurisdiction in relation to children includes the power to make parenting orders, which may include one or more of the following:  
the person or persons with whom a child is to live (*Family Law Act 1975*, section 64B(2)(a));  
the time the child is to spend with another person or other persons (*Family Law Act 1975*, section 64B(2)(b));

- the allocation of parental responsibility for a child for making daily and long-term decisions about a child's care, welfare and development (*Family Law Act 1975*, section 64B(2)(c));
- if two or more persons are to share parental responsibility for a child, the form of consultations those persons are to have with one another about decisions to be made in the exercise of that responsibility (*Family Law Act 1975*, section 64B(2)(d));
- the communication a child is to have with another person or other persons (*Family Law Act 1975*, section 64B(2)(e)); and

- maintenance of a child (*Family Law Act 1975*, section 64B(2)(f)).

The Family Court also has a broad welfare jurisdiction to deal with special matters such as consent to medical treatment and certain powers under international conventions.

### **The roles of the Family Court and the Department of Communities:**

The role of the Family Court is to determine disputes between separated parents and other persons concerned with the child's welfare or about the care of the child. In deciding whether to make a particular parenting order, the Family Court must regard the best interests of the child as the paramount consideration.

If there is suspected harm or risk of harm to a child, the department is the mandated authority to investigate the allegations. The Family Court does not have the expertise, role or resources to perform this function. Whether or not there are proceedings in the Family Court, the department has the lead responsibility to ensure the child's safety and need for protection. A child of separated parents has the same right to protection and to receive departmental services, as do other children.

The *Family Law Act 1975* recognises the child protection role of the state in the following ways:

- Family Court personnel are mandated to report cases of suspected harm and risk of harm, and family violence, to the state welfare authority (*Family Law Act 1975*, section 67Z, 67ZA);
- the Family Court cannot make a parenting order in relation to a child in the care of a person under the *Child Protection Act 1999*, unless the order is to come into effect when the child ceases to be in that care or the chief executive consents to the application proceeding in the Family Court (*Family Law Act 1975*, section 69ZK(1));

Nothing in the *Family Law Act 1975* or any order under that Act affects:

- the jurisdiction of the Childrens Court to make an order by which a child is placed in the care of a person under the *Child Protection Act 1999*; or
- the power of the department under the *Child Protection Act 1999* to take any action by which a child is placed in the care of a person under the Act; or
- the operation of the *Child Protection Act 1999* in relation to a child (section 69ZK(2));

The department has the right to intervene in Family Court proceedings and deal with child protection issues in the Family Court if it chooses (*Family Law Act 1975*, section 92A);

The Family Court may request the department to intervene in the proceedings (*Family Law Act 1975*, section 91B); and under the *Family Law Rules 2004*,

rule 6.02(2), the chief executive of the department must be served as a respondent to any application relating to a child for whom a care agreement, assessment order or child protection order under the *Child Protection Act 1999* is in place.

**In Summary:**

- presided over by a Judge, Judicial Registrar, Registrar; 3 Judges for an Appeal (Full Court)
- deals with child and family matters
- international child abduction matters (Hague matters)

**2. Federal Magistrate Court**

The Federal Magistrates Service and state Magistrates Courts also have jurisdiction under the *Family Law Act 1975* to deal with children's matters. The Federal Magistrates Court, which shares registries with the Family Court in Brisbane and Townsville, can deal with contested children's matters provided the consent of all parties has been provided. For the purpose of this procedure, the Family Court also refers to the Federal Magistrates Service. The State Magistrates Court has jurisdiction to make consent orders only.

**In Summary:**

- specialised court which deals with Family Court matters (eg international child abduction matters, dissolution or annulment of marriages)
- appeals heard by the Family Court (Full Court)

**3. High Court of Australia**

The High Court is the highest court in the Australian judicial system. It was established in 1901 by Section 71 of the Constitution. The functions of the High Court are to interpret and apply the law of Australia; to decide cases of special federal significance including challenges to the constitutional validity of laws and to hear appeals, by special leave, from Federal, State and Territory courts.

The seat of the High Court is in Canberra, where it is located in its own building within the Parliamentary Triangle. In addition, there are offices of the High Court Registry in Sydney and Melbourne, staffed by officers of the High Court. In Brisbane and Perth registry functions are performed on behalf of the High Court by officers of the Federal Court of Australia, and in Adelaide, Hobart and Darwin they are performed by officers of the Supreme Court of the respective State or Territory.

**In Summary:**

- presided over by 5 x Judges who hear appeal matter
- sits once a year in Brisbane
- oversees the State and Federal Court Systems

**Judicial Review v Administrative Review**

Judicial Review looks at whether the decision was made contrary to legislation, rules of natural justice, made on no evidence or otherwise made outside of power. See section 20(2) of the *Judicial Review Act 1991*. It basically looks at whether a decision was made contrary to law.

Administrative review is a merits review process which looks at all the information afresh and any new information to determine if the decision made was the correct one.

In Queensland judicial review is undertaken by the Supreme Court pursuant to the *Judicial Review Act 1991* and other Tribunals in relation to specific legislation (for example CST deals with Child Safety (Schedule 2) and Childrens Commission (blue card refusals etc).

The Queensland *Judicial Review Act 1991* (JR Act) gives the public the right to:

***'request the reasons for the decisions which adversely affect them; or seek a review of a decision in the Supreme Court'.***

As well as administrative decisions of Government departments and local authorities, the JR Act also applies to administrative decisions of semi-government agencies and statutory authorities.

'Administrative decisions' which are made under an enactment are reviewable. An enactment includes part of an Act or a statutory instrument such as regulations, rules, by-laws, ordinances, guidelines or standards.

'Decisions' include a failure to make a decision and actions and conduct leading up to the making of the decision. A decision can be an order, award or determination, certificate, direction, approval, consent or permission, licence, condition or restriction, declaration, requirement, demand or a refusal to hand over an article.

Some of the grounds for review are that:

- The decision-maker breached the rules of natural justice;
- The decision-maker did not observe the correct legal procedures;
- The decision-maker did not have the authority to make the decision;
- The decision was not authorised by the legislation it was purported to be made under;
- The decision involved an improper use of power;
- The decision involved an error of law;
- The decision is or may be tainted by fraud;
- There was no evidence or other material supporting the decision; or
- The decision was in some other way unlawful

### **Queensland Civil and Administrative Tribunal**

The establishment of the Queensland Civil and Administrative Tribunal (QCAT) was announced by the Premier, the Honourable Anna Bligh MP, on 12 March 2008. QCAT began its operations on 1 December 2009 amalgamating 23 jurisdictions into one tribunal, providing a single gateway through which the community can access justice.

**See chapter 12 for more information.**

## **Child Protection Act 1999**

### **INSTRUMENT OF DELEGATION AND AUTHORISATION**

I, **NORELLE DEETH**, Director-General, Department of Child Safety, do now, under the provisions of Sections 149 and 156 of the *Child Protection Act 1999*.

- 1) authorise the person who is from time to time the holder of the office set out in Schedule A below to exercise and perform the powers, authorities, functions and duties conferred, or imposed on me by, or under the provisions specified in Schedule C below;
- 2) delegate to the person who is from time to time the holder of the office set out in Schedule A below, the powers, authorities, functions and duties arising out of me being made a respondent or party to proceedings under the *Child Protection Act 1999*.

#### **SCHEDULE A**

Court Coordinator, Child Safety Service Centre

#### **SCHEDULE B**

Nil

#### **SCHEDULE C**

*Child Protection Act 1999*, Section 108A.

- I. This Instrument of Delegation and Authorisation revokes any other Instrument of Delegation and Authorisation issued pursuant to the aforementioned Acts and Regulations, held by you.
- II. This Delegation and Authorisation shall be effective from the date of execution of this instrument until revoked.
- III. The exercise of powers, authorities, functions and duties delegated under this instrument are subject to directions issued under my hand from time to time.

Executed at BRISBANE this thirty-first day of January 2008.

**Signed**

Norelle Deeth  
**Director-General**

## **OVERVIEW OF THE CHILD PROTECTION ACT 1999**

The legislation which underpins the Department of Communities (Child Safety) daily work is the *Child Protection Act 1999* (hereinafter referred to as 'the Act').

The Act was introduced in 1999 and has subsequently undergone a number of amendments. The current version of the Act is 'reprint 6F' which came into force in 29 November 2010. There are currently proposed amendments which are due for inclusion in 2011. (see powerpoint document).

### **The Purpose of the Act**

The purpose of the Act is set out at s4 which states:

- *the purpose of this Act is to provide for the protection of children.*

### **The Principles of the Act**

The principles of the Act are outlined at s5 which states:

- *this Act is to be administered under the principle that the welfare and best interests of a child are paramount;*
- *every child has a right to protection from harm;*
- *families have the primary responsibility for the upbringing, protection and development of their children;*
- *the preferred way of ensuring a child's wellbeing is through the support of the child's family;*
  
- *powers conferred under this Act should be exercised in a way that is open, fair and respects the rights of people affected by their exercise, and, in particular, in a way that ensures—*
  - *(i) actions taken, while in the best interests of the child, maintain family relationships and are supportive of individual rights and ethnic, religious and cultural identity or values; and*
  - *(ii) the views of the child and the child's family are considered; and*
  - *(iii) the child and the child's parents have the opportunity to take part in making decisions affecting their lives;*
- *if a child does not have a parent able and willing to protect the child, the State has a responsibility to protect the child, but in protecting the child the State must not take action that is unwarranted in the circumstances;*
  
- *if a child is removed from the child's family—*
  - *(i) the aim of authorised officers' working with the child and the child's family is to safely return the child to the family if possible; and*

- (ii) *the child's need to maintain family and social contacts, and ethnic and cultural identity, must be taken into account; and*
- (iii) *in deciding in whose care the child should be placed, the chief executive must give proper consideration to placing the child, as a first option, with kin;*
- *a child should be kept informed of matters affecting him or her in a way and to an extent that is appropriate, having regard to the child's age and ability to understand;*
- *if a child is able to form and express views about his or her care, the views must be given consideration, taking into account the child's age or ability to understand; and*
- *if a child does not have a parent able and willing to give the child ongoing protection, the child has a right to long-term alternative care.*

### **Some basic concepts of the Act:-**

#### **Section 8 Who is a *child***

- A ***child*** is an individual under 18 years.
- 

#### **Section 9 What is *harm***

- (1) ***Harm***, to a child, is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing.
- (2) It is immaterial how the harm is caused.
- (3) Harm can be caused by—
  - (a) physical, psychological or emotional abuse or neglect; or
  - (b) sexual abuse or exploitation.

#### **Section 10 Who is a *child in need of protection***

- A ***child in need of protection*** is a child who -
  - (a) has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm; and
  - (b) does not have a parent able and willing to protect the child from the harm.

### **What is Natural Justice and/or Procedural Fairness?**

The rules or principles of natural justice, also known as procedural fairness, have been developed to ensure that decision-making is fair and reasonable.

Natural justice is a legal requirement that applies to government decision-making. Put simply, natural justice involves decision-makers informing people of the case against them or their interests, giving them a right to be heard (the 'hearing' rule), not having a personal interest in the outcome (the rule against 'bias'), and acting only on the basis of logically probative evidence (the 'no evidence' rule). A denial of natural justice is a ground of review. An example of a denial of natural justice is late service of Court material.

## **Due Process of Law**

Due process is the principle that the government must respect all of a person's legal rights, instead of just some or most of those legal rights, when the government deprives a person of life, liberty, or property.

Due process is the idea that laws and legal proceedings must be fair.

## **Rights of Parents:**

Parents are afforded numerous rights under the Act.

Sections 11, 23, 37, 51F, 52, 67(3) outline the definition of a parent which relates to specific divisions of the Act.

The following sections of the Act place obligations on the CE that must be complied with in relation to parents and their rights:-

### **Section 15 - Child's parents to be told about allegation of harm and outcome of investigation**

- (1) An authorised officer or police officer who is investigating an allegation of harm, or risk of harm, to a child, or assessing the child's need of protection because of the allegation must give details of the alleged harm or risk of harm to at least 1 of the child's parents.
- (2) Also, as soon as practicable after completing the investigation, the officer must—
  - (a) tell at least 1 of the child's parents about the outcome of the investigation; and
  - (b) if asked by the parent—give the information in writing to the parent.
- (3) However, if the officer reasonably believes—
  - (a) someone may be charged with a criminal offence for the harm to the child and the officer's compliance with subsection (1) or (2) may jeopardise an investigation into the offence; or
  - (b) compliance with the subsection may expose the child to harm;

the officer need only comply with the subsection to the extent the officer considers is reasonable and appropriate in the particular circumstances.

### **Section 20 - Officer's obligations on taking child into custody**

- (1) If an authorised officer or police officer takes a child into the chief executive's custody, the officer must, as soon as practicable—
  - (a) take reasonable steps to tell at least 1 of the child's parents—
    - (i) that the child has been taken into custody and the reasons for the action; and

- (ii) when the chief executive's custody ends under section 18(7); and
  - (b) tell the child about his or her being taken into the chief executive's custody;<sup>7</sup> and
  - (c) tell the chief executive the child has been taken into the chief executive's custody and where the child has been taken.
- (2) Subsection (1) does not require the officer to tell the child's parents in whose care the child has been placed.
- (3) The officer's obligation under subsection (1)(a)(i) to give reasons for taking the child into custody is limited to the extent the officer considers is reasonable and appropriate in particular circumstances if the officer reasonably believes—
  - (a) someone may be charged with a criminal offence for harm to the child and the officer's compliance with the subparagraph may jeopardise an investigation into the offence; or
  - (b) compliance with the subparagraph may expose the child to harm.

### **Section 32 - Explanation of temporary assessment orders**

- Immediately after a temporary assessment order is made for a child, the applicant for the order must—
  - (a) give a copy of the order, or facsimile order or order form under section 30(6), to at least 1 of the child's parents; and
  - (b) explain the terms and effect of the order; and
  - (c) inform the parent—
    - (i) about the right of appeal; and
    - (ii) that, because of the duration of the order, if the parent wishes to appeal against the order, an appeal should be started immediately;<sup>10</sup> and
    - (iii) how to appeal; and
  - (d) tell the child about the order

### **Section 41 - Notice of application (CAO's)**

- (1) As soon as practicable after the application is filed, the applicant must—
  - (a) personally serve a copy of it on each of the child's parents; and
  - (b) tell the child about the application.<sup>13</sup>
- (2) However, if it is not practicable to serve the copy personally, a copy of the application may be served on a parent by leaving it at, or by sending it by post to, the parent's residential address last known to the applicant.
- (3) Also, if the applicant is a police officer, the applicant must immediately give a copy of the application to the chief executive.
- (4) A copy of the application served under this section must state—
  - (a) when and where the application is to be heard; and

- (b) for a copy served on a parent—that the application may be heard and decided even though the parent does not appear in court.

**Section 48 - Chief executive's obligations after making of court assessment order**

- As soon as practicable after a court assessment order for a child is made, the chief executive must give to the parties to the application for the order—
  - (a) a copy of the order; and
  - (b) a written notice—
    - (i) explaining the terms and effect of the order; and
    - (ii) stating that a party may appeal against the decision to make the order within 28 days after the order is made; and
    - (iii) stating how to appeal.

**Section 51L - Who should be involved (in case planning)**

- (1) The convenor must give the following persons a reasonable opportunity to attend and participate in the meeting—
  - (a) the child, unless it would be inappropriate because of the child's age or ability to understand;
  - (b) the child's parents;

**Section 51T/Y - Distributing and implementing the case plan**

- After a case plan has been recorded in the approved form and endorsed, the chief executive must—
  - (a) give a copy of the plan to the child, unless that would be inappropriate having regard to the child's age and ability to understand; and
  - (b) explain the plan to the child in a way, and to an extent, that is reasonable, having regard to the child's age and ability to understand; and
  - (c) give a copy of the plan to—
    - (i) the child's parents; and
    - (ii) anyone else affected by the plan or who the chief executive considers should receive a copy; and
  - (d) support the implementation of the plan.

**Section 51T/Y - Distributing and implementing the revised case plan**

- (1) This section applies after the chief executive has prepared the revised case plan.
- (2) The chief executive must—
  - (a) give a copy of the plan to the child, unless that would be inappropriate having regard to the child's age and ability to understand; and
  - (b) explain any changes in the plan to the child in a way, and to an extent, that is reasonable, having regard to the child's age and ability to understand; and

- (c) give a copy to the child's parents and anyone else affected by the plan or who the chief executive considers should receive a copy; and
- (d) support the implementation of the plan.

**Section 56 - Notice of application**

- (1) As soon as practicable after the application is filed, the applicant must—
  - personally serve a copy of it on each of the child's parents; and
  - (b) tell the child about the application.
- (2) However, if it is not practicable to serve the copy personally, a copy of the application may be served on a parent by leaving it at, or by sending it by post to, the parent's residential address last known to the applicant.
- (3) The copy of the application served under this section must state—
  - when and where the application is to be heard; and
  - (b) the application may be heard and decided even though the parent does not appear in court.

**Section 63 - Chief executive's obligations after making of child protection order**

- As soon as practicable after a child protection order for a child is made, the chief executive must give to the parties to the application for the order—
  - (a) a copy of the order; and
  - (b) a written notice—
    - explaining the terms and effect of the order; and
    - (ii) stating that a party may appeal against the decision to make the order within 28 days after the order is made; and
    - (iii) stating how to appeal.

**Section 78 - Chief executive's powers**

- (1) For giving effect to the child protection order, the chief executive may, by written notice given to a parent of the child, direct the parent to do or refrain from doing something specifically relating to the supervision matters stated in the order.
- (2) The notice must state the following—
  - (a) the reasons for the decision;
  - (b) that the parent may apply to the tribunal to have the decision reviewed only on the ground mentioned in subsection (3);
  - (c) the application must be made within 28 days after the person receives the notice;
  - (d) how to apply to have the decision reviewed.
- (3) The parent may apply to have the decision to give the direction reviewed only on the ground that the direction does not specifically relate to the supervision matters.

- (4) Despite the *Children Services Tribunal Act 2000*, section 70 the tribunal can not grant a stay of the decision.

#### **Section 86 - Chief executive to notify parents of placing child in care— child protection order**

- (1) This section applies if the child is in the chief executive's custody or guardianship under a child protection order.
- (2) Subject to subsections (3) and (4), the chief executive must, as soon as practicable after deciding in whose care to place the child, give written notice of the decision to the child and the child's parents stating the following—
  - the person in whose care the child is placed and where the child is living;
  - the reasons for the decision;
  - that the child and the child's parents may, within 28 days after receiving the notice, apply to the tribunal to have the decision reviewed;
  - how to apply to have the decision reviewed.
- (3) Before complying with subsection (2), the chief executive must consider the matters prescribed under a regulation.
- (4) If, after considering the matters, the chief executive reasonably suspects compliance with subsection (2) would constitute a significant risk to the safety of the child or anyone else with whom the child is living, the chief executive may decide not to comply with the subsection.
- (5) If the chief executive makes a decision under subsection (4), the chief executive must give written notice of the decision to the child and the child's parents stating the following—
  - (a) that the chief executive has decided not to tell the child's parents the person in whose care the child is placed and where the child is living;
  - (b) the reasons for the decision;
  - (c) that the child and the child's parents may, within 28 days after receiving the notice, apply to the tribunal to have the decision reviewed;
  - (d) how to apply to have the decision reviewed.
- (6) Subsection (2) does not apply if the chief executive is satisfied it is not reasonably practicable for the chief executive to give the notice because the child is placed in the person's care for less than 7 days.

#### **Section 87 - Chief executive to provide contact between child and child's parents**

- (1) The chief executive must provide opportunity for contact between the child and the child's parents and appropriate members of the child's family as often as is appropriate in the circumstances.
- (2) However, the chief executive may refuse to allow, or restrict or impose conditions on, contact between the child and the child's parents or members of the child's family, if the chief

executive is satisfied it is in the child's best interests to do so or it is not reasonably practicable in the circumstances for the parents or family member to have the contact.

- (3) If the chief executive refuses to allow, or restricts or imposes conditions on contact between the child and a person, the chief executive must give written notice of the decision to each person affected by the decision.
- (4) The notice must—
  - be given as soon as practicable after the decision is made; and
  - (b) state the reasons for the decision; and
  - (c) state that the person may, within 28 days after receiving the notice, apply to the tribunal to have the decision reviewed; and
  - (d) state how to apply to have the decision reviewed.

### **Model Litigant Principles:**

Refer to the Model Litigant Principles article by Conrad Lohe (dated 28 June 2007).

Principles apply to the Department of Communities as a state body.

Principles are broken down into two main headings:

#### **Fairness:-**

Acting consistently;  
Dealing promptly;  
Endeavouring to avoid litigation;  
Keeping litigation costs to a minimum where it cannot be avoided;  
Paying legitimate claims without litigation;  
Not seeking to take advantage of an impecunious opponent;  
Not contesting matters which it accepts is correct; and  
Not instituting and perusing appeals unless there is a belief for reasonable prospects of success.

#### **Firmness:-**

Appropriately testing claims;  
Contesting all spurious or vexatious claims;  
Claiming legal professional privilege where appropriate;  
Claiming public interest immunity to protect confidential information;  
Seeking security for costs;  
Relying on available statutes of limitation; and  
Acting properly to protect state's interest.

# ROLE OF LEGAL SERVICES

Presented by  
**Steve Habermann**

Director -Legal Services – Child Safety Services & Sport



## Who are we?

- Legal Services serves as a primary role the Executive of the department
- the branch will take care, for the executive, of all of its legal requirements
- One of the major matters that Legal Services administers is the litigation that exists, essentially with the department being nominated as defendant. In fact it is the State of Queensland that is actually named as defendant in any such proceedings

## What litigation do we do?

- Currently there are about 120 claims against the department. Of these 120 there are currently 46 that are active and current and which require the attention of Legal Services.
- The remainder are claims that have been commenced but have not been actively pursued by the claimants.
- The majority of the claims are personal injuries claims brought by former children in foster care.
- Overall there are four main types of claims

## What are the types of claims?

1. **First**, and in the **majority**, are "**abuse**" **claims** where the **statute of limitations does apply**. Claims have been brought by former residents of Queensland institutions as well as former children in foster care. The claimants will have to demonstrate to a court why they should not be barred from bringing their claims because the claims have been commenced "out of time". The claimants allege that they were abused whilst in care of the State and that the State failed in its duty of care to them. Most of the claims have been made in the last four years

Many claims by former residents in institutions have been finalised using the REDRESS SCHEME which spent an estimated \$100 Million dollars in an administrative process which created an automatic entitlement for every person that had been in an orphanage and who had met certain other criteria.

2. **Second**, there are **abuse claims** where the **statute of limitations does not apply** - that is, the claims have been commenced within the time limits provided for by the *Limitation of Actions Act 1974*. Where the alleged abuse is said to have occurred within the limitation period and the Director-General is still the guardian of the child then the State will refer the matter to the Public Trustee to act in the child's interests.

The Public Trustee would normally brief the matter to a private firm of solicitors to act for the child. This is appropriate as the State would have a conflict of interest and could not provide instructions on behalf of the child.

These matters are where a child in care has a claim against the State , usually this Department and the Director-General would, but for this referral be the litigation guardian and the proper defendant. We currently have three such matters

3. **Third**, there are claims by foster carers who have been injured by children in our care. This commonly occurs where we have placed a difficult or violent child with the carer. Or we have claims where workers in residential care services try and recover damages from the State. We currently have two highly contested matters.
4. **Fourth**, there are claims where the claimants allege that they have suffered as a result of the adoption process. Most of the claims have been made in the last four years. None have been pursued and all remain dormant at this time. We would anticipate a significant reduction in such claims due to the new *Adoption Act 2009*
5. **Fifth**, there are some claims where a person alleges that the State of Queensland failed to remove them from their parents and or care situation in breach of the duty of care owed by the Department to all children in Queensland. We currently have 8 of these types of claims.
6. **Last**, there are a small number of miscellaneous claims, such as work related stress injuries etc.

## Who represents the department in these cases?

- In relation to these matters Crown Law acts on behalf of the department, and a significant amount of the legal work is completed in partnership between Legal Services and Crown Law.
- Legal Services locates relevant evidence, considers advice provided, interprets the advice for relevant persons such as the Director General and Minister and will provide opinions on the advice given by Crown Law, suggest the most appropriate course to adopt so that the executive can provide proper instructions back to Crown Law .
- The ultimate responsibility for the litigation matters lies with QGIF ( Queensland Insurance Fund) who are our insurers for unforeseen contingencies.
- There are also cases where the chief executive of the department acts as litigation guardian for children. In these cases, the department is not being sued. The child is suing someone else for a wrong that it is alleged that other person has committed against the child. We are currently managing 12 such cases.

## What else do we do?

- As to the other duties performed by Legal Services, imagine all of the issues that can come up in any corporate entity that may have a legal component, and this is what we deal with on a daily basis. Therefore, our tasks are not limited to dealing with child protection issues. Our work is extremely wide ranging with the branch being called upon to deal with any legal issue that arises within the department.
- On a daily basis Legal Services deals with 20 to in excess of 30 of email requests for authoritative legal advice on many issues. For instance we may be dealing at one moment with a legislation question in relation to a child protection matter, be required in the next instance to draft overnight a contract for the retention of specialised services and in the next be drafting statements of reasons for judicial review purposes.

## Legal Services v Court Services

- We also deal with inquests and all matters arising from Coronial Inquiries into deaths of children. We deal with the provision of evidence, we draft and edit statements for the coroner, we conduct witness preparation for witnesses and we keep the executive informed.
- As to the interface with Court Services and Child Safety Service Centres, the difference between our dealings with Court Services and the CSSC's is that in relation to Court Services we are almost always dealing with child protection legislative issues. With the CSSC's, it can again be any one of the raft of legal questions that arises as a result of general business of the department.
- In relation to child protection legislative issues, if a CSSC has a question that has arisen as a general issue – say something that keeps arising and needs an answer with general application of the legislation, Legal Services should be approached for legal advice. Unless it is a very basic question, the request should be in writing – email – so that everyone knows precisely what is being considered. Likewise, Legal Services will then respond in writing.

- Where there is a specific issue that has arisen because of a matter currently being dealt with in the court or tribunal, such issues must be referred to Court Services in the first instance. Court Services has the experience of being able to interpret the legislation and of being able to apply it in the court and tribunal environment.
- Court Services also has the benefit of a close contact with the Brisbane Children's Court magistrate and members of the tribunal, so officers from Court Services will be far more aware than Legal Services of what sort of consideration is to be given to application of the legislation in the court situation.
- Therefore no specific matters that are before the court or tribunal should be referred to Legal services. If there is a legal issue that Court Services needs to clarify, it will be for Court Services to contact Legal Services. From the point of view of the CSSC's, they will refer the matter to, and receive a response from, Court Services.

- It is probably clear, therefore, that the interaction between Court Services and Legal Services is one where Legal Services will be requested to provide, from time to time, authoritative legal advice where specific issues arise. We will be looking at the specifics of a case and at the literal correct interpretation of the legislation, or whether there is more than one interpretation for instance, and will provide advice accordingly.
- We will also look at matters where it is perhaps hoped that a particular interpretation can be placed on legislation and determine whether an argument can be mounted that supports the interpretation. Of course we are bound by what are called model litigant principles, so we are not in a position to promote a dubious interpretation of the law.

## Judicial Review v Administrative Review

- Judicial Review looks at whether the decision was made contrary to legislation, rules of natural justice, made on no evidence or otherwise made outside of power. See section 20(2) of the *Judicial Review Act 1991*. It basically looks at whether a decision was made contrary to law. We are currently involved in three such reviews and they are generally around grant funding issues and around licensing decisions. The only result that can come from a Judicial Review is an order to make the decision again.
- Administrative review is a merits review process which looks at all the information afresh and any new information to determine if the decision made was the correct one.

In Queensland judicial review is undertaken by the Supreme Court pursuant to the *Judicial Review Act 1991* and other Tribunals in relation to specific legislation (for example QCAT deals with Child Safety (Schedule 2) and Children's Commission (blue card refusals etc)).

The Queensland *Judicial Review Act 1991* (JR Act) gives the public the right to:

request the reasons for the decisions which adversely affect them;  
or

seek a review of a decision in the Supreme Court.

As well as administrative decisions of Government departments and local authorities, the JR Act also applies to administrative decisions of semi-government agencies and statutory authorities.

'Administrative decisions' which are made under an enactment are reviewable. An enactment includes part of an Act or a statutory instrument such as regulations, rules, by-laws, ordinances, guidelines or standards.

'Decisions' include a failure to make a decision and actions and conduct leading up to the making of the decision. A decision can be an order, award or determination, certificate, direction, approval, consent or permission, licence, condition or restriction, declaration, requirement, demand or a refusal to hand over an article.

Some of the more quirky applications we have seen recently were:

- seeking a Statement of Reasons from a person that did not make the decision and
- A request for a judicial review of a decision not to answer a letter of demand, essentially seeking to have children returned to a parent.

## Grounds for seeking a review

- The decision-maker breached the rules of natural justice;
- The decision-maker did not observe the correct legal procedures;
- The decision-maker did not have the authority to make the decision;
- The decision was not authorised by the legislation it was purported to be made under;
- The decision involved an improper use of power;
- The decision involved an error of law;
- The decision is or may be tainted by fraud;
- There was no evidence or other material supporting the decision;
- or
- The decision was in some other way unlawful

## Overview Of Court Hierarchy

Although Parliament decides what the laws will be, it is the courts' role to decide how these laws will be applied to particular cases.

Some courts, such as the Family Court and the High Court, are federal courts, which means they have been established by the Federal Government. However, most cases in Queensland are decided in the State courts: the Supreme Court, the District Courts or the Magistrates Courts.

Cases are described as being either criminal or civil. A civil case is one in which a person, a company or the Government claims that another party has acted contrary to the law. A criminal case is one in which the police or the Government says that a person has broken the criminal law, for example by killing someone or stealing property.

## Role of the High Court

The High Court is the highest court in the Australian judicial system. It was established in 1901 by Section 71 of the Constitution. The functions of the High Court are to interpret and apply the law of Australia; to decide cases of special federal significance including challenges to the constitutional validity of laws and to hear appeals, by special leave, from Federal, State and Territory courts.

The seat of the High Court is in Canberra, where it is located in its own building within the Parliamentary Triangle. In addition, there are offices of the High Court Registry in Sydney and Melbourne, staffed by officers of the High Court. In Brisbane and Perth registry functions are performed on behalf of the High Court by officers of the Federal Court of Australia, and in Adelaide, Hobart and Darwin they are performed by officers of the Supreme Court of the respective State or Territory.

## Family Court of Australia

The Family Court of Australia was created by the [Family Law Act 1975 \(Cth\)](#) to interpret and apply that law to individual cases. The Family Court has registries in Brisbane and Townsville and sub-registries in Rockhampton and Cairns. This initiative was aimed not only at improving the manner in which separation and marriage dissolution were managed but also aimed at providing specialised facilities and services concerned with the welfare of children of the separating couples.

The Court also has jurisdiction in some matters under other legislation such as the *Marriage Act 1961* (Cth) and the Child Support legislation. The jurisdiction and the administration of the Court has changed over time as a result of changes to the Family Law Act, in response to recommendations of reviews both internal and external, and the creation of the Federal Magistrates Court.

The Family Law Act defines the jurisdiction of the Family Court and of the State Courts which may also exercise some jurisdiction under it.

For example, the Family Court has jurisdiction to hear matters related to divorce whereas the Federal Court does not have this power because these matters are not within its jurisdiction.

## Family Court

The Family Court's jurisdiction in relation to children includes the power to make parenting orders, which may include one or more of the following:

- the person or persons with whom a child is to live (*Family Law Act 1975*, section 64B(2)(a));
- the time the child is to spend with another person or other persons (*Family Law Act 1975*, section 64B(2)(b));
- the allocation of parental responsibility for a child for making daily and long-term decisions about a child's care, welfare and development (*Family Law Act 1975*, section 64B(2)(c));
- if two or more persons are to share parental responsibility for a child, the form of consultations those persons are to have with one another about decisions to be made in the exercise of that responsibility (*Family Law Act 1975*, section 64B(2)(d));
- the communication a child is to have with another person or other persons (*Family Law Act 1975*, section 64B(2)(e)); and
- maintenance of a child (*Family Law Act 1975*, section 64B(2)(f)).
- Consent to adoptions of children by step parents

The Family Court also has a broad welfare jurisdiction to deal with special matters such as consent to medical treatment and certain powers under international conventions.

## Other Courts with Family Law Act jurisdiction

The Federal Magistrates Service and state Magistrates Courts also have jurisdiction under the *Family Law Act 1975* to deal with children's matters. The Federal Magistrates Court, which shares registries with the Family Court in Brisbane and Townsville, can deal with contested children's matters provided the consent of all parties has been provided. For the purpose of this procedure, the Family Court also refers to the Federal Magistrates Service. The State Magistrates Court has jurisdiction to make consent orders only.

## Roles of Family Court and Department

The role of the Family Court is to determine disputes between separated parents and other persons concerned with the child's welfare or about the care of the child. In deciding whether to make a particular parenting order, the Family Court must regard the best interests of the child as the paramount consideration.

If there is suspected harm or risk of harm to a child, the department is the mandated authority to investigate the allegations. The Family Court does not have the expertise, role or resources to perform this function. Whether or not there are proceedings in the Family Court, the department has the lead responsibility to ensure the child's safety and need for protection. A child of separated parents has the same right to protection and to receive departmental services, as do other children.

## Roles of Family Court and the department

The *Family Law Act 1975* recognises the child protection role of the state in the following ways:

- Family Court personnel are mandated to report cases of suspected harm and risk of harm, and family violence, to the state welfare authority (*Family Law Act 1975*, section 67Z, 67ZA);
- the Family Court cannot make a parenting order in relation to a child in the care of a person under the *Child Protection Act 1999*, unless the order is to come into effect when the child ceases to be in that care or the chief executive consents to the application proceeding in the Family Court (*Family Law Act 1975*, section 69ZK(1));

## Roles of Family Court and the department

nothing in the *Family Law Act 1975* or any order under that Act affects:

- the jurisdiction of the Childrens Court to make an order by which a child is placed in the care of a person under the *Child Protection Act 1999*; or
  - the power of the department under the *Child Protection Act 1999* to take any action by which a child is placed in the care of a person under the Act; or
  - the operation of the *Child Protection Act 1999* in relation to a child (section 69ZK(2));
- ❖ the department has the right to intervene in Family Court proceedings and deal with child protection issues in the Family Court if it chooses (*Family Law Act 1975*, section 92A);
  - ❖ the Family Court may request the department to intervene in the proceedings (*Family Law Act 1975*, section 91B); and
  - ❖ under the *Family Law Rules 2004*, rule 6.02(2), the chief executive of the department must be served as a respondent to any application relating to a child for whom a care agreement, assessment order or child protection order under the *Child Protection Act 1999* is in place.

## What is the Supreme Court?

The Supreme Court is the highest court in the Queensland court system. It consists of the Chief Justice and two divisions, the Trial Division and the Court of Appeal.

Presiding over the court is a justice (judge) of the Supreme Court. The Supreme Court hears serious criminal offences, such as murder and certain serious drug offences. The Supreme Court hears civil disputes where the amount in dispute is more than \$750,000.

Like the District Courts, the Trial Division of the Supreme Court must use a jury to determine guilt or innocence in criminal cases. Civil cases are usually decided by a judge without a jury.

In certain circumstances, parties may dispute the decision of a court or the sentence imposed through a process called an appeal. Most appeals are heard in the Court of Appeal. It is part of the Supreme Court and handles only appeals; it does not decide cases initially. The Court of Appeal does not have a jury. Three justices of the Supreme Court make the decisions.

## What is a District Court?

Serious criminal cases, such as rape and armed robbery, are decided in a District Court. A District Court also handles civil disputes where the amount in dispute is between \$150,000 and \$750,000.

Appeals against some decisions of a Magistrates Court may also be dealt with by a District Court.

A District Court judge presides over a District Court. In criminal trials, a jury decides whether the person charged is guilty or not. If the person is found guilty, the judge then decides on the penalty.

Most civil cases are decided by a judge sitting without a jury

Some Judges of the District Court also sit in the Planning and Environment Court and in the Childrens Court.

## What is a Magistrates Court?

### **What is a Magistrates Court?**

A magistrate presides over a Magistrates Court. There is no jury.

These courts deal with less serious offences. More serious criminal matters are decided in the higher courts, that is, the District or Supreme Courts.

In less serious criminal cases, the magistrate must decide whether the accused person is guilty or not. If he or she is guilty, the magistrate also fixes the penalty.

If a criminal case is too serious to be dealt with in a Magistrates Court, it must be decided in the District or Supreme Court. However, the accused is first charged in a Magistrates Court and the magistrate must then decide whether there is enough evidence to justify sending the matter for trial in one of the higher courts. This is called a committal for trial.

Magistrates Courts deal with civil matters if the amount in dispute is \$150,000 or less.

## Childrens Court

A Childrens Court is presided over by a magistrate or two Justices of the Peace (Qualified).

The Children's Court has separate jurisdiction from the adult jurisdiction of the Magistrates, District and Supreme Courts. The Childrens Court has the jurisdiction to:

- determine certain offences against young people under 17 years who have offended
- determine child protection matters in accordance with the [Child Protection Act 1999](#).

Childrens Courts are convened in the same locations as Magistrates Courts throughout Queensland - except in central Brisbane where there is a separate Childrens Court building.

## Childrens Court

The Childrens Court is a closed court and therefore only certain persons are allowed to be present. Those who are allowed to attend court include:

- the magistrate (or judge in the Childrens Court of Queensland)  
court clerk

and representatives from the Department of Child Safety - applicant  
court officer/legal representative

- parents and their legal representative

- the child (if old enough) and their legal representative

- the Separate Representative (lawyer) appointed by the court to represent the child's interests

a representative of a Recognised Entity if the child is an  
Aboriginal or Torres Strait Islander child or young person

- non-parties who the magistrate would like to hear from.

## Childrens Court

The child safety officer of the Department of Communities is known as the 'Applicant' in court.

Parents are referred to as the 'Respondents'.

Magistrates in the Childrens Court must be addressed as 'Your Honour'.

## Contact by email is preferred

Legal Services

GPO Box 806

Brisbane Qld 4001

Phone: 07 3234 1829

Fax: 07 3235 9788

Email: [steve.habermann@communities.qld.gov.au](mailto:steve.habermann@communities.qld.gov.au)

## **CROWN LAW**

The purpose of Crown Law is to provide competent, high quality, efficient, cost-effective advice and/or representation by experienced legal officers at Court Ordered Conferences and before the Courts and Tribunals of Queensland.

### **Overview of the Role, Function and Interface of Crown Law:**

Upon receipt of instructions from the Court Services Unit, Crown Law will allocate an officer who will have carriage of that particular file. This officer will liaise with the Court Services Adviser who has also been allocated this file, on all matters concerning the hearing.

The officer with carriage of the matter will review the instructions and provide a brief initial response (wish list, issues, problems, evidence to be adduced, and strategy for case management) within 7 days and in any event prior to the Advice in Conference.

The officer will participate in all 'Advice in Conferences' and provide advice in detail in relation to:

- relevant legal issues
- evidentiary issues
- strategies for the conduct of the case
- prospects of success
- timetable for various witnesses
- set a timetable for completion of tasks discussed such as preparation of evidence.

After the Advice in Conference the officer will confirm, in writing, the evidentiary material to be obtained by the CSSC.

The officer will attend a Court Ordered Conferences ONLY where instructed by Court Services.

Crown Law undertakes to provide an efficient and cost effective legal service in that they:

- will only seek the evidence necessary to establish a case (eg. they will not seek to have 3 or more witnesses establish the same factual point, unless the circumstances of the case require it).
- will only seek to issue subpoenas for the purposes of having specified documents available to be tendered before the Court (ie they will not seek to use subpoenas as a method of establishing or creating a case to be made before the Court, or seeking to search for information to be used before the Court.

## **Crown Law**

Crown Law is a major provider of legal services to the government. It provides legal services to ministers, statutory authorities, government departments, agencies and local authorities in a range of areas including litigation, native title, constitutional, commercial, property, planning and environment, intellectual property, industrial law and coronial inquests.

Crown Law does not provide services to members of the community. However, by providing effective legal services across government, it contributes to the overall standard of service provided to Queenslanders by the Government.

Crown Law holds files containing documents which relate to the legal services provided to clients and also distributes publications on legal matters of concern to its government clients in the form of legal updates.

Crown Law creates and holds documents to provide legal services to its government clients, including legal advice and the conduct of litigation. These documents are not available to members of the public.

The *Right to Information Act 2009* and the *Information Privacy Act 2009* give a right of access to information held by the government, unless, on balance it would be contrary to the public interest to release the information. You may request access to documents held by Crown Law by applying under these acts.

## **CHILD PROTECTION ACT 1999**

The *Child Protection Act 1999* is the primary legislation providing for the protection of children in Queensland. This act is available for download.

The following outline indicates the key parts of the legislation:

### **Chapter 1 explains:**

- the purpose of the legislation
- the key principles under which the Act is administered
- provisions about Indigenous children
- relationship to the *Child Protection (International Measures) Act 2003* and
- functions of the chief executive (Director-General)
- key terms used in the legislation
- the effect of custody and guardianship

### **Chapter 2 covers the protection of children, including:**

- responding to allegations of children at risk of harm
- temporary assessment orders (TAOs)
- court assessment orders (CAOs)
- case planning
- Intervention with the agreement of parents
- child protection orders
- adjournments of proceedings and court ordered conferences
- obligations and rights under orders and care agreements
- general matters including reports about criminal history, medical examinations or treatment, social assessments and custody or guardianship of a child pending a decision or application for an order.

### **Chapter 3 covers court proceedings, including:**

- jurisdiction of the Childrens Court
- Childrens Court procedures
- appeals regarding Childrens Court decisions

### **Chapter 4 covers the regulation of care, including:**

- standards of care
- licensing of care services and approval of carers
- application of the *Commission for Children and Young People and Child Guardian Act 2000*

### **Chapter 5 covers administration matters including:**

- authorised officers under the Act
- general matters including delegation of powers under the Act, approved forms and payment of carers.

**Chapter 5A covers service delivery coordination and information exchange, including:**

- coordination of service delivery
- the Suspected Child Abuse and Neglect (SCAN) system
- information exchange
- release of health and other relevant information to a coroner
- protection from liability and interaction with other laws

**Chapter 6 covers enforcement and legal proceedings including:**

- establishment of offences under the Act
- prosecution of certain interstate offences
- warrant for apprehension of a child
- general powers of authorised officers and police officers
- evidence and legal proceedings
- obligations of confidentiality
- general provisions including compliance with provisions about providing explanations and documents, exercise of power by other officers and protection from civil liability.

**Chapter 7 covers interstate transfers of child protection orders and proceedings including:**

- transfer of orders or proceedings from Queensland to another state
- transfer of orders or proceedings from another state to Queensland

**Chapter 7A covers child deaths, including the requirement for a review.**

**Chapter 8 covers miscellaneous provisions including:**

- recognised entities
- reviewable decisions
- annual reporting about child protection matters
- acting in support of the Commissioner for Children and Young People
- consultation about investigations and prosecutions
- power to make regulations

**Chapter 9 covers the impact of this Act on other legislation and existing orders at the time the legislation was enacted.**

**There are three schedules to the Act:**

- charter of rights for a child in care
- reviewable decisions and aggrieved persons
- a dictionary that sets out the meaning of terms used in the Act.

## **CROWN LAW**

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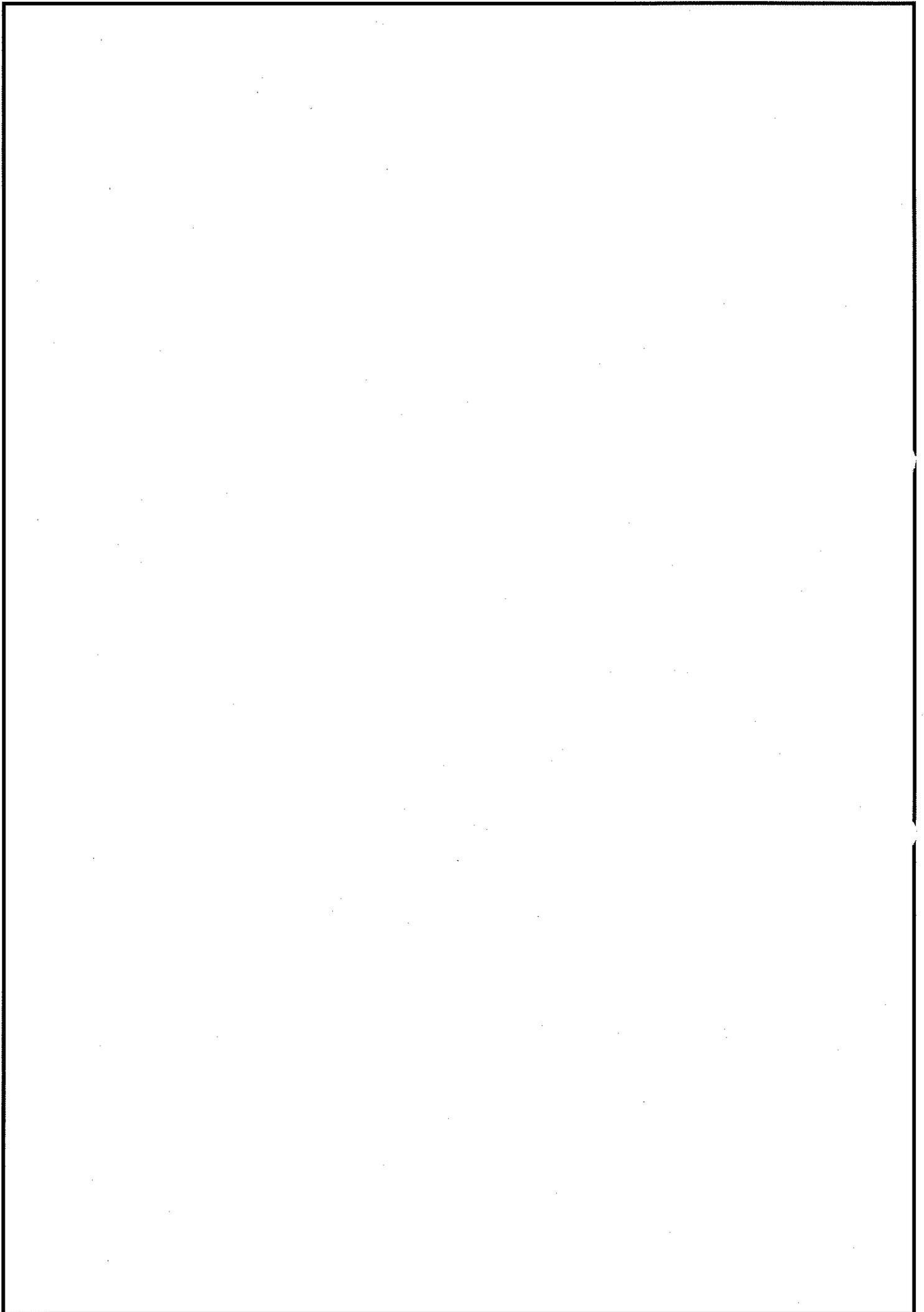
- will only seek the evidence necessary to establish a case (eg. they will not seek to have 3 or more witnesses establish the same factual point, unless the circumstances of the case require it).
- will only seek to issue subpoenas for the purposes of having specified documents available to be tendered before the Court (ie they will not seek to use subpoenas as a method of establishing or creating a case to be made before the Court, or seeking to search for information to be used before the Court.

## **INTERSTATE TRANSFER INFORMATION**

Transfer of Orders Table

Request for Interstate Transfers Document

Protocol for the Transfer of Care and Protection Orders  
and Proceedings and Interstate Assistance August 2007



## **OVERVIEW OF THE COURT SERVICES UNIT (CSU)**

The Court Services Unit sits under the Statewide Services Branch and has responsible for the following program areas:

### **Child Protection:**

- Represents the Director-General in all child protection matters in the Brisbane Children's Court, the Children's Court of Queensland, District Court and the Supreme Court;
- Trains, consults and advises on matters concerning the management of child protection cases before the courts;
- Coordinates all contested child protection matters across the state;
- Coordinates all appeals across the state;
- Coordinates Crown Law representation and advice in case related matters; and
- Provides quality consultation on child protection legal system interface.

### **Queensland Civil and Administrative Tribunal matters:**

- Promotes accountable and transparent decision making through the coordination of reviews to the Queensland Civil and Administrative Tribunal.

### **Interstate Liaison:**

Court Coordinators or Child Safety Officers may require the services of an Interstate Liaison Officer (ILO) to:

- request an interstate jurisdiction to complete an initial assessment
- notify an interstate jurisdiction about child protection concerns in relation to a child/family living interstate
- assess a prospective carer who resides interstate
- assess a parent who resides interstate, for the purposes of contact visits or to consider reunification.
- request an interstate jurisdiction to undertake casework with a child/young person and their carer, if the child/young person is under a QLD CPO and is residing interstate.

- transfer an Order to an interstate jurisdiction, where a child/young person is under a QLD CPO and residing interstate
- locate an interstate placement for a child/young person under a QLD CPO
- obtain a warrant for the return of a child/young person under a QLD CPO from interstate
- obtain a child protection history or criminal history check for a family being assessed or a carer applicant who has resided in NZ.

Each state and territory has an ILO with protocols in place around requests for assessments, transfers etc.

Any requests from interstate jurisdictions should come to CSSC's via the Queensland ILO. If you receive any requests directly from interstate, you should check whether they have been in contact with their state ILO, and also advise the QLD ILO of the request.

Any requests for **interstate child protection histories** should be directed to **Data Management Services**.

Checks of criminal histories, including interstate, should be done using the Request for criminal history form.

Please refer to:

- The Transfer of Orders table
- The Request for Interstate Transfer document and
- The Protocol of Transfers document

### **Subpoena Team**

- Process subpoenas for all departmental documents;
- Carry responsibility for ensuring that an appropriate response is arrange in order for the material to be produced on time to the court or for the subpoena to be contested.

### **Family Law:**

- Coordinate departmental interface with the Family Court of Australia and the Federal Magistrates Court.
- Trains, consults and advises on matters concerning the management of child protection cases before the Family Court of Australia and Federal magistrates Court;

- Coordinates Crown Law representation and advice in case related matters; and
- Provides quality consultation in relation to child protection matters within the Family Court of Australia and Federal magistrates Court.

**International Child Abduction:**

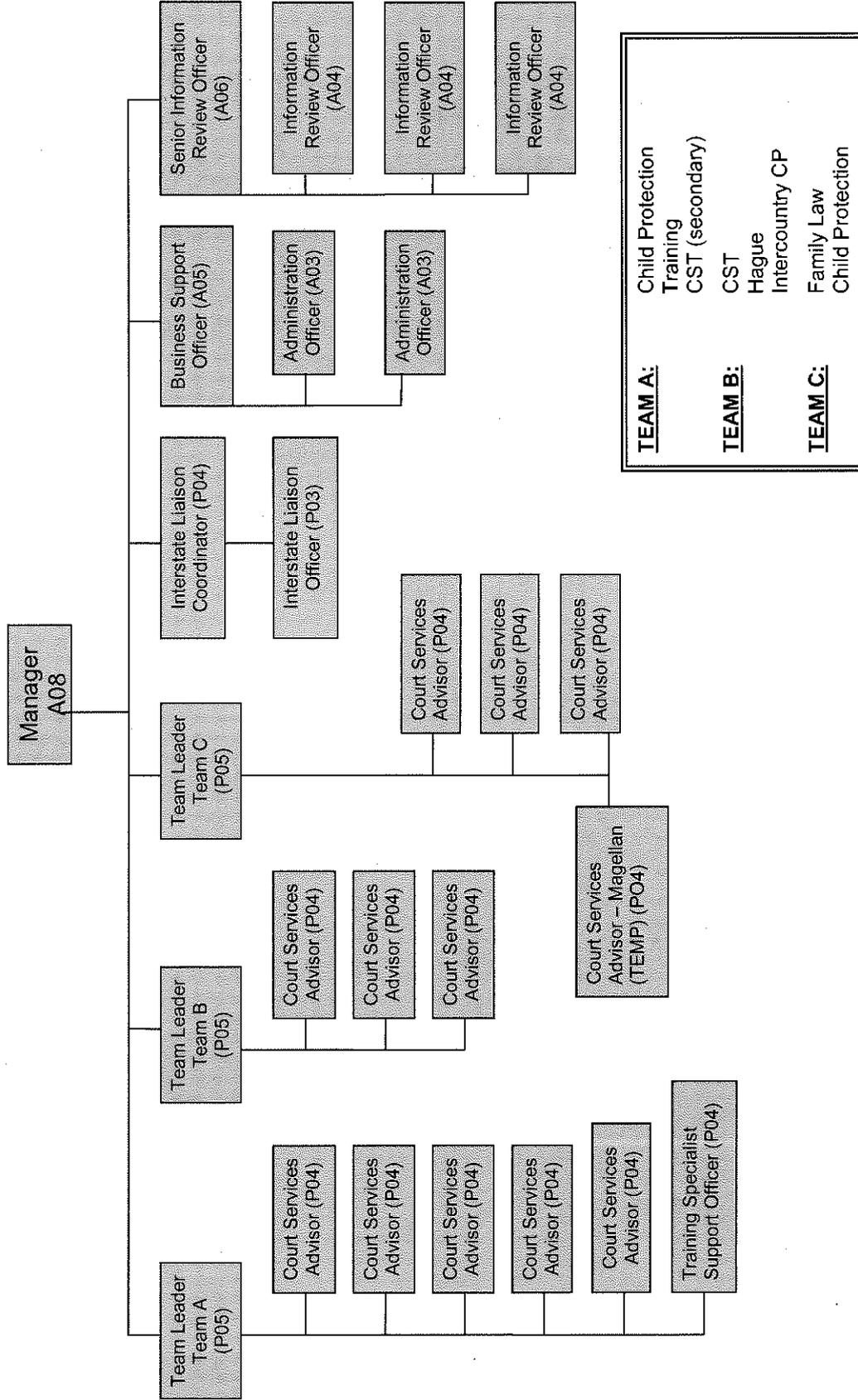
- Act as the State Central Authority in the Hague Convention of the Civil Aspects of International Child Abduction.

**International Child Protection Matters:**

- Coordinate requests in relation to international child protection matters.

The Court Services Unit also provides quality consultation to Child Safety Service Centre's on any legal aspects in relation to the above jurisdictions.

# COURT SERVICES (CHILD SAFETY) UNIT



## **ROLE AND RESPONSIBILITIES OF THE COURT SERVICES UNIT**

The Court Services Unit (CSU) coordinates the provision of the legal services of Crown Law who are engaged to advise and represent the Child Safety Service Centres in connection with contested matters before the Courts.

Therefore it is important that CSU obtains AS SOON AS POSSIBLE from the Child Safety Service Centres the dates for mentions, Court Ordered Conferences and Hearings at which Crown Law will be required.

The CSU provide instructions at the earliest possible date for Advice in Conferences, Court Ordered Conferences and Hearings.

The purpose of the Advice in Conference is to record and clarify, where necessary, the use of various evidence; time-frames for the preparation of evidence; and raise any other difficulties that may be noteworthy either in obtaining the evidence or in the conduct of the Hearing.

After the Advice in Conference, the CSU confirms with the Court Coordinator, Applicant and Team Leader the material sought and the timeframes for the supply of the material in email or letter and further liaises with the office to ensure that the material is prepared on time.

If material is filed late, the CSU liaise with the Child Safety Service Centre and Crown Law to negotiate an appropriate filing strategy to ensure that relevant material is before the court.

The CSU also liaise with the Child Safety Service Centre for the purposes of settling any affidavit material and where necessary seeking Crown Law assistance in the same; assisting the Court Coordinator in making arrangements for witnesses for Hearings together with dates and times for specific witnesses; to liaise with witnesses in relation to their entitlements AND to advise Crown Law of any changes in hearing dates.

The Child Safety Service Centre is responsible for providing all relevant information to Court Services and Crown Law for the purposes of the conduct of contested hearings.

Relevant staff MUST attend any Advice in Conference, providing the information referred to above together with alternative sources of information including expert information where required.

The Court Coordinator and the applicant are to assist to coordinate witnesses in conjunction with Court Services, in respect of preparation and filing of affidavits along with the preparation and service of subpoenas on witnesses to be had for the Hearing.

## **INTERFACE BETWEEN COURT SERVICES AND COURT COORDINATORS:**

Once the Child Safety Service Centre has informed Court Services of a hearing date, the matter is then allocation to a Court Services Advisers. The Court Services Adviser then contacts the Court Coordinator and commences the consultation and coordinator between the Child Safety Services Centre and Crown Law in relation to that specific case.

Furthermore, two Court Services Advisers are allocated to an Intake Roster to respond to any general enquiries, however Court Coordinators are encouraged to contact their regional Court Services Advisor at the first instance in relation to obtaining advice.

## **COURT COORDINATOR REGIONAL LINKS**

Each Court Services Adviser is allocated to particular Regional areas including:

Logan and Brisbane West  
Ipswich and Western Area  
Brisbane South and Gold Coast  
Brisbane North and Sunshine Coast  
Central  
Northern and;  
Far Northern

Each Court Services Adviser is responsible for arranging a meeting with all the Court Coordinators that sit in positions in the Child Safety Services Centre in each Region. These meetings are generally held every 6-8 weeks.

The purpose of these meetings is to have a forum where Court Coordinators can discuss practice issues, receive assistance and support from CSU and their colleagues on a regular basis, discuss complex cases as a professional development strategy and to give and receive any updated on legislation, appeal decisions, policy and practice.

## **TRAINING AND CONFERENCES**

The Court Services Unit delivers Court Coordinator Induction Programs four times a year.

It also organises the annual Court Coordinator Conference.

### Glossary of Court Terms

The following table provides definitions of child protection court terminology as they relate to the *Child Protection Act 1999* (Note: Provided as a guide only).

Term	Details
Adjournment	A court order by which proceedings are postponed, interrupted, or continued at a different time or place before the same court.
Applicant	One who applies for or requests something.
Affidavit	<p>A written statement made by a person who has sworn or affirmed before a person authorised to administer the oath that the contents of the statement are true. This may be then used to support a position in a court proceeding.</p> <p>The person who signs the affidavit is called the deponent.</p> <p>For Childrens Court matters, an affidavit should be prepared on a Form 25.</p>
Affirmation	A solemn declaration that the evidence given is truthful. A person can make an affirmation instead of taking an oath where the person has no religious belief or where it is not reasonably practical to administer an appropriate oath as required by the person's particular faith.
Aggrieved person	For a reviewable decision under the Act, a person stated in Schedule 2 who is affected by the decision. It is a person who has the avenue to have the decision reviewed by the Queensland Civil & Administrative Tribunal.
Appeal	An application to a higher court to reconsider or rehear the decision of a lower court on the ground that there has been an error of law or fact (or both) in the decision of the lower court.
Appellate court	<p>Under the Act:</p> <p>For a decision on an application for a Court Assessment Order or Child Protection Order, or for an order transferring a Child Protection Order or child protection proceeding to a participating state:</p> <ol style="list-style-type: none"> <li>1. if the decision was made by the Childrens Court constituted by a judge - the Court of Appeal</li> <li>2. if the decision was made by the Childrens Court constituted in another way - the Childrens Court</li> </ol>

Term	Details
	<p>constituted by a judge.</p> <p>For a decision on an application for a Temporary Assessment Order or Temporary Custody Order - the Childrens Court constituted by a judge.</p>
Assessment Order	<p>A short term order that is granted by either a magistrate or the court, under the <i>Child Protection Act 1999</i>, to allow a range of activities to occur to complete an investigation and assessment, when a parent has not given consent for these actions to occur (refer to Temporary assessment order and Court assessment order).</p> <p>A temporary assessment order (TAO) authorises actions during the investigation and assessment process when parental consent cannot be obtained. A TAO can provide the authority to take a child into the custody of the chief executive, however, guardianship rights and responsibilities remain with the child's parents. A TAO may also order specific actions relating to the assessment of a notification, for example, the conduct of a medical assessment in relation to a child. A TAO can only be granted for not more than three business days and can be extended by one business day.</p> <p>A court assessment order (CAO) is an order made under the <i>Child Protection Act 1999</i>, chapter 2, to authorise actions necessary as part of an investigation and assessment to assess whether a child is in need of protection, if:</p> <ul style="list-style-type: none"> <li>• the child's parents have not provided their consent for these actions or the parents consent cannot be obtained</li> <li>• it is considered that it will take more than three business days to complete the investigation and assessment.</li> </ul>
Authorised officer	Means a person appointed under s149 of the Act.
Balance of probabilities	The standard of proof in a civil matter, including child protection matters. This is the degree to which the court must be satisfied that the applicant has made out his/her case. A fact is proved to be true on the balance of probabilities if its existence is more probable than not.
Burden of proof	The duty of one party to make out the case against the other party and to prove to the court that the case has been established. It is for the applicant to prove the facts, which are in dispute. These are often called facts in issue. In child protection matters, the burden of proving a child is in need of a child protection order falls upon the applicant.
Child	An individual under 18 years (as defined in section 8 of the

Term	Details
	Act).
Child in need of protection	<p>A child who (as defined in section 10 of the Act):</p> <ul style="list-style-type: none"> <li>• has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm</li> <li>• does not have a parent able and willing to protect the child from the harm.</li> </ul>
Child Protection Order	<p>Means a an order under chapter 2, part 4 of the Act, including:</p> <ul style="list-style-type: none"> <li>• an order extending, varying or revoking a child protection order</li> <li>• an interim order under section 67 in relation to a proceeding for a child protection order.</li> </ul> <p>For chapter 7, includes an order mentioned in section 201.</p>
Child protection proceeding	<p>A proceeding under the Act for the making, extension, amendment or revocation of a child protection order, or</p> <p>A proceeding under a child welfare law of a participating state for:</p> <ul style="list-style-type: none"> <li>• the making, extension, amendment or revocation of a child protection order or interim order</li> <li>• if, under that law, the making of a particular finding is a prerequisite to the making of a child protection order - the making of that finding.</li> </ul>
Childrens Court	Is a specialist Magistrates Court that hears and decides child protection proceedings at first instance.
Court Assessment Order	<p>A court assessment order (CAO) is an order made under the <i>Child Protection Act 1999</i>, chapter 2, to authorise actions necessary as part of an investigation and assessment to assess whether a child is in need of protection, if:</p> <ul style="list-style-type: none"> <li>• the child's parents have not provided their consent for these actions or the parents consent cannot be obtained</li> <li>• it is considered that it will take more than three business days to complete the investigation and assessment.</li> </ul>
Court Ordered Conference	Ordered by the Childrens Court on adjournment of proceedings under section 68 (1)(e) and is a conference held between the parties that is convened by a chairperson (refer to sections 69-72 of the Act). It is an attempt to narrow the matters in dispute or to try to resolve the issues.
Criminal history	Of a person means all of the following:

Term	Details
	<p>(a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this definition, including spent convictions;</p> <p>(b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this definition;</p> <p>(c) every disqualification order made under the <i>Commission for Children and Young People and Child Guardian Act 2000</i> in relation to the person, whether before or after the commencement of this definition;</p> <p>(d) every disqualification order and offender prohibition order made under the <i>Child Protection (Offender Prohibition Order) Act 2008</i> in relation to the person, whether before or after the commencement of this definition.</p>
Cross examination	<p>Questions addressed to a witness by a party other than the party who called the witness to give evidence. Cross examination takes place after the witness has given his or her evidence in chief. Leading questions are permitted during cross examination.</p>
Custody	<p>As defined in section 12 of the Act, custody means the right to have the child's daily care and the responsibility to make decisions about the child's daily care.</p>
Custody order	<p>A child protection order where custody of the child has been granted to a relative of the child or the chief executive of the Department of Communities for not more than two years.</p>
Deponent	<p>The person who gives sworn or affirmed evidence in an affidavit.</p>
Directions hearing	<p>Held with respect to section 8 of the <i>Childrens Court Act 1992</i>. This is a hearing or mention conducted prior to the substantive hearing to determine procedural matters or interlocutory (interim) issues. This could also be known as a 'directions mention'.</p>
Directive Order	<p>A Child Protection Order directing a parent to do or refrain from doing something directly related to the child's protection, or an order directing the parents not to have contact with the child or to have contact only when a stated person or category of person is present.</p>
Domestic violence history	<p>The history of domestic violence orders made against the person under the <i>Domestic Violence (Family Protection) Act 1989</i>.</p>

Term	Details
Evidence in Chief	The questioning of a witness by the party who called that witness. Evidence in chief is given orally. Leading questions on a relevant matter should not be put to a witness being examined in chief without the court's leave.
Ex parte	An application by one side when the other is not, or does not need to be present.
Expert witness	A witness who is an expert in a particular field. This person has skills or qualifications, which allow them to express an opinion in court. The opinions of ordinary witness's are deemed irrelevant. The court decides whether or not a person is an expert.
Family Meeting Group	A meeting convened in accordance with the Act, section 51, to: <ul style="list-style-type: none"> <li>• provide family-based responses to children's protection and care needs</li> <li>• to ensure an inclusive process for planning and making decisions relating to children's wellbeing and protection and care needs.</li> </ul>
Guardianship	Legal responsibility for all the duties, powers, responsibilities and authority that, by law, parents have in relation to their children. This includes responsibility for decisions about the child's long-term care. This is defined in section 13 of the Act.
Guardianship Order	A child protection order where guardianship of the child has been granted to a relative of the child, another person, or the chief executive of the Department of Communities.
Harm	<p>Any detrimental effect of a significant nature on the child's physical, psychological or emotional well-being. Harm can be caused by physical, psychological or emotional abuse or neglect, or sexual abuse or exploitation. Harm can be caused by a single act, omission or circumstance; or a series or combination of acts, omissions or circumstances (<i>Child Protection Act 1999, section 9</i>).</p> <p>For a detrimental effect to be of a significant nature it must have more than a minor impact upon a child. It must be substantial, serious and demonstrable - that is, measurable and observable on the child's body, in the child's functioning or behaviour. A detrimental effect of a significant nature may also be indicated by the likelihood of the detrimental effect being long-term (more than transitory), or adversely affecting the child's health or well-being to an extent which would be considered by the general public to be unacceptable.</p>
Hearing	A proceeding conducted by a court or tribunal with a view to resolving the issues of fact or law, in which oral evidence may

Term	Details
	be taken and documentary evidence tendered. A hearing may be by way of oral or written submission.
Hearsay	Is information gathered by one person from another person concerning some event, condition, or thing of which the first person had no direct experience. When submitted as evidence, such statements are called <b>hearsay evidence</b> . As a legal term, "hearsay" can also have the narrower meaning of the use of such information as evidence to prove the truth of what is asserted. Such use of "hearsay evidence" in court is generally not allowed. This prohibition is called the <b>hearsay rule</b> .
Interim Order	An order made under section 67 of the Act, on an adjournment of a proceeding for a court assessment order or child protection order. These orders identify the status of the child or make a direction about contact with the child during the period of the adjournment.
Jurat	A short statement at the conclusion of an affidavit, setting out the name of the deponent, the signature of the deponent, where and when the affidavit was sworn/affirmed, the name of the person before whom it was sworn/affirmed, and the signature and title or description of the person before whom it was sworn/affirmed.
Justice of the Peace	Appointed in an honorary capacity with authority to issue warrants for search and arrest, admit prisoners to bail and witness certain documents. In limited situations, they may sit in a court depending on the level at which they are appointed.
Leave of the court	Authority obtained from a court to take particular action which would not be permissible otherwise.
Litigation	The conduct of legal proceedings by parties before a court.
Long-term guardianship	Under a Child Protection Order, means guardianship until the child turns 18 years.
Magistrate	A judicial officer with summary jurisdiction (power to hear and determine a case alone, without a jury) in minor criminal and civil matters.
Medical examination	A physical, psychiatric, psychological or dental examination, assessment or procedure, and includes forensic examination and an examination or assessment carried out by a nursing or other health professional.
Mention	A preliminary procedure before a court where the matter is 'mentioned' before a judge or magistrate to determine pre-

Term	Details
	hearing issues. If a matter is set for mention, it will usually not usually be heard on that day.
Non-custodial order	An order made under the <i>Child Protection Act 1999</i> , where custody and guardianship of the child remain with the parents.
Non-participating state	A state other than a participating state (as it relates to interstate provisions).
Notifier	A notifier is a person who informs Child Safety about alleged harm or risk of harm to a child, or that an unborn child may be at risk of harm after he or she is born. A notifier may be a child, family member, carer, a member of the community, another professional or a person mandated by law to report child protection concerns. A person providing this information is a notifier under the Act, section 22(1)(a) and 186(1), irrespective of how the information is recorded or responded to by Child Safety.
Oath	A solemn promise to tell the truth calling upon God as one's witness.
Parent	This is defined differently in different parts of the Child Protection Act. See sections 11, 23, 37, 51AA, 51F, 52, 67, 117 and 205.
Parent Able and Willing	A parent who has both the ability and willingness to protect the child from harm (section 10). A parent may be willing to protect a child, but not have the means or capacity to do so. For example, a parent with a diagnosed mental illness may express a willingness to protect their child, however, due to factors related to the mental illness, is not able to do so. Alternatively, a parent may have the means and capacity to protect a child, but may not do so. It is the role of the CSO to clearly assess the parents motivation and ability to protect the child. In circumstances where a child resides across two households, the ability and willingness of both parents to protect the child needs to be assessed.
Participating state	A state declared to be a participating state under section 204 of the Act (as it relates to interstate provisions).
Party	To a proceeding on an application for an order for a child , means the child the applicant or a respondent to the application, and includes the chief executive if the application is for a court assessment order made by a police officer.
Recognised Entity	For an Aboriginal or Torres Strait Islander child, means an entity that, under an agreement between the state and the entity, is the appropriate entity to be consulted about the

Term	Details
	child's protection.
Remand	This relates to the status of the person who is the subject of the application. Between court appearances, the person is remanded by the court to appear at a future court date. A person who is remanded may be released on bail, held in custody, or for a child protection proceedings, an interim order may be made.
Respondent	A party called upon to answer an application, a petition or an appeal.
Reviewable decision	In accordance with the <i>Queensland Civil and Administrative Tribunal Act 2000</i> , a decision that, under an Act (for the purpose of this manual, the <i>Child Protection Act 1999</i> ), a person may apply to have reviewed by the Queensland Civil and Administrative Tribunal.
SCAN	<p>The SCAN team system enables a co-ordinated multi-agency response to children where statutory intervention is required by facilitating:</p> <ul style="list-style-type: none"> <li>• the sharing of relevant information between members of the system</li> <li>• the planning and co-ordinating of actions to assess and respond to children's protection needs</li> <li>• an holistic and culturally responsive assessment of children's protection needs.</li> </ul>
Separate legal representative	A legal representative appointed by the court on adjournment of a child protection proceedings who acts in the child's best interests and presents the child's views and wishes to the court.
Short-term guardianship	An order made under the <i>Child Protection Act 1999</i> , where guardianship rights and responsibilities in relation to the child, including matters associated with the child's daily care, are granted to the chief executive for not more than two years.
Standing down a matter	Seeking the leave of the court to have the matter placed 'on hold' for a short period of time (definitely not overnight) with a view to obtaining further information to provide to the court.
Stay of proceedings	An order made by a court preventing an action proceeding further either before or after a determination by a court in respect of that action. The suspension of the proceedings may be temporary or permanent.
Subject Child	A child under the age of 18 years where the notified concerns indicate that the child has been harmed or is at risk of harm and it is reasonably suspected that the child is in need of

Term	Details
	protection, or an unborn child, where it is suspected that he or she will be in need of protection after birth. Harm in this context refers to any detrimental effect of a significant nature on the child's physical, psychological or emotional well-being and includes the impact of cumulative harm on the child's safety and well-being.
Subpoena	A document issued by a court ordering a person to attend court and/or produce information for a matter.
Supervision Order (also known as Protective Supervision Order)	A Child Protection Order requiring the chief executive to supervise the child's protection in relation to the stated matters. To give effect to this order, the chief executive can issue administrative directives to the parents directing them to do or refrain from doing something specifically related to the supervision matters stated on the order (refer to section 78 of the Act). An order of this nature can only be made up to a maximum of 1 year in duration.
Temporary Assessment Order	A temporary assessment order (TAO) authorises actions during the investigation and assessment process when parental consent cannot be obtained. A TAO can provide the authority to take a child into the custody of the chief executive, however, guardianship rights and responsibilities remain with the child's parents. A TAO may also order specific actions relating to the assessment of a notification, for example, the conduct of a medical assessment in relation to a child. A TAO can only be granted for not more than three business days and can be extended by one business day.
Temporary Custody Order	A temporary custody order (TCO) authorises the actions necessary to secure the immediate safety of a child, pending a decision of what further action is necessary to meet the child's protection and care needs. A TCO can provide the authority to take a child into the custody of the chief executive, however guardianship rights and responsibilities remain with the child's parents. A TCO may also order specific provisions considered appropriate, for example, authorising a medical examination or directing contact. A TCO can only be granted for a period of three business days and can be extended by one business day if intending to apply for a child protection order.
Transition Order	<p>A transition order can be made under the <i>Child Protection Act 1999</i>, section 65A, which continues the existing child protection order for a period of up to 28 days, to allow the child's gradual transition from an out-of-home care placement to their parents full-time care. A transition order cannot be extended.</p> <p>A transition order can be made when the court:</p> <ul style="list-style-type: none"> <li>• revokes a child protection order</li> <li>• decides an appeal against the making of the order in</li> </ul>

Term	Details
	<p>favour of a person other than the chief executive</p> <ul style="list-style-type: none"> <li>• refuses to extend the order or grant a further order before the order ends.</li> </ul>
Transition Plan	<p>The transition plan outlines how the chief executive will provide support and gradually transition the child into the parents care, to minimise distress and disruption to the child. It also includes any other relevant matter, for example:</p> <ul style="list-style-type: none"> <li>• actions required to ensure the transition occurs within the period of the order</li> <li>• care and contact arrangements for the duration of the order.</li> </ul>
Queensland Civil and Administrative Tribunal	<p>On March 12 2008 QCAT was established to take over the functions of a number of different tribunals including the Childrens Services Tribunal.</p>
Unacceptable Risk of Harm	<p>Unacceptable risk of harm refers to situations where the risk identified is probable, not possible, and likely to occur in the near future, where there are insufficient protective factors to ensure the child's safety without intervention by Child Safety. The harm must be likely or probable, not just possible and may be a single act or series or combination of acts, omissions or circumstances that have a cumulative effect on the child's safety and well-being. There must be a reasonable belief that the parents behaviour, actions or verbal statements or threats will result in harm to the child. (<i>Child Protection Act 1999</i>, section 10)</p> <p>The assessment of whether there is unacceptable risk of harm, must take into consideration:</p> <ul style="list-style-type: none"> <li>• the outcome of the family risk evaluation</li> <li>• whether observations made directly or indirectly support the findings of the family risk evaluation</li> <li>• any risk factors for the child that are not raised in the family risk evaluation, that place the child at risk of harm in the future</li> <li>• whether there is a parent able and willing to protect the child from harm.</li> </ul>

Last updated 18 July 2011

## CPA 1999 Amendments (2010)

Please note that the *proposed* commencement dates for the amendments to the CPA99 are as follows:-

Commence as of 1 Oct 2010	Commence as of 29 Nov 2010	Commence as of 1 July 2011
<p>Sections:</p> <ul style="list-style-type: none"> <li>• 5</li> <li>• 21A</li> <li>• 51YA</li> <li>• 51YB</li> <li>• 59</li> <li>• 61</li> <li>• 80A</li> <li>• 95</li> <li>• 99</li> <li>• 99D</li> <li>• 99H</li> <li>• 104</li> <li>• 110</li> <li>• 113</li> <li>• 122</li> <li>• 126</li> <li>• 129A</li> <li>• 130</li> <li>• 159A</li> <li>• 159B</li> <li>• 159BA</li> <li>• 159C</li> <li>• 159D</li> <li>• 159F</li> <li>• 159G</li> <li>• 159M</li> <li>• 159R</li> <li>• 187</li> <li>• 188</li> <li>• 189B</li> <li>• 199</li> <li>• 246A</li> <li>• 246E</li> <li>• Dictionary – ‘charge’, ‘criminal history’, ‘member of a person’s household’, ‘relevant child’, ‘spent conviction’ and ‘carer’.</li> <li>• Amendments which replace ‘welfare’ with ‘wellbeing’.</li> </ul>	<p>Sections:</p> <ul style="list-style-type: none"> <li>• 136D</li> <li>• 140AB</li> <li>• 140AC</li> <li>• 140AF</li> <li>• Dictionary – ‘prohibiting event’.</li> </ul>	<p>Sections:</p> <ul style="list-style-type: none"> <li>• 9</li> <li>• 14</li> <li>• 15</li> <li>• 17</li> <li>• 18</li> <li>• 20</li> <li>• 23</li> <li>• 25</li> <li>• 27</li> <li>• 29</li> <li>• 30</li> <li>• 31</li> <li>• 32</li> <li>• 34</li> <li>• 37</li> <li>• 38</li> <li>• 41</li> <li>• 45</li> <li>• 51AA</li> <li>• 51AC</li> <li>• 51AD</li> <li>• 51AE</li> <li>• 51AF</li> <li>• 51AG</li> <li>• 51AH</li> <li>• 51AI</li> <li>• 51AJ</li> <li>• 51AK</li> <li>• 51AL</li> <li>• 51AM</li> <li>• 51F</li> <li>• 51Q</li> <li>• 51V</li> <li>• 51VA</li> <li>• 51ZE</li> <li>• 51ZI</li> <li>• 52</li> <li>• 65</li> <li>• 65A</li> <li>• 65B</li> <li>• 65C</li> <li>• 65D</li> <li>• 67</li> <li>• 67A</li> <li>• 117</li> <li>• 120</li> <li>• 159</li> <li>• 171</li> <li>• 173</li> <li>• 174</li> <li>• 195</li> <li>• 205</li> <li>• 210</li> <li>• Dictionary – ‘long-term guardian’, ‘parent’, ‘relevant child’, temporary custody order’ and ‘transition order’.</li> </ul>

## **Court Services**

### **Purpose**

Represent the Director-General in court and Tribunal matters involving children and young people and promote high quality service delivery to courts and the Tribunal on a statewide basis through the provision of expert advice and training, contribution to policy and practice development, and monitoring of practice and trends.

### **Function**

1. Represent the Director-General in Childrens' Courts, the Family Law courts and higher courts in child protection matters.
2. Manage contested child protection matters and coordinate Crown Law representation.
3. Manage the department's dealings with the Queensland Civil and Administrative Tribunal (QCAT) in relation to review applications.
4. Coordinate the department's implementation of the Magellan case management model (Family Court).
5. Coordinate the department's response to applications for Special Medical Procedures in the Family Court.
6. Act as the State Central Authority under the Hague Convention on the Civil Aspects of International Child Abduction.
7. Manage intercountry requests in child protection and act as the State Central Authority under the Hague 'Child Protection' Convention.
8. Coordinate all requests as per the Protocol for the Transfer of Child Protection Orders and Proceedings and Interstate Assistance.
9. Process subpoenas for all departmental files.
10. Provide expert consultation and advice to other departmental staff on court and Tribunal practice issues.
11. Resource and support the statewide network of Court Coordinators.
12. Assist departmental staff to develop skills in court work through provision of high quality training.
13. Liaise with key stakeholders and contribute to the development of policy and practice standards.
14. Monitor statewide practice standards and trends.

## Structured Decision Making

Structured Decision Making (SDM) is a major practice initiative, implemented across Queensland in 2005 to assist Department of Communities practitioners in making decisions about children, young people and families.

Developed by the Children's Research Center (CRC), SDM incorporates a set of evidence-based assessments and decision-making guidelines designed to provide a higher level of consistency and validity in the assessment and decision-making process. It also is a method for targeting resources to families that are most likely to subsequently abuse or neglect their children. The term practitioner is used to reflect that SDM assessments are to be used by professional departmental officers.

SDM is not intended to make decisions. It assists decision-making by allowing practitioners' to organise facts and **evidence gathered**, and is used in conjunction with the practitioner's professional judgement. This leads to a recommendation for action that must subsequently be approved by a line manager (team leader).

# EVIDENCE

## Court Coordinator Induction Training March 2010

### *Child Protection Act 1999 (Qld)*

**105 Evidence**

- (1) In a proceeding, the Childrens Court is not bound by the rules of evidence, but may inform itself in any way it thinks appropriate.
- (2) If, on an application for an order, the Childrens Court is to be satisfied of a matter, the court need only be satisfied of the matter on the balance of probabilities.

**QCAT Act 2009 (Qld)**

**28 Conducting proceedings generally**

(...)

(3) In conducting a proceeding, the tribunal—

- (a) must observe the rules of natural justice; and
- (b) is not bound by the rules of evidence, or any practices or procedures applying to courts of record, other than to the extent the tribunal adopts the rules, practices or procedures;

and

- (c) may inform itself in any way it considers appropriate; and

(...)

***Domestic and Family Violence Protection Act 1989 (Qld)***

**84 Evidentiary provision**

(...)

In any proceeding with the view to—

- (a) making a protection order or a temporary protection order;

(...)

the court or magistrate may inform itself, himself or herself in such manner as it or the magistrate thinks fit and is not bound by the rules or practice as to evidence.

***Children and Young Persons (Care and Protection) Act 1998 (NSW)***

**93 General nature of proceedings**

(...)

(3) The Children's Court is not bound by the rules of evidence unless, in relation to particular proceedings or particular parts of proceedings before it, the Children's Court determines that the rules of evidence, or such of those rules as are specified by the Children's Court, are to apply to those proceedings or parts.

(4) In any proceedings before the Children's Court, the standard of proof is proof on the balance of probabilities.

(...)

***Children, Youth and Families Act 2005 (VIC)***

**215 Conduct of proceedings in Family Division**

(1) The Family Division—

- (a) must conduct proceedings before it in an informal manner; and
- (b) must proceed without regard to legal forms; and
- (c) must consider evidence on the balance of probabilities; and
- (d) may inform itself on a matter in such manner as it thinks fit, despite any rules of evidence to the contrary.

***Children's Protection Act 1993 (SA)***

**45 Evidence etc**

- (1) In any proceedings under this Act—
  - (a) the Court is not bound by the rules of evidence but may inform itself as it thinks fit; and
  - (b) the Court must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.
- (2) A fact to be proved in proceedings under this Act is sufficiently proved if proved on the balance of probabilities.

***Children and Community Services Act 2004 (WA)***

**146. Court not bound by rules of evidence**

(...)

- (2) In protection proceedings the Court is not bound by the rules of evidence, but may inform itself on any matter in any manner it considers appropriate.
- (3) Without limiting subsection (2), evidence of a representation about a matter that is relevant to the protection proceedings is admissible despite the rule against hearsay.
- (4) The Court may give such weight as it thinks fit to evidence admitted under subsection (3).

**151. Standard of proof**

The standard of proof in protection proceedings is proof on the balance of probabilities.

***Community Welfare Act 2008 (NT)***

**39. Powers of Court at hearing of application**

(...)

(2) In hearing an application under this Part the Court is not bound by the rules of evidence but may inform itself on any matters it thinks fit.

(...)

**42. Proof of need of care**

The burden of proving that a child is in need of care in an application under this Part lies on the Minister and the standard of proof is on the balance of probabilities.

***Children, Young Persons and Their Children Act 1989 (NZ)***

**195 Evidence**

Subject to sections 65 and 198 of this Act, in any proceedings under Part 2 or Part 3A of this Act the Court may receive any evidence that it thinks fit, whether it is otherwise admissible in a Court of law or not.

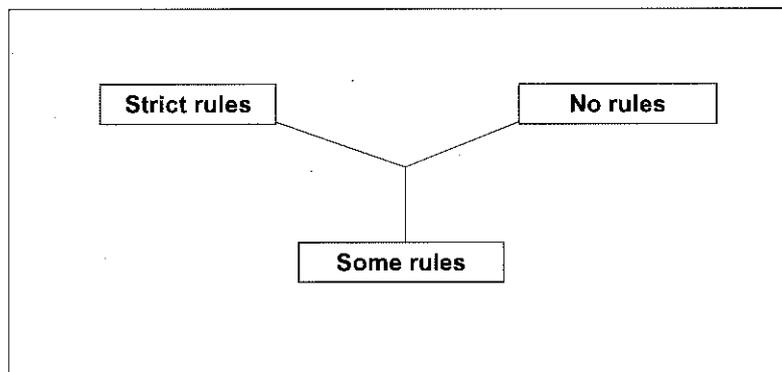
**197 Standard of proof**

Subject to section 198 of this Act, the standard of proof applying in any proceedings under Part 2 or Part 3A of this Act shall be the standard of proof applying in civil proceedings.

### **Child Protection Act 1999 (Qld)**

#### **105 Evidence**

- (1) In a proceeding, the Childrens Court is not bound by the rules of evidence, but may inform itself in any way it thinks appropriate.
  
- (2) If, on an application for an order, the Childrens Court is to be satisfied of a matter, the court need only be satisfied of the matter on the balance of probabilities.



# Discretion

## FUNDAMENTAL CONCEPTS

# Admissibility

## FUNDAMENTAL CONCEPTS

# Relevance

## Evidence must be relevant to the key matters to be proved

### 59 Making of child protection order

- (1) The Childrens Court may make a child protection order only if it is satisfied—
  - (a) the child is a child in need of protection and the order is appropriate and desirable for the child's protection; and
  - (b) there is a case plan for the child—
    - (i) that has been developed or revised under part 3A, and
    - (ii) that is appropriate for meeting the child's assessed protection and care needs; and
  - (c) if the making of the order has been contested, a conference between the parties has been held or reasonable attempts to hold a conference have been made; and
  - (d) the child's wishes or views, if able to be ascertained, have been made known to the court; and
  - (e) the protection sought to be achieved by the order is unlikely to be achieved by an order under this part on less intrusive terms.
- (2) The court must not make a child protection order unless a copy of the child's case plan and, if it is a revised case plan, a copy of the report about the last revision under section 53X have been filed in the court.
- (3) Also, before making a child protection order granting custody or guardianship of a child to a person other than the chief executive, the court must have regard to any report given, or recommendation made, to the court by the chief executive about the person, including a report about the person's criminal history, domestic violence history and traffic history.<sup>20</sup>
- (4) In addition, before making a child protection order granting long-term guardianship of a child, the court must be satisfied—
  - (a) there is no parent able and willing to protect the child within the foreseeable future; or
  - (b) the child's need for emotional security will be best met in the long-term by making the order.
- (5) Further, the court must not grant long-term guardianship of a child to—
  - (a) a person who is not a member of the child's family unless the child is already in custody or guardianship under a child protection order; or
  - (b) the chief executive if the court can properly grant guardianship to another suitable person.
- (6) This section does not apply to the making of an interim order under section 67.

**Key Issues in the Contest**  
**Evidence of *harm* and *risk of harm***

- 10 **Who is a *child in need of protection***  
*A child in need of protection* is a child who—
- (a) has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm; and
  - (b) does not have a parent able and willing to protect the child from the harm.
- 9 **What is *harm***
- (1) *Harm*, to a child, is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing.
  - (2) It is immaterial how the harm is caused.
  - (3) Harm can be caused by—
    - (a) physical, psychological or emotional abuse or neglect; or
    - (b) sexual abuse or exploitation.

**Key Issues in the Contest**  
**Evidence of *no parent willing and able to protect***

- 10 **Who is a *child in need of protection***  
*A child in need of protection* is a child who—
- (a) has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm; and
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  - (2) It is immaterial how the harm is caused.
  - (3) Harm can be caused by—
    - (a) physical, psychological or emotional abuse or neglect; or
    - (b) sexual abuse or exploitation.

**Key Issues in the Contest**  
**Evidence of *case planning***

Is there a case plan appropriate to address the child or young persons needs?

**51B What is a *case plan***

- (1) A *case plan* for a child is a written plan for meeting the child's protection and care needs.
- (2) A case plan may include any of the following matters—
  - (a) a goal or goals to be achieved by implementing the plan;
  - (b) arrangements about where or with whom the child will live, including interim arrangements;
  - (c) services to be provided to meet the child's protection and care needs and promote the child's future wellbeing;
  - (d) matters for which the chief executive will be responsible, including particular support or services;
  - (e) the child's contact with the child's family group or other persons with whom the child is connected;
  - (f) arrangements for maintaining the child's ethnic and cultural identity;
  - (g) matters for which a parent or carer will be responsible;
  - (h) a proposed review day for the plan.

**Key Issues in the Contest**  
**Evidence of *least intrusive order***

**Other issues to be satisfied  
Evidence required...**

Has a **Family Group Meeting** been held?

Has a **Court Ordered Conference** been held?

Is there a current **Case Plan** and if necessary a **Review Report** filed in Court?

Have the **child's views and wishes** been made known to the Court?

**FUNDAMENTAL CONCEPTS**

Categories of evidence

Direct

Indirect

Admissions

Lay and Expert Opinion

### **An CSO applicant for a CAO sets out the grounds for her application as follows:**

Current Child Protection Concerns:

The Caloundra Child Safety Service Centre received a notification on the 9th January, 2010 in relation to Peter Jones. The child was presented to the emergency department of the Redcliffe Hospital with head injuries and significant bruising to his body. The injuries were of a serious nature and the child was immediately transferred to the Mater Children's Hospital, where he was admitted to the intensive care unit for treatment.

The child's father, Barry Jones and his partner, Denise Sutton advised me that at the time the injuries occurred they were in the living room of their home. They heard a crash from the kitchen and when they went to investigate the noise they found the child lying on the ground amongst a number of grocery items. The child appeared to be having a seizure. The father and his partner explained that it appeared that the child had fallen whilst trying to climb up on his high chair to get some food. The father advised that he called an ambulance immediately given that the child was "fitting".

On the 11th January, 2010 Dr. Lewis from the Mater Children's Hospital advised me that the child's injuries on admission included:

- A subdural haemorrhage.
- Retinal haemorrhaging in both eyes.
- Bruising to the left side of the face, this was estimated to be approximately two days old.
- Bruising to left side of the body, this was estimated to be approximately two days old.

He also informed me that the injuries to the child are considered to be non-accidental. This preliminary finding is based on a CT scan and professional opinion that the child suffered a severe blow to the head, 24 to 48 hours prior to his presentation at the Redcliffe Hospital. Dr. Lewis also indicated to me that the retinal haemorrhaging is consistent with the child being severely shaken.

(...)

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Current Child Protection Concerns:

The Caloundra Child Safety Service Centre received a notification on the 9th January, 2010 in relation to Peter Jones. The child was presented to the emergency department of the Redcliffe Hospital with head injuries and significant bruising to his body. The injuries were of a serious nature and the child was immediately transferred to the Mater Children's Hospital, where he was admitted to the intensive care unit for treatment.

The child's father, Barry Jones and his partner, Denise Sutton advised me that at the time the injuries occurred they were in the living room of their home. They heard a crash from the kitchen and when they went to investigate the noise they found the child lying on the ground amongst a number of grocery items. The child appeared to be having a seizure. The father and his partner explained that it appeared that the child had fallen whilst trying to climb up on his high chair to get some food. The father advised that he called an ambulance immediately given that the child was "fitting".

On the 11th January, 2010 Dr. Lewis from the Mater Children's Hospital advised me that the child's injuries on admission included:

- A subdural haemorrhage.
- Retinal haemorrhaging in both eyes.
- Bruising to the left side of the face, this was estimated to be approximately two days old.
- Bruising to left side of the body, this was estimated to be approximately two days old.

He also informed me that the injuries to the child are considered to be non-accidental. This preliminary finding is based on a CT scan and professional opinion that the child suffered a severe blow to the head, 24 to 48 hours prior to his presentation at the Redcliffe Hospital. Dr. Lewis also indicated to me that the retinal haemorrhaging is consistent with the child being severely shaken.

(...)

**A CSO applicant for a CAO sets out the grounds for her application as follows:**

Current Child Protection Concerns:

The Caloundra Child Safety Service Centre received a notification on the 9th January, 2010 in relation to Peter Jones. The child was presented to the emergency department of the Redcliffe Hospital with head injuries and significant bruising to his body. The injuries were of a serious nature and the child was immediately transferred to the Mater Children's Hospital, where he was admitted to the intensive care unit for treatment.

The child's father, Barry Jones and his partner, Denise Sutton advised me that at the time the injuries occurred they were in the living room of their home. They heard a crash from the kitchen and when they went to investigate the noise they found the child lying on the ground amongst a number of grocery items. The child appeared to be having a seizure. The father and his partner explained that it appeared that the child had fallen whilst trying to climb up on his high chair to get some food. The father advised that he called an ambulance immediately given that the child was "fitting".

On the 11th January, 2010 Dr. Lewis from the Mater Children's Hospital advised me that the child's injuries on admission included:

- A subdural haemorrhage.
- Retinal haemorrhaging in both eyes.
- Bruising to the left side of the face, this was estimated to be approximately two days old.
- Bruising to left side of the body, this was estimated to be approximately two days old.

He also informed me that the injuries to the child are considered to be non-accidental. This preliminary finding is based on a CT scan and professional opinion that the child suffered a severe blow to the head, 24 to 48 hours prior to his presentation at the Redcliffe Hospital. Dr. Lewis also indicated to me that the retinal haemorrhaging is consistent with the child being severely shaken.

(...)

**FUNDAMENTAL CONCEPTS**

Issues of direct/indirect evidence go to -

Weight

or

Persuasiveness

Has the Department adduced the best and most direct evidence available?

## FUNDAMENTAL CONCEPTS

# Standard of Proof

## *Child Protection Act 1999 (Qld)*

### 105 Evidence

- (1) In a proceeding, the Childrens Court is not bound by the rules of evidence, but may inform itself in any way it thinks appropriate.
- (2) If, on an application for an order, the Childrens Court is to be satisfied of a matter, the court need only be satisfied of the matter on the balance of probabilities.

## STANDARDS OF PROOF

Beyond reasonable doubt

VS

Balance of probabilities

## Briginshaw Standard

The degree of satisfaction demanded may depend on the nature of the issue.

“Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters “reasonable satisfaction” should not be produced by inexact proofs, indefinite testimony, or indirect inferences.”

*Briginshaw v Briginshaw* (1938) 60 CLR 336 per Dixon J

### ***Re H & Ors (minors)***

“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A stepfather is usually less likely to have repeatedly raped and had non-consensual oral sex with his under age stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.”

*Re H & Ors (minors)* [1995] UKHL 16 per Lord Nicholls of Birkenhead

### ***H v Chief Executive Department of Communities***

“The Children’s Court has to be satisfied on the balance of probabilities, however, it is accepted for the purposes of this application that the more serious the question, the more cogent the evidence needs to be.”

*H v Chief Executive Department of Communities* [2005] QDC (unreported) (25 November 2005), per Richards DCJ

**TK v Kemp & Ors (2009)**

“It is accepted that in this case the civil standard of proof is required, that is, the Department must prove on the balance of probabilities that the child is a child in need of protection. Where there are incidents which amount to criminal allegations the *Briginshaw* test will apply [*Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362]. However, the allegations here are not that the child is being physically abused. The concern is that the injuries are too prevalent for a child who at, three and a half years of age, requires close supervision. The child has been described as being very active and a very active child will be injured from time to time in the normal rough and tumble of living. However, it is the job of the child’s carer to ensure that the opportunity for injury is limited and that the child can explore his environment safely. It is of significance to note that the child has not suffered any significant injuries since he was taken into care.” [at 21]

*TK v Kemp & Ors* (District Court of Queensland, unreported, 7 September 2009, No 8 of 2009) per Richards DC]

**The Sliding Scale**

**Intrusiveness of the Order**

TAO/CAO      PSO/Directive      STC      STG      LTG

**Finality of the decision**

Interim      Final

**Nature of issue – allegations of criminality**

## Interim Hearing

“However, short of a complete hearing of all of the evidence, which is still taking place, there is little else that could have been done. A temporary protection order functions rather like an interim or interlocutory injunction, or an interim order for custody, to maintain the status quo pending the determination of the proceedings for final relief, in which it is common practice to continue the relief until those proceedings are completed. Unless persuaded to discharge or vary the protection order at that stage, it is not easy to see what else the magistrates could on the evidence before them have done but to extend the temporary order until the hearing was concluded and the application finally determined. Contrary to the husband’s assertion before us and to the magistrates, there is no reason to suppose that the material on which the wife relied was completely fabricated. Indeed, the purpose of that hearing, which is not yet concluded, is to determine where the truth lies”

*Bell v Bay-Jespersen* [2004] QCA 68 per McPherson JA

## Seriousness of the consequences

On appeal, His Honour stated that “it by no means appears from the magistrate’s reasons for his decision that he was satisfied to the requisite standard of proof. Even assuming that standard to be no higher than the ordinary civil standard of satisfaction on a balance of probabilities, what his worship said was:

“There seems to have been no significant improvement in the behavioural pattern of the child, and *perhaps to that extent* the child could be said to have been neglected by the lack of proper care.”

“Something more is needed than a bare possibility (“perhaps”) that some treatment, not necessarily curative, has “to an extent” been neglected before the court takes a child from the care of a person who has looked after and cared for him for as long as that.”

The appeal decision thus clearly contemplates that the standard should be at the higher end of the scale in relation to the making of an order that would have the effect of removing a child from the care of a person (the grandmother) in whose care the child had been for 10 years and with whom the child had a strong attachment.

*Dunnett v Gebers & Anor. ex parte Dunnett* [1997] QCA 056 per McPherson JA

**A Problem...**  
**note the dissenting opinion in *Re H***

“This seems to me to be a strong argument in favour of making the threshold lower rather than higher. It would be a bizarre result if the more serious the anticipated injury, whether physical or sexual, the more difficult it became for the local authority to satisfy the initial burden of proof, and thereby ultimately, if the welfare test is satisfied, secure protection for the child.”

*Re H & Ors (minors)* [1995] UKHL 16 per Lord Lloyd of Berwick dissenting

***SRG v PGB* (1988)**

“In all the circumstances, including both the gravity of the consequences if the order sought is made, and *the gravity for the future welfare of the children if it is not*, I consider that the order for care and protection ought to be made.”

*SRG v PGB* (1988) 12 Fam LR 225 at 235 (per McPherson J)

### ***P v C*(1987)**

"The reference to *Briginshaw, supra* suggests that perhaps the magistrate again has permitted himself to fall into the error of having regard to the seriousness of the allegations from the point of view of the father. The father, however, was not on trial. These were not committal proceedings against him. What the magistrate had before him were proceedings in the nature of an inquiry to determine, whether, in substance, it was in the child's interests that she be no longer required to live in the home with her father because of his sexual misconduct towards her. It certainly was a most serious matter. The seriousness, however, with which the magistrate was concerned, or should have been concerned, was the seriousness of the child's welfare – not the seriousness of possible criminal proceedings against the father."

*P v C*(1987) 11 Fam LR 896 (per Allen J)

### **BURDEN OF PROOF**

He who asserts must prove  
&  
Reversal

## Statutory Presumption & Reversal of Onus

### *Community Welfare Act 2008 (NT)*

#### 39. Powers of Court at hearing of application

- (1) At the hearing of an application under this Part, the Court may, in addition to any other powers it has –
  - (a) require the person having the custody of the child at the time to account for the cause of an injury which is a ground for the application; and
  - (b) admit as evidence the finding that any other child in the care of the person having the custody of the child in relation to whom the application is made has suffered maltreatment.
- (2) In hearing an application under this Part the Court is not bound by the rules of evidence but may inform itself on any matters it thinks fit.
- (...)

#### 42. Proof of need of care

The burden of proving that a child is in need of care in an application under this Part lies on the Minister and the standard of proof is on the balance of probabilities.

## Statutory Presumption & Reversal of Onus

### *Children and Young Persons (Care and Protection) Act 1998 (NSW)*

#### 106A Admissibility of certain other evidence

- (1) The Children's Court must admit in proceedings before it any evidence adduced that a parent or primary care-giver of a child or young person the subject of a care application:
  - (a) is a person:
    - (i) from whose care and protection a child or young person was previously removed by a court under this Act or the *Children (Care and Protection) Act 1987*, or by a court of another jurisdiction under an Act of that jurisdiction, and
    - (ii) to whose care and protection the child or young person has not been restored, or
  - (b) is a person who has been named or otherwise identified by the coroner or a police officer (whether by use of the term "person of interest" or otherwise) as a person who may have been involved in causing a reviewable death of a child or young person.
- (2) Evidence adduced under subsection (1) is prima facie evidence that the child or young person the subject of the care application is in need of care and protection.
- (3) A parent or primary care-giver in respect of whom evidence referred to in subsection (1) has been adduced may rebut the prima facie evidence referred to in subsection (2) by satisfying the Children's Court that, on the balance of probabilities:
  - (a) the circumstances that gave rise to the previous removal of the child or young person concerned no longer exist, or
  - (b) the parent or primary care-giver concerned was not involved in causing the relevant reviewable death of the child or young person, as the case may require.
- (...)

## Tacit Reversal of Onus

"I would accept that his Honour's judgment could have been more felicitously expressed. But when it is read as a whole and in the context of the paragraphs which both preceded and succeeded it, there can be no doubt that his Honour consciously placed the ultimate burden of proving on the balance of probabilities that sexual contact was the cause of Sophie's infection wholly upon the Director-General.

Given the father's denial of sexual contact upon the basis of the bathing/towelling scenario, his Honour's rejection of it clearly left the father's denial, as he described it, "*compromised*".

I therefore do not accept that at his Honour was shifting the burden of proving that Sophie's infection was caused by non-sexual means to the father or, to put the matter another way, that he placed upon the father the burden of disproving that the infection was caused by sexual means."

*Re Sophie (No. 2)* [2009] NSWCA 89 per Tobias JA

## Other Tacit Reversals

A parent's failure to engage can and usually is led in evidence to invite the inference that:

- ❖ a parent has failed to take responsibility for claimed concerns; or
- ❖ lacks insight into the nature of the concerns; or
- ❖ refuses to accept the validity of the concerns; or
- ❖ is unable to acknowledge their role in causing the harm;
- ❖ all of the above,

by way of founding a conclusion that the parent lacks the willingness and/or ability to protect the child from harm.

## Errors in Evidence Gathering

- ❖ Insufficient factual description – be emphatically descriptive (whether it is in the body of an affidavit or an exhibited CP history)
- ❖ Opinionated “expert” type statements that are not supported by factual description (be careful of adjectives such as “alcoholic”, “addicted”, “violent”, “evasive”, “aggressive” if you haven’t laid a factual platform)
- ❖ Insufficient corroborative material – inadequate use of Chapter 5A provisions or subpoenas or failing to obtain updated material immediately prior to trial
- ❖ Failing to call a relevant witness or to subpoena relevant documentary material (*Jones v Dunkel* (1959) 101 CLR 298) – a failure to adduce evidence (ie call a witness or tender evidence) in support of an allegation may lead the Court to draw an adverse inference that the uncalled evidence would not have supported your case, particularly where the evidence was reasonably available to you.

## Practice Notes

### Queensland Police Service

- issues re completeness of records and location of evidence (esp s 93A ICARE ROI video and audio, police notebooks)

### Queensland Health

- database issues (advise them of locality/hospitals/regions if known)

### Education Queensland

- holidays (subpoenae to produce/attend and give evidence)

**Guide Sheet for CSSC Intake Workers**  
**‘ Processing a Form 4 Notice of Child Abuse or Family Violence ‘**

There are 2 key steps for CSSC staff when processing a Form 4 – Notice of Child Abuse or Family Violence. The key steps involve the recording of the information and providing a response to the Family Court.

## **1. Record the Information**

- 1.1. Open a Intake Event and screen and record information using following departmental processes and procedures. *Please see Chapter 1 of the CSPM for further information.*

Please note, Notifier details should be selected as follows –

Notifier category: Family  
Family: (Name of parent who filed Form 4)

*(Please contact Court services if you require further information about how to record notifier details for a Form 4.)*

- 1.2. Attach the Form 4 to the ICMS Intake Event.  
Please save as: ‘Form 4 – Notice of Child Abuse or Family Violence’.
- 1.3. Submit Intake Event for approval as per usual practice.

## **2. Provide a Response to the Family Court**

- 2.1. The template response letter (Notification under section 67Z of the Family Law Act 1975) can be found by following this link -

<http://csintranet.dcs.root.internal/Court-Services/CSSC-response-67Z-letter.aspx>

This letter should be sent to the Family Court Registry where the matter is managed (eg. Townsville or Brisbane)

Family Court of Australia – Townsville Registry      Family Court of Australia – Brisbane Registry  
PO Box 9991, Townsville, 4810                                      GPO Box 9991, Brisbane, 4001

- 2.2. Scan and attach letter to the ICMS Intake Event.  
Please save as: ‘Response Letter (Notification under Section 67Z of the Family Law Act 1975)’

Should you require any further assistance or information please contact Court Services on (07) 3235 9859



## Referral Summary of Family Law/Child Protection Interface Matters

Date: \_\_\_\_\_

CSSC making referral: \_\_\_\_\_

<b>Subject Child/ren</b>	
Names/DOB:	
Indigenous status:	
<b>Family Details</b>	
Mother:	
Father:	
Other:	
Are the parents legally rep? <i>Please provide details, including ph, email, fax etc</i>	
<b>Current Status of Children</b>	
Interim orders:	
Current Placement: <i>(Carer, duration etc)</i>	
<b>Children's Court Status</b>	
Court:	
Current order/app:	
Parents contesting etc:	
Next mention date:	
FGM/COC/Sep Rep: <i>(please provide contact details for Sep Rep)</i>	
<b>Case Management</b>	
What CSSC holds case management/case work? <i>Please list people, roles &amp; contact details (CSO/TL/CC)</i>	
<b>Family Court Orders</b>	
Do you have a copy of the orders?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Date of existing order	
Details of existing order	
Does the existing order include any other parties other than	

Please ensure you forward all relevant documentation with this form. A copy of the application and any orders would be relevant – you may also want to include the Children's Court material. This will help Court Services in determining what response the department may take in respect of this matter in the family law jurisdiction. Thankyou.

the parents?	
Do you have a copy of the current application?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Details of the application. For example: orders being sought (recovery, initial, variation)	
Have the CSSC provided any commitment to either party with respect to the family court application etc <i>If so, please outline information provided (including date) to the party/s and attach letter.</i>	
Have any other parties filed material? If so, please provide details.	
File number:	
<b>Department's position</b>	
Does the department have a position in relation to the interim/final orders sought by the applicant in the family court proceedings?	<input type="checkbox"/> Yes <input type="checkbox"/> No <b>Please provide details:</b>
Outline the assessment undertaken to support the position	
Case plan (when is this due for review, progress with case plan goals etc)	
Contact arrangement (please outline how this is progressing)	
Please outline your views with respect to orders the family court may make in relation to contact between the child/ren and parties	

If forwarding material to court services please outline documents attached:

For example:

- Initiating application of ..... dated
- Affidavit of .....dated

# INITIATING APPLICATION (Family Law)

Filed in:

- Family Court of Australia
- Family Court of Western Australia
- Federal Magistrates Court of Australia
- Other (specify): \_\_\_\_\_

**IMPORTANT: Information for respondents to the application is on page 10.**

COURT USE ONLY
Client ID
File Number
Filed at
Filed on
Court location
Court date
Time
Type of hearing

STORM NORMAN  
Applicant's Name  
Father

PEITA PATTA  
Respondent's Name  
Mother

DEPARTMENT OF CHILD SAFETY

## Part A: The orders sought

**Type of orders sought** (mark all boxes that apply)

- Children (parenting)
- Financial (property and/or maintenance)
- Child support
- Other (specify): \_\_\_\_\_
- Declaration

Filed on behalf of: The Applicant

Prepared by Erma Lawyer Lawyer's Code \_\_\_\_\_

Name of law firm Family Matters Lawyers

Address for service in Australia North Quay

Brisbane State QLD Postcode 4001

Email\* \_\_\_\_\_ DX \_\_\_\_\_

Tel \_\_\_\_\_ Fax\* \_\_\_\_\_ Attention \_\_\_\_\_

\* Please do not include email or fax details unless you are willing to receive documents from the Court and other parties in that way.

**Final orders sought** (state precisely and briefly the final orders sought by the applicant – give a number to each order sought)

1. That the child Star Jasmine Patta Norman (DOB: 17/01/07) and Moon Ray Patta Norman (DOB: 9/11/04) live with the Father, Storm Norman.
2. That the Father have sole long term responsibility for the major long term decisions in relation to the children, including, but not limited to, the school or schools that the children are to attend; the religious instruction and upbringing of the children; and the medical and psychological treatment of the children.
3. That the children spend time with and communicate with the Mother, supervised by the Maternal Grandmother, at such times as ordered by the Court.

**Interim or procedural orders sought** (These orders can only be sought in this form if you are seeking final orders as well; otherwise, leave blank. State precisely and briefly the orders sought – give a number to each order sought.)

1. As above

# Part B: Details of the Parties

## Details of Applicant/s

	Applicant 1	Applicant 2
<b>Family name as used now</b>	NORMAN	
<b>Given names</b>	STORM	
<b>Sex</b>	<input checked="" type="checkbox"/> male <input type="checkbox"/> female	<input type="checkbox"/> male <input type="checkbox"/> female
<b>Residential address</b> (incl postcode)	124 Gladstone Road, Brisbane, QLD	
<b>Telephone number</b> (home and mobile)	07 3216 8964	
<b>Date of birth</b> (day / month / year)	24 / 10 / 1971	/ /
<b>Usual occupation</b>	Labourer	
<b>Mark box as applicable for each applicant</b>	<input checked="" type="checkbox"/> present in Australia <input type="checkbox"/> ordinarily resident in Australia <input checked="" type="checkbox"/> an Australian citizen <input type="checkbox"/> domiciled in Australia	<input type="checkbox"/> present in Australia <input type="checkbox"/> ordinarily resident in Australia <input type="checkbox"/> an Australian citizen <input type="checkbox"/> domiciled in Australia
<b>Description</b>	<input checked="" type="checkbox"/> husband/father <input type="checkbox"/> wife/mother <input type="checkbox"/> party to a de facto relationship that has broken down <input type="checkbox"/> Other (specify):	<input type="checkbox"/> husband/father <input type="checkbox"/> wife/mother <input type="checkbox"/> party to a de facto relationship that has broken down <input type="checkbox"/> Other (specify):
<b>Is an interpreter required?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. If Yes, state language & dialect:	<input type="checkbox"/> No <input type="checkbox"/> Yes. If Yes, state language & dialect:
<b>*Is the applicant of Aboriginal and/or of Torres Strait Islander origin?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Aboriginal <input type="checkbox"/> Yes Torres Strait Islander <input type="checkbox"/> Yes Aboriginal and Torres Strait Islander	<input type="checkbox"/> No <input type="checkbox"/> Yes Aboriginal <input type="checkbox"/> Yes Torres Strait Islander <input type="checkbox"/> Yes Aboriginal and Torres Strait Islander

\*You are not required to answer this question, but it will greatly assist the Court if you do. The information sought is being collected to assist the Court in planning and delivering client services. It is possible that you may be contacted to participate in a review of a particular aspect of the Court's services, although your right not to participate will be respected. The information you provide may be shared with researchers approved by the Court, and may be included in publications in statistical form in a way that does not identify you.

## Details of Respondent/s

	Respondent 1	Respondent 2
<b>Family name as used now</b>	PEITA	Director-General Department of Communities
<b>Given names</b>	PATTA	
<b>Sex</b>	<input type="checkbox"/> male <input checked="" type="checkbox"/> female	<input type="checkbox"/> male <input type="checkbox"/> female
<b>Residential address</b> (incl postcode)	Unknown	Court Services Unit Level 13, 30 Makerston Street Brisbane QLD 4000
<b>Date of birth</b> (day / month / year)	16 / 08 / 1976	/ /
<b>Usual occupation</b>	Unemployed	
<b>Mark box as applicable for each respondent</b>	<input type="checkbox"/> present in Australia <input type="checkbox"/> ordinarily resident in Australia <input checked="" type="checkbox"/> an Australian citizen <input type="checkbox"/> domiciled in Australia	<input type="checkbox"/> present in Australia <input type="checkbox"/> ordinarily resident in Australia <input type="checkbox"/> an Australian citizen <input type="checkbox"/> domiciled in Australia
<b>Description</b>	<input type="checkbox"/> husband/father <input checked="" type="checkbox"/> wife/mother <input type="checkbox"/> party to a de facto relationship that has broken down <input type="checkbox"/> Other (specify):	<input type="checkbox"/> husband/father <input type="checkbox"/> wife/mother <input type="checkbox"/> party to a de facto relationship that has broken down <input type="checkbox"/> Other (specify):
<b>Is an interpreter required?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. If Yes, state language & dialect:	<input type="checkbox"/> No <input type="checkbox"/> Yes. If Yes, state language & dialect:
<b>*Is the respondent of Aboriginal and/or Torres Strait Islander origin?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Aboriginal <input type="checkbox"/> Yes Torres Strait Islander <input type="checkbox"/> Yes Aboriginal and Torres Strait Islander	<input type="checkbox"/> No <input type="checkbox"/> Yes Aboriginal <input type="checkbox"/> Yes Torres Strait Islander <input type="checkbox"/> Yes Aboriginal and Torres Strait Islander

\* You are not required to answer this question, but it will greatly assist the Court if you do. The information sought is being collected to assist the Court in planning and delivering client services. It is possible that you may be contacted to participate in a review of a particular aspect of the Court's services, although your right not to participate will be respected. The information you provide may be shared with researchers approved by the Court, and may be included in publications in statistical form in a way that does not identify you.

## Part C: Relationship of Parties

**Date parties commenced to live together** (day / month / year)

12 / 12 / 1993

or  Not applicable

**Date of marriage**  
(day / month / year)

01 / 07 / 1999

or  Not applicable

**Place of marriage**  
(town, city, country)

Brisbane

or  Not applicable

**Date of final separation**  
(day / month / year)

12 / 02 / 2006

or  Not applicable

**Date of divorce**  
(day / month / year)

25 / 02 / 2007

or  Not applicable

## Part D: Children

(Complete details for each child. If more space is required for extra children, attach an extra page)

	Child 1	Child 2
<b>Family name</b>	NORMAN	NORMAN
<b>Given names</b>	STAR JASMINE PATTA	MOON RAY PATTA
<b>Date of birth</b> (day / month / year)	17 / 01 / 2001	9 / 11 / 2004
<b>Sex</b>	<input type="checkbox"/> male <input checked="" type="checkbox"/> female	<input checked="" type="checkbox"/> male <input type="checkbox"/> female
<b>Mother's family name</b>	PATTA	PATTA
<b>Mother's given names</b>	PIETA	PIETA
<b>Father's family name</b>	NORMAN	NORMAN
<b>Father's given names</b>	STORM	STORM
<b>With whom does the child live?</b>	FATHER	FATHER
	Child 3	Child 4
<b>Family name</b>		
<b>Given names</b>		
<b>Date of birth</b> (day / month / year)	/ /	/ /
<b>Sex</b>	<input type="checkbox"/> male <input type="checkbox"/> female	<input type="checkbox"/> male <input type="checkbox"/> female
<b>Mother's family name</b>		
<b>Mother's given names</b>		
<b>Father's family name</b>		
<b>Father's given names</b>		
<b>With whom does the child live?</b>		

## Part E: For applications for parenting orders

**Has the applicant obtained a certificate from a registered family dispute resolution practitioner?**  
(Refer to section 60I of the *Family Law Act 1975*).

No     Yes

If yes, attach a copy of the certificate to this application and go to Part F of this form.

If no, to obtain an exemption from filing a certificate you must either complete and file the form *Affidavit - Non-Filing of Family Dispute Resolution Certificate* or include the factual basis for the exemption in the affidavit you file in support of any order you are seeking.

Has the applicant received advice from a family counsellor or a family dispute resolution practitioner about the services and options (including alternatives to court action) available in circumstances of abuse or violence? (Refer to section 60J of the *Family Law Act 1975*).

No  Yes

## Part F: Other court cases and orders

### Ongoing cases

Are there any ongoing cases in this or any other court about family law, child support, family violence or child welfare issues that involve any of the parties or children listed in this application?

No  Yes

If yes, provide the following details for each ongoing case. (Attach extra pages as required.)

Court name and place

BRISBANE CHILDRENS COURT

Next Court date

6 / 11 / 2008

Names of parties

AS ABOVE

State the nature of the orders sought (eg property settlement, parenting orders, child support)

CHILD PROTECTION APPLICATION

### Existing orders, agreements or undertakings

Are there any existing orders, agreements, parenting plans or undertakings to a court about family law, child support, family violence or child welfare issues concerning any of the parties or children listed in this application?

No  Yes

If yes, either **attach copies** of any orders, agreements, parenting plans or undertakings or provide details below.

(If there is more than one order etc, attach extra pages as required.)

Court name and place

Rockhampton

Date

01 / 04 / 2008

Names of parties to the order, agreement, parenting plan or undertaking

As per application

## Part G: For property and/or spouse/de facto partner maintenance applications

If the parties were in a de facto relationship that has broken down, complete Part H)

Have the parties entered into a financial agreement or a part VIIIAB Financial Agreement under the *Family Law Act 1975* or under any relevant state or territory legislation?

No  Yes

If either party has a superannuation interest, have the parties entered into a binding superannuation agreement in relation to that superannuation interest?

No  Yes

Is any party currently bankrupt or currently a debtor in bankruptcy proceedings started by either a creditor's petition or a debtor's petition or currently a debtor subject to a personal insolvency agreement?

No  Yes

Is there a proceeds of crime order or current forfeiture application in relation to any of the property of any of the parties?

No  Yes  
If yes, attach a sealed copy of the order or application.

## Part H: De facto relationship jurisdiction – financial causes

(subsection 4(1) of Family Law Act 1975 defines de facto relationship cause)

Complete all the boxes below if relying on the Court's jurisdiction to make orders for the benefit of party to de facto relationship that has broken down.

### Entitlement to apply and geographic requirements

(a) Did your de facto relationship break down on or after 1 March 2009?

No  Yes

(b) Is the period or the total of the periods of the de facto relationship at least 2 years?

No  Yes

(c) Is there is a child of the de facto relationship?

No  Yes

(d) Has the applicant made substantial contributions and a failure to make an order or declaration would result in serious injustice to the applicant?

No  Yes

(e) Is, or was, the relationship registered under a prescribed law of a State or Territory of Australia?

No  Yes

(f) Were both parties to the relationship ordinarily resident in one or more of the Australian Territories or New South Wales, Queensland, Victoria or Tasmania for at least one third of the domestic relationship, or at the date the relationship broke down?

No  Yes

(g) Did the applicant make substantial contributions in one or more of the Australian Territories or New South Wales, Queensland, Victoria, or Tasmania?

No  Yes

## Part I: Cross-vested jurisdiction

(Complete only if relying on cross-vested jurisdiction. Note: An affidavit *must* be filed – see Rule 4.06 of the *Family Law Rules 2004*)

If relying on a cross-vesting law, specify the Territory law relied on

## Part J: Lawyer's declaration

If the applicant is filing this application without a lawyer, this part need not be completed. However the applicant should obtain a copy of the information brochure *Marriage, Families and Separation* from Court staff when filing the application. If a lawyer is filing the application, then the lawyer must give the applicant a copy of the brochure and sign the following declaration.

I gave the applicant(s) a copy of the Family Law Courts' brochure *Marriage, Families and Separation*.

\_\_\_\_\_  
Signature of lawyer

Full name of lawyer:

Date:        /        /

# Part K: Affidavit of Applicant(s)

Affidavits must be sworn or affirmed before a person authorised to witness affidavits

Applicant 1	Applicant 2
<p>I <input checked="" type="checkbox"/> swear / <input type="checkbox"/> affirm that:</p> <ol style="list-style-type: none"> <li>I am the applicant.</li> <li>I have read this Application.</li> <li>The facts of which I have personal knowledge are true.</li> <li>All other facts are true to the best of my knowledge, information and belief and the orders sought in this application are supported by evidence.</li> <li>I am aware that I have a duty to the Court and to each other party to give full and frank disclosure – in a timely manner - of all information relevant to the issues in the case.</li> </ol>	<p>I <input type="checkbox"/> swear / <input type="checkbox"/> affirm that:</p> <ol style="list-style-type: none"> <li>I am the applicant.</li> <li>I have read this Application.</li> <li>The facts of which I have personal knowledge are true</li> <li>All other facts are true to the best of my knowledge, information and belief and the orders sought in this application are supported by evidence.</li> <li>I am aware that I have a duty to the Court and to each other party to give full and frank disclosure – in a timely manner - of all information relevant to the issues in the case.</li> </ol>

**Signature of Applicant 1**

Place: Brisbane

Date 19 /08 /2009

**Signature of Applicant 2**

Place:

Date / /

Before me (signature of witness)

Erma Lawyer

Full name of witness (please print)

Qualification of witness

- Lawyer
- Notary Public
- Justice of the Peace
- Other (specify)

Before me (signature of witness)

Full name of witness (please print)

Qualification of witness

- Lawyer
- Notary Public
- Justice of the Peace
- Other (specify)

# IMPORTANT NOTICE TO RESPONDENT(S)

You should seek legal advice about this application.

If you do not want the court to make the orders sought in this application or if you want the court to make other orders, **YOU MUST:**

## For proceedings in the Federal Magistrates Court of Australia

- file at the court a response, an affidavit and other relevant documents – including, in financial matters, a *Financial Statement*
- deliver a copy of the response, affidavit and other relevant documents to the applicant's address for service within 14 days, and
- attend at the hearing. **Please note: If you do not attend the hearing orders may be made in your absence.**

## For proceedings in the Family Court of Australia

- within 14 days of service on you of the *Initiating Application*, file at the court a *Response to Initiating Application* and in a financial case, a *Financial Statement*. These forms are available at any family law registry or on the Family Law Courts' website [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au)
- file an affidavit if interim or procedural orders are sought by either party. A form of affidavit in support of a response seeking or opposing interim parenting orders is available at any family law registry or on the Family Law Courts' website [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au)
- file other documents, as required, depending on the orders you seek (see Rule 4.18 of the *Family Law Rules 2004*)
- serve on all other parties copies of the documents filed, at least 7 days before the court date shown on page one of this application, and
- attend at the hearing. **Please note: If you do not attend the hearing orders may be made in your absence.**

**Federal Magistrates Court**  
**SCENARIO**

**Relevant Persons**

**Children:** Star Jasmine Patta Norman (Female) (DOB: 17/01/01)  
Moon Ray Patta Norman (Male) (DOB: 9/11/04)

**Father:** Storm Norman

**Mother:** Peita Patta

**Background Information**

The children were previously subject to Child Protection Orders granting custody to the Chief Executive for a period of 12 months. In November 2009, an application to extend the existing orders was mentioned in the Brisbane Children's Court and the matter was adjourned for further mentions on 3 January 2010 and 6 March 2010. The children are currently subject to Interim Child Protection Orders granting custody to the Chief Executive.

Prior to their removal from the parent's care, the subject children lived with her mother Mrs Peita Patta.

The Department first had contact with Ms Patta and Mr Storm in 2000. The parents commenced living together in 1998 and separated in 2006. Since this time, the Department has recorded 6 child protection notifications in relation to the subject children and 1 child concern report. The theme of the child protection concerns has been the ongoing neglect of the subject children by Ms Patta. Departmental records indicated that Star and Moon were initially exposed to domestic violence between their parents and placed at risk of physical harm.

The children were most recently removed from their mother's care in March 2009 initially subject to Temporary Assessment Orders and then Court Assessment Orders. Ultimately they became subject to Child Protection Orders because of concerns related to the risk of physical harm of the children by the mother Ms Patta. The concerns at the time the notification was received in March 2009 was that the Mother had entered into a domestically violent relationship and that she had started using drugs. The concerns stated that the Mother's drug use, together with her existing mental health condition had placed the children at risk of physical and emotional harm as the Mother was unable to care for them appropriately.

An assessment of the concerns was conducted and it was determined that the children had suffered harm while living with the Mother, as evidenced by bruising Moon Ray and a burn on Star, which is alleged that she received while trying to cook dinner for herself and her brother. Both children made disclosures of witnessing domestic violence between their Mother and her new partner, as well as often needing to find food for themselves and having witnessed their Mother's drug use.

At the time of the children's removal from the mother's care, they were placed with departmentally approved foster carers. On 9 October 2009 the children were placed with their father Mr Norman and the placement is considered very stable.

Mr Norman has engaged with the department and has acknowledged the harm to the children by him and Ms Patta in the past and the children to live in a safe environment, free of drug use and domestic violence. The mother Mrs Patta continues to deny any harm to the children and risk of harm to the children.

During a significant part of the previous Child Protection Order, Mrs Patta failed to engage with the department and was sporadic in her contact with the children.

On 10 October 2009 a Family Group Meeting is conducted with both parents and it is determined that applications to extend the existing Child Protection Orders will be sought for a further period of one year and that the goal of case planning will be reunification of the children into the father's care subject to him achieving various outcomes identified in the case plan.

The children are now having 1 hour supervised contact with the mother Ms Patta each Saturday, supervised by her Mother.

On 25 February 2010, the Director General of the Department of Child Safety is served at the Court Services Unit as second respondent to an application by the father Mr Norman to the Federal Magistrates Court of Australia for orders that the subject children live with him and spend time with their mother Ms Patta each week.

It remains the Department's assessment that:

- the subject children remain children in need of protection at this time as they do not have a parent who is willing and able to protect them from harm. The Father has demonstrated his ability and willingness, however as the children were primarily in the residence of the mother and the Mother has indicated that she would remove them from the Father should the department withdraw, it has been assessed that the Father is unable to meet the children's protective needs;
- an application to extend the existing Child Protection Orders granting custody to the Chief Executive is appropriate to achieve the children's protection at this time, as it has been assessed that –
  - there is a risk of physical harm to the children if the children were removed from their Father by the Mother, due to her ongoing drug use and mental health concerns;
  - there is a risk of emotional harm to the children if the children were not able to spend time with their mother and/or were at this time removed from the care of their Father as they have developed a positive attachment too him.

**Key factors for the Department when considering the level of intervention  
in a Family Law Court proceeding**

Where matters come before the Family Law Courts and the Department holds relevant information related to child protection matters involving any of the relevant parties then it is highly desirable that this information is made available to the Court at the earliest opportunity.

It is understood that the making of an Order pursuant to section 91B of the *Family Law Act 1975* requesting the intervention of the Director-General, enables the Court to alert the department to a current proceeding in that jurisdiction. This then enables there to be some investigation by a departmental officer as to what related information the department may hold and how best this may be presented to the Court, without the onerous need for the department to intervene on every occasion.

In endeavouring to identify the matters which are considered pertinent when deciding the level of the Director-General's intervention in Family Law Court proceedings, it is difficult to present a definitive set of factors.

Given the varied and fluid nature of matters that present across the jurisdictions, it becomes more about considering all the information as a whole at a given point in time. In doing so, some of the key indicators which would result in greater levels of intervention include:

- The more recent the information held by the department.
- The greater the level of concerns reported to the department – that is has there been a full investigation of the reported concerns.
- The more extensive the assessments undertaken by the department.
- The more intrusive the departmental intervention into the family.
- The existence of any related Children's Court proceedings or orders.

This is not an exhaustive list and it is intended that all matters are considered on their own unique set of facts and circumstances.

The above list and the attached diagrammatical representation are provided as a reference point only and intend to convey a flexible yet considered approach in determining the level of intervention by the Department.

**Session Plan**  
**Interface between the Department of Communities**  
**& the Family Law Courts of Australia**

**Court Coordinator Induction**

**Learning Outcomes:**

- Develop an understanding of the interface between the DChS and the Family Law Courts;
- Clarify the role of Court Co-ordinators in relation to matters that interface with the Family Court;
- Clarify the role of Court Services in relation to matters that interface with the Family Court; and
- Develop an understanding of the Magellan Project and the role of the Court Coordinator in this process.

Time	Content	Resources
1.45pm	<p><b><u>Introduction</u></b></p> <ul style="list-style-type: none"> <li>• <b>Greetings</b></li> </ul> <p>Welcome the participants to the next session which will be focused on providing an overview of the interface between the Department of Child Safety and the Family Court. All members of the Family Law Team will be present and general introductions made.</p>	
2pm	<p><b><u>Introduction to the Family Law Courts</u></b></p> <p>There are a number of child protection cases that have an interface with the Family Law Courts. This session will provide an opportunity to obtain an understanding of the interface, the key stakeholders, relevant legislation and where the Family Court sits within the court structure.</p> <p><b><u>Learning Outcomes</u></b></p> <ul style="list-style-type: none"> <li>➤ Develop a basic understanding of the jurisdiction of the Family Law Courts and relevant legislation;</li> <li>➤ Develop a basic understanding of the interface between the Child Protection and the Family Law Courts; and</li> <li>➤ Develop a basic understanding of the role of Court Services and Court Coordinators in the Family Law interface.</li> </ul>	<p>PowerPoint slides –</p> <ul style="list-style-type: none"> <li>• 'Introduction to the Family Court'.</li> </ul> <p>Resources -</p> <ul style="list-style-type: none"> <li>• Family Law Overview (in resource folder)</li> </ul>
2.30pm	<p><b><u>Case Scenario</u></b></p> <p>This session will provide participants with a hands on example of the Child Protection / Family Law Courts interface. It will outline the role of the Court Coordinator in interface matters and outline the referral process and role of Court Services in these matters.</p> <p><b><u>Learning Outcomes</u></b></p> <ul style="list-style-type: none"> <li>➤ Develop a basic understanding of the jurisdiction of the Family Law Courts and how this interfaces with the Child Protection Act 1999;</li> <li>➤ Develop a basic understanding of the departments roles and responsibilities in interface matters; and</li> <li>➤ Gain knowledge of how applications are commenced and processed in the Family Court.</li> </ul>	<p>PowerPoint slides-</p> <ul style="list-style-type: none"> <li>• 'Family Law Case Scenario.</li> </ul> <p>Resources –</p> <ul style="list-style-type: none"> <li>• Storm Norman Scenario;</li> <li>• Initiating Application;</li> <li>• Referral Summary. (in resource folder)</li> </ul>

3.00 – 3.15PM	<b>AFTERNOON TEA</b>	
3.15pm	Case Scenario cont.	
4.15pm	<p><b><u>Introduction to Magellan</u></b></p> <p>In 2009, the department committed to fully participating in the Magellan Project, managed by the Family Court. This session will explain the process and purpose of the Magellan Project, and the department's role in this.</p> <p><u>Learning Objectives</u></p> <ul style="list-style-type: none"> <li>➤ Gain an understanding of how the Magellan Project came about and what the objectives of the project are;</li> <li>➤ Develop a basic understanding of the departments roles and responsibilities in Magellan matters; and</li> <li>➤ Develop an understanding of Court Services and the CSSC's role's in Magellan matters; and</li> <li>➤ Develop an understanding of Form 4's and the intake process that is required to appropriately record and respond to them.</li> </ul>	<p>PowerPoint slides-</p> <ul style="list-style-type: none"> <li>• 'Magellan Court Coordinator Induction'</li> </ul> <p>Resources –</p> <ul style="list-style-type: none"> <li>• Guide Sheet for processing a Form 4 (in resource folder)</li> </ul>
4.45pm	<b><u>End of Session</u></b>	

**Resources to be included in the Court Coordinator Induction Training Resource Material Folder**

- Introduction to the Family Law Courts PowerPoint;
- Family Law Overview (updated and edited as below – and including other bordered documents?);
- Storm Norman Scenario;
- Storm Norman Initiating Application;
- Referral Summary template;
- Protocol between the Family Court of Australia and the Federal Magistrates Court of Australia and the Department of Child Safety Queensland;
- Family Court Subpoenas;
- Definitions commonly used in Family Law Court matters.

To be removed (from what is currently in the folder)

- Child Protection / family Law Interface document (need to be amalgamated with the Family Law Overview document)
- Old referral summary
- Some additional family law court resources
- S67Z letter
- Old 91 B letter
- Old Magellan letter
- S69ZK Statement of Position letter;
- S67ZA notification template – FCA
- Copy of all Family Court legislation

**Introduction to Family Law**

**Induction Package**

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<b>Family Law Overview</b>	<b>2 &amp; 3</b>
<b>Fact Sheet Index</b>	

<b>Fact Sheet</b>	<b>Document Title</b>	
<b>1</b>	<b>Key factors to consider when intervening in the Family Law Jurisdiction</b>	<b>4</b>
<b>2</b>	<b>Magellan and Section 91 B Orders</b>	<b>5</b>
<b>3</b>	<b>Subpoenas in the Family Law Jurisdiction</b>	<b>7</b>
<b>4</b>	<b>The role of Court Services in CP / Family Law Interface matters</b>	<b>8</b>
<b>5</b>	<b>Definitions commonly used in the Family Law Jurisdiction</b>	<b>9</b>

## Family Law Overview

### Family Law Courts

The Commonwealth family law courts consist of two separate courts. These include

1. Family Court of Australia
2. Federal Magistrates Court of Australia

Both of the above mentioned courts are Federal (Commonwealth) courts established under the *Family Law Act, 1975*. State Magistrates courts may also convene under the Family Law Act.

Other relevant legislation that is applicable to this jurisdiction includes:

- *Family Law Rules 2004*
- *Federal Magistrates Court Rules 2000*
- *Family Law Regulations 1984*

### Family law jurisdiction

The family law jurisdiction deals with range of matters including:

- divorce
- property settlement
- care of children of a relationship
- special medical procedures
- Hague (international child abduction) Convention matters

### Objectives of the family law jurisdiction

- Ensure the child has the benefit of both parents having meaningful involvement in their life to the maximum extent, consistent with best interest principle
- Protection of children from being harmed or exposed to abuse, neglect and family violence
- Ensuring that children receive proper parenting so they achieve their full potential
- Ensuring that parents fulfill their duties.

### Limitations of the family law jurisdiction

The relevant section of the *Family Law Act 1975* that addresses the limitations of the Act is section 69ZK(1). It states that the court must not make an order in relation to a child/ren who is under the care (however described) of a person under a child welfare law unless

- Section 69ZK(1)(a) – the order is expressed to come into effect when the child ceases to be under the care of a child welfare authority;
- Section 69ZK(1)(b) – the only exception is if the Director General, Department of Communities consents to the jurisdiction dealing with the matter.

### Different avenues for the department to become involved in family law proceedings

1. By attending and participating in proceedings:
  - As a party/respondent to the application
  - As a "*Friend of the Court*"
  - As an Intervener at the request of the court under section 91B or under section 92A of the *Family Law Act 1975* or
2. By providing information to the Court
  - Via a section 91B which may result in the department providing information about the departments involvement to the ICL and in accordance with the protocol
  - Via a section 69ZW order made by the court which requires the department to provide specific departmental documents to the court
  - Provision of a Magellan Report as a result of the matter being designated Magellan
  - Provision of departmental files as a result of a Subpoena being issued by one of the parties to the proceedings
  - Departmental officer subpoenaed to give evidence as part of proceedings

### Role of Court Services

- Facilitates requests for information to/from Family Law Courts/CSSC
- Briefs and instructions to Crown Law in matters where the Department is served as a party to proceedings
- Appear as "*Friend of the Court*" where appropriate the department is a non party
- Duties as QLD State Central Authority for Hague (international child abduction) Convention
- Processes subpoenas for departmental files
- Processes Magellan requests
- Processes S91b & S69ZW orders
- Provide advice & support to Court Coordinators and CSSC in relation to intervention in family law proceedings (facilitate case discussions)
- Attend stakeholder forums
- Liaise with legal representations for parties and Independent Children's Lawyers

### A Reminder

- No action should be taken in family law matters without prior consultation with Court Services.
- Court Services should be informed of any family court applications provided or served upon CSSC as soon as possible
- Advice must be sought from Court Services about the best way to proceed in each individual case.

## Fact Sheet 1

### Key factors for the Department when considering the level of intervention in a Family Law Court proceeding

Where matters come before the Family Law Courts and the Department holds relevant information related to child protection matters involving any of the relevant parties then it is highly desirable that this information is made available to the Court at the earliest opportunity.

It is understood that the making of an Order pursuant to section 91B of the *Family Law Act 1975* requesting the intervention of the Director-General, enables the Court to alert the department to a current proceeding in that jurisdiction. This then enables there to be some investigation by a departmental officer as to what related information the department may hold and how best this may be presented to the Court, without the onerous need for the department to intervene on every occasion.

In endeavouring to identify the matters which are considered pertinent when deciding the level of the Director-General's intervention in Family Law Court proceedings, it is difficult to present a definitive set of factors.

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- The more recent the information held by the department.
- The greater the level of concerns reported to the department – that is has there been a full investigation of the reported concerns.
- The more extensive the assessments undertaken by the department.
- The more intrusive the departmental intervention into the family.
- The existence of any related Children's Court proceedings or orders.

This is not an exhaustive list and it is intended that all matters are considered on their own unique set of facts and circumstances.

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## Fact Sheet 2

### Magellan and Section 91B Orders

#### Magellan Case Management Model

Historically, the Magellan Case Management Model came about as a result of research undertaken by Monash University (VIC) in family law matters involving allegations of child abuse and neglect. The research indicated that cases involving allegations of child abuse and family violence had become part of the core business of the Family Court, with a significant proportion of Family Court resources being expended on these intractable and complex cases.

The Magellan Case Management Model introduced a differentiated case management approach in the Family Court for children's matters where allegations of sexual abuse or serious physical abuse of child/ren arise in relation to child/ren who are the subject of family proceedings. It aims to expedite these matters to trial within six months. Normally this can take 18 months to two years to resolve.

Principles underlying the program include:

- an inter-organisational approach;
- a child centred focus;
- a priority on early intervention;
- the use of a Judge-led, tightly managed and time limited approach;
- the use of court-ordered expert investigations and assessments from the State child protection service and court counsellors;
- the use of a court-ordered legal representative for every child funded by legal aid; and
- the use of a multidisciplinary team.

In December 2008, the Director-General gave a commitment to the Department participating fully in the Magellan Case Management Model. The response will include, amongst other things, compiling Magellan reports for the Family Court, and liaising with key stakeholders such as Legal Aid Queensland, Independent Child Lawyers (ICLs), judicial officers, registry staff and Family Consultants from the Family Court of Australia. Court Services will coordinate the response to the Family Court. The content of the Magellan report is intended to include historical/current information in respect of the Department's involvement with a family, as well as any risk assessment and case plans (where applicable).

#### Project Magellan – procedures & processes

Court Services will undertake to inform (via email) the relevant CSSC once a matter is designated Magellan and there is a request for a Magellan report. The correspondence will in the first instance be forwarded to the Team Leader (IA), Court Coordinator, and (where relevant) the CSO. The contact details for these relevant officers is obtained from either/or ICMS or INFONET. If the receiving officer is not the appropriate contact it would be appreciated if they could advise Court Services, or alternatively forward the email onto the appropriate officer.

In addition to the advice of a matter being designated Magellan a copy of the relevant Family Court order will be attached. This information will need to be recorded on ICMS by the CSSC. Court Services will then engage the relevant CSSC regarding

the preparation of the Magellan report. Of significance to the preparation of the Magellan report is whether the department is currently involved with the family and its assessment of risk in respect of the parent/s. Upon completion of the report by Court Services, and endorsement by the CSSC, a copy of the report will be forwarded to the Family Court, ICL and CSSC. It should be noted that a copy of the Magellan report will also be provided by the court to the parties to the family law proceedings.

In addition to preparing the report the CSSC and Court Services may be required to liaise with the ICL. Court Services will advise the CSSC of who the appointed ICL is when they have been informed. Again, of significance is whether the department is currently involved with assessing or working with the family. It is appropriate that CSSC and ICL staff liaise with each other in respect of any involvement the department may have had with the family. (For confidentiality reasons it will be necessary for the ICL to confirm their appointment – this can be demonstrated by the providing a *Notice of Address for Service* form – this is a prescribed family law court form).

#### S91B ORDERS MADE UNDER THE FAMILY LAW ACT 1975

Generally speaking the department may only seek to 'intervene' in these matters where the child is the subject of a protective order under the *Child Protection Act 1999* and has a vested interest in the outcome of the family law proceedings. Like Magellan matters it is yet another vehicle by which the department can inform the family law courts of its involvement with a family. This is often done by liaising with the ICL and providing them with the relevant information. That said however there may be circumstances in which it is appropriate for the department to intervene on its own initiative to provide the relevant information.

The department's response to these matters is coordinated centrally at Court Services. Court Services response to these matters has only changed more recently to the extent that a significant part of its communication is now undertaken electronically (and through case discussions) with CSSC staff and ICLs. Historically the process has been more through written correspondence to CSSC staff and ICLs. This update is provided to CSSC staff so that they are aware of such matters when they come through via email. Again, Court Services will liaise with the CSSC regarding an appropriate response.

## Fact Sheet 3

### Family Law Court Subpoenas

#### What is a subpoena?

A subpoena is a legal document issued by a court at the request of a party to a case. A subpoena compels a person to produce documents or give evidence at a hearing or trial.

#### There are 3 types of subpoena:

- a subpoena for production
- a subpoena to give evidence, and
- a subpoena for production and to give evidence.

When served with a subpoena, you must comply with it unless you were not served correctly under the court rules or were not provided with proper conduct money to attend court – see Rule 15.24 of the *Family Law Rules 2004*.

If you incur a substantial loss or expense greater than the set conduct money or witness fee, a court may order that the issuing party reimburse you for these expenses.

Any claims for costs in attending court or producing a document under the subpoena must be met by the party issuing the subpoena and not the court.

If you do not comply with a subpoena, a court may:

- issue a warrant for your arrest; and
- order you to pay any costs caused by your non-compliance.

A court may also find you guilty of contempt of court.

If you want to object to a subpoena, or have it set aside in whole or in part, you must still attend court on the date specified on the subpoena, at which time your objection will be heard.

#### How long does a subpoena remain in force?

A subpoena remains in force until the first of the following events occurs:

- you comply with the subpoena
- the issuing party or a court release you from the obligation to comply with the subpoena, or
- the hearing or trial is concluded.

#### The Law

In the Family Court, the law covering subpoenas is set out under Part 15.3.1 of the *Family Law Rules 2004*.

## Fact Sheet 4

### The role of Court Services in CP / Family Law Interface matters

The Court Services Unit manages the interface between the Department of Child Safety and the Family Court of Australia.

This involves various scenarios which can result from the initiative of the Family Court, the Independent Children's Lawyers (formerly Children's Representative), a parent and/or from a Child Safety Service Centre.

These include:

- The facilitation of requests for information/action from the Family Court to the relevant CSSC
- Providing information to the Family Court when the department is taking action under the *Child Protection Act 1999*
- Processing 91B requests made by the Family Court for the department to intervene in a matter
- Briefing and instructing Crown Law to represent the Director General in the Family Court on matters where the department is served as a party or there is a decision that the department applies to be a party to these proceedings
- Preparing and delivering files subpoenaed for the Family Court
- Providing advice and training to a CSSC as to possible action in the Family Court jurisdiction that may negate the need for continued departmental involvement.

Court Services staff has delegations to appear in the Family Court and represent the interest of the Director General.

- No Action in the Family Court should be taken without prior consultation with the Court Services Unit
- Advice must be sought from the Court Services Unit about the best way to proceed in each individual case
- Please refer to Chapter 15 of the Child Safety Practice Manual – "Working with the Family Court of Australia"

#### The role of Court Coordinators:

The Court Coordinator is responsible for alerting Court Services *as soon as possible* of any Family Court matters that may arise in their Child Safety Service Centre by forwarding the "*Request for information re family law/child protection interface matters*" form to the Unit.

Upon Court Services receiving the "Request for information" form, a Court Services Adviser will contact the Court Coordinator and discuss any further action required by the Child Safety Service Centre.

## Fact Sheet 5

### Definitions commonly used in the Family Law Jurisdiction

<b>Best Interests of the Child</b>	The child's best interests are considered by the court when making a particular parenting order. The child's best interests are determined by taking into account the primary and additional considerations (ss 60CA and 60CC(1) FLA)
<b>Consent Order</b>	An agreement between the parties to a proceeding. A consent order can cover a wide range of issues including: property issues, spousal maintenance issues and parenting matters. When it is approved by the court it becomes a court order
<b>Equal Shared Parental Responsibility (ESPR)</b>	ESPR means both parents can make major long-term decisions about the child, including medical, religious and cultural matters, their education, name and changes to their living arrangements (s 4(1) FLA). Day-to-day decisions regarding what the child eats or wears is not included. The court presumes that both parents have ESPR (s 61DA(1) FLA; note: this presumption does not apply if there has been child abuse or violence s 61DA(2) FLA). If ESPR is presumed, the court must consider whether it is practical and in the child's best interests for the child to spend equal time or substantial and significant time with each parent (s 65DAA FLA).
<b>'Equal Time'</b>	The child spends equal time with the parents, whether that be on a week about or month about basis etc (s 65DAA(1)).
<b>Ex parte Hearing</b>	A hearing where one party is not present and has not been given notice of the application before the court. This hearing is often reserved for urgent cases.
<b>Family Consultant</b>	A psychologist and/or social worker who specialises in child and family issues that may occur after separation and divorce. There are often required to provide the court with family reports.
<b>Family Court of Australia (FCA)</b>	If a matter is predicted to last more than 3 days (i.e. it is complex) it will be listed for hearing in the FCA
<b>Family Dispute Resolution (FDR)</b>	FDR is a process where those affected by separation are helped by a family dispute resolution practitioner to resolve their disputes (s 10F FLA). A court must not hear any application under Part VII of the FLA (children's matters) unless the parties have attended FDR (s 60I(7) FLA; note: FDR is not compulsory in cases where there are reasonable grounds to believe there has been abuse s 60I(9)(b) FLA). Three hours of free FDR will be provided to all new or reopened cases
<b>Family Report</b>	A written assessment of a family by a family consultant to assist the court in making a decision about a case. It may include information regarding the background of the dispute, the current relationship between the parents, and between the parents and the children and, the children's views.
<b>Federal Magistrates Court of Australia (FMC) – FLA</b>	If a matter is predicted to last less than 3 days (i.e. it is not complex) it will be listed for hearing in the FMC.
<b>Independent Children's Lawyer (ICL)</b>	Family Law Act 1975 (Cth) a lawyer appointed by the court to represent the child's interests in a case (similar function to a Separate Representative in the Children's Courts). They can obtain relevant information from teachers, doctors and counsellors, talk with the child and arrange for family or psychological reports (s 68L FLA).
<b>'Lives With'</b>	Where the child is to live (previously known as 'custody' or 'residence').

<b>Parental Responsibility</b>	a parent's responsibility to make decisions about the care, welfare and development of the child (s 61B FLA). It involves making decisions about the child's education, religion, medical treatment, name and living arrangements.
<b>Parenting Plan</b>	A written agreement between the parties setting out parenting arrangements for children. It is neither approved by, nor filed with the court (s 63C FLA).
<b>Parenting Order</b>	A court order which sets out the particular responsibilities of parents and carers, after taking into account the best interests of the child. They include who the child lives with, who they spend time and communicate with, and any other issues relevant to the child's care such as schooling, religious affiliation and medical treatment (s 64B FLA).
<b>Sole Parental Responsibility</b>	if the presumption of ESPR is not applied (s 61DA(1) and (2) FLA), <u>one</u> parent is granted sole parental responsibility of the child to make decisions regarding long-term issues, including education, religion, health, name and changes to a child's living arrangements (s 4(1) FLA)
<b>Spends Time With'</b>	Who the child is to spend time with (previously known as 'access' or 'contact').
<b>'Substantial and Significant Time'</b>	To be 'substantial and significant time' the child must spend time with both parents that include days that do and days that do not fall on weekends and holidays, which allows both parents to be involved with the child's daily routine and significant events (s 65DAA(2) and (3) FLA)



# Level of Department Intervention in Family Law

## Courts (S91B)

Intervene as party through to final determination

Intervene as party for part of proceedings

Crown Law attendance on behalf of DG as FOC

Departmental officer attendance (Friend of the court)

Provision of file information

Low level concerns

Current unsubstantiated CP concerns

History of substantiated CP concerns

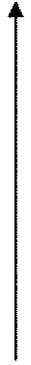
Current substantiated concerns

Voluntary intervention with children

Children's Ct proceedings

Children under a CP order

# Departmental Intervention (under *Child Protection Act 1999*)



## WHO IS FOSTER CARE QUEENSLAND?

### **FCQ is:**

- A non-government, departmentally funded organisation.
- The peak body for all foster carers, relative carers and limited approval carers in QLD.
- Conducted by a Management Committee of volunteers who are all foster carers.
- Responsible for FAST (Foster Care Advocacy and Support Team) delegates.

### **Mission:**

FCQ is committed to informing, supporting, representing and advocating for foster carers and the children and young people for whom they care. As the peak body for foster carers, FCQ is committed to working in partnership with government, non-government and community sectors to enhance policy, practice and service delivery in foster care.

### **Functions of FCQ:**

FCQ is funded by the Department of Child Safety and undertakes the following activities:

- broad policy and practice development
- daily support on practical issues
- individual advocacy and support through the FAST network
- specific projects and research
- provision of training and development of training and workshops
- information dissemination
- celebration of foster care

## **What is FAST?**

FAST is a team of specially trained foster carers who have volunteered to provide support and advice and advocate on behalf of other foster carers.

There is a FAST delegate for each office. In some areas more than one FAST delegate has been selected.

FAST was established by FCQ in 2002 to provide advocacy and support to foster carers as a response to the results of a national survey indicating that foster carers prefer to be supported by their peak body and other foster carers.

The FAST delegate provides a local avenue for foster carers to receive advice, support/or advocacy on individual matters.

FAST delegates also advocate for foster carers on relevant issues relating to groups of foster carers, coordinate feedback on documents and policy issues for FCQ and communicate relevant policy and procedural information from FCQ to foster carers.

## **Who supports the FAST delegates?**

Careful consideration was made to the development and support needs of the FAST delegates.

An experienced coordinator is available to debrief FAST delegates as required, provide advice and assistance and take on more complex cases referred by the FAST delegate. Regular telelink arrangements and email support and contact among delegates is also available.

Ten modules of in-depth information and skills training has been written to consolidate and extend on the current skills and knowledge of all FAST delegates. Additional training is held annually to ensure that the skills and knowledge of delegates remains current.

## **How to find out more**

- phone FCQ on 07 3857 375
- email FCQ at [fcq@bigpond.com.au](mailto:fcq@bigpond.com.au)
- [www.fcq.org.au](http://www.fcq.org.au)
- [www.fastfcq.org.au](http://www.fastfcq.org.au)

**GIVING EVIDENCE IN COURT**  
**CROSS-EXAMINATION BY THE LAWYER REPRESENTING THE FAMILY**

The Magistrate will not allow the cross-examination to become insulting or abusive. The opposing counsel is there to attempt to test your evidence by showing up any weaknesses or illogical or inconsistent statements. If you get into an argument or become angry at the counsel then you may limit the credibility of your evidence. To prevent this from occurring you should:

- Drill yourself to always pause before answering a question. Take this time to check your emotional state and think through your reply.
- Do something to remind yourself to do this (eg. hold your hands a particular way).

The following table outlines a number of common tactics used by counsel during cross-examination, and provides suggested responses on the part of the witness.

<b>Counsel's tactics</b>	<b>Example</b>	<b>Purpose</b>	<b>Witness' response</b>
Reversing the words of the witness	Witness: "We met on Wednesday & spoke by phone on Friday". Counsel: "You say you spoke by phone on the Wednesday and met on Friday"	To confuse the witness & demonstrate a lack of confidence in the witness.	Listen closely whenever counsel repeats back something you have said. If counsel makes an error then correct it.
Repetitive questions	The same question asked several times but slightly rephrased.	To obtain inconsistent or conflicting answers from the witness.	Listen carefully and answer "I have just answered that question".
Rapid questioning	Asking several questions one after the other with no time for the witness to answer.	To confuse the witness & force an inconsistent answer.	Pause & take time to answer. Ask to have any or all of the questions repeated. Ask counsel which question s/he wishes you to answer first.
Condescending manner or questions	Benevolent in his/her approach or questions to the point of ridicule.	To give the impression the witness is inept, lacks confidence in their opinion, or may not be reliable.	Respond with a firm, concise answer.
Friendly manner & questioning	Being very courteous, polite – questions, appear to be taking the witness into his/her confidence.	To lull the witness into a false sense of security where the witness may give answers favourable to his/her (counsel's) client.	Remember that the counsel's role is to discredit or diminish the effect of your testimony. Think through your reply even to questions that are apparently easy to answer.
Badgering	Counsel staring you right in the face and shouting "That is so, isn't it!"	To make the witness angry so that s/he loses his/her sense of calm & logic.	Make a conscious effort to remain calm, Speak deliberately and concisely, focusing on the facts.
Demanding a "yes" or "no" answer	Counsel: "In your opinion is this a safe medical procedure, yes or no?"	To prevent pertinent and mitigating details to be considered by the court.	Say that you believe a "yes" or "no" answer would mislead the court & request permission from the magistrate to answer the question in full.

Suggestive or leading questions.	Counsel: "In your opinion this would be considered normal behaviour?"	To suggest an answer to the question to confuse or lead the witness.	Concentrate on the facts. Answer the question from the facts. Disregard suggestions by counsel. Stick to the facts.
Mispronouncing witness name or incorrect position or title.	Counsel addresses the witness using a junior title.	To provoke or unnerve the witness. Minimise the credibility of the witness' evidence.	Wait for an appropriate opportunity & correct the mistake before answering any further questions.
Staring at the witness	After the witness has answered a question counsel stares as though was more to be said.	To create a long pause to provoke the witness to say more than is necessary.	Wait for the next question. Only provide information required to adequately answer the question.

## Witness Expenses

### Conduct Monies:-

- All witnesses are entitled to conduct money, payable upon service of a subpoena in the amount of \$67.00. CSSCs are responsible for drawing manual cheques to cover the payment of these monies however, they are then to transfer the cost to Court Services Cost Centre.
- Conduct money is also to be paid for subpoenas requesting production of documents at a rate of \$63.00. CSSCs are responsible for drawing manual cheques to cover the payment of these monies however, they are then to transfer the cost to Court Services Cost Centre.
- At this time, conduct money is to be paid by CSSCs **upon request** only.

### Government Employees:-

- Government employees are not entitled to witness expenses, other than travel if necessary (see rates below). Technically, they are entitled to expenses but HR policy states they must give that money to the government department they work for. Therefore, we simply do not pay witness expenses, other than travel if required, for Government employees.
- Government employees include individuals employed by QPS, Education Queensland, Queensland Health, etc.

### Professional Witnesses:

All expenses are determined in line with the Legal Aid Scale of Fees. Expenses and processes are relevant for both CP and CST proceedings.

- **Social Workers** are entitled to \$90/hour for time spent giving evidence as a witness at a Court or Tribunal. They are also entitled to claim expenses for waiting time and travel if necessary.
- **Psychiatrists** are entitled to \$188/hour for the first hour only for time spent giving evidence as a witness at a Court or Tribunal. They are also entitled to claim expenses for waiting time and travel if necessary. Fees payable are limited to \$1,222 for a full day attendance.
- **Psychologists** are entitled to \$90/hour for time spent giving evidence as a witness at a Court or Tribunal. They are also entitled to claim expenses for waiting time and travel if necessary.
- **Occupational Therapists** are entitled to \$65/hour for time spent giving evidence as a witness at a Court or Tribunal. They are also entitled to claim expenses for waiting time and travel if necessary.
- **Physiotherapists** are entitled to \$65/hour for time spent giving evidence as a witness at a Court or Tribunal. They are also entitled to claim expenses for waiting time and travel if necessary.

- **General Medical Practitioners** are entitled to \$162/hour or part thereof; \$90.00 per half hour thereafter for time spent giving evidence as a witness at a Court or Tribunal. They are also entitled to claim expenses for waiting time and travel if necessary. Fees payable for giving evidence from a distance are \$527.00 per half day and \$1053.00 per day plus reasonable expenses.

Attendance at Court – time is calculated from leaving rooms or hospital and includes time specifically set aside for giving evidence.

Cancellation or deferment of hearing - If a firm date is settled for appearance and giving evidence and this is cancelled on the day set down, the fee shall be \$117.00 per hour for time set aside. For cancellation up to 48 hours prior to the appointed day, the fee shall be on the pro-rata basis to lost practice time.

- **Medical specialists** [which include allergists, anaesthetists, cardiologists, endocrinologists, gastroenterologists, geriatricians, gynaecologists, haematologists, immunologists, nephrologists, neurologists, obstetricians, oncologists, otolaryngologists, pathologists, physicians, psychiatrists, radiologists, rheumatologists, surgeons (including colorectal, general, neuro, oculoplastic, ophthalmic, oral and maxillofacial, orthopaedic, paediatric, plastic, thoracic, vascular) and urologists] are entitled to \$188.00/hour or part thereof; \$105.00/half hour thereafter for time spent giving evidence as a witness at a Court or Tribunal. They are also entitled to claim expenses for waiting time and travel if necessary. Fees payable for giving evidence from a distance are \$611 for a half day attendance or \$1222.00 per day plus reasonable expenses.

Attendance at Court – time is calculated from leaving rooms or hospital and includes time specifically set aside for giving evidence.

Cancellation or deferment of hearing - If a firm date is settled for appearance and giving evidence and this is cancelled on the day set down, the fee shall be \$136.00 per hour for time set aside. For cancellation up to 48 hours prior to the appointed day, the fee shall be on the pro-rata basis to lost practice time.

- **Travel Expenses** are paid at \$0.60/km if it is more than a 35km round trip.
- **Travel Time** is paid at \$60/hour if it is more than a 35km round trip.
- **Waiting Time** is paid at \$60/hour if time spent waiting is in **excess of 2 hours**. This does not include time spent waiting for proceedings to begin or lunch break and is not claimable if attending to other business.
- **Accommodation** is paid at the standard accommodation rate of \$186 per night for a capital city and \$136.00 per night for a non capital city.

The procedure for claiming witness expenses is Court Coordinators from the relevant CSSCs are to discuss with Court Services the proposed witness list (as arranged with Crown Law) along with qualifications/role of each witness. Expenses will be determined in accordance with the Legal Aid Scale of Fees. Court Coordinators are to be made aware of these and are to ensure that all witnesses are advised of this at the first available opportunity.

Court Coordinators are then to contact each witness and advise them of the expenses they are entitled to (in accordance with the LAQ schedule) and request that they complete an Invoice which is to be forwarded along with a copy of their subpoena to:-

The Manager  
Court Services Unit  
Department of Communities  
GPO Box 806  
Brisbane Qld 4001

Court Coordinators will need to ensure that witnesses include the name of the Hearing, the date which they attended and each individual claim for expenses (i.e. time spent giving evidence – e.g. 1.5hrs at \$90/hour = \$135, waiting time – e.g. 2hrs at \$60/hour = \$120, travel time – e.g. 1hr at \$60/hour = \$60, etc) on the invoice.

Any negotiations to take place around witness expenses will need to occur with the CSSC, the witness and Court Services (if applicable).

At the conclusion of the hearing, the Court Coordinator should email the Court Services Adviser with details of who gave evidence, how long they waited and how long they were on the stand so that an approximate estimate of expenses can be determined and the Manager of Court Services advised accordingly (prior to this, an email should be sent to the Manager of Court Services with a list of witnesses proposed for the hearing and the expenses they are entitled).

Should a matter not proceed or a witness no longer be required, the Court Coordinator must provide notice of this to the witness at the first available opportunity.

Non Professional Witnesses:-

- Non professional witnesses such as carers are entitled to a flat rate of \$60.00 for attendance at a Court or Tribunal and time spent giving evidence.
- They are also entitled to claim travel expenses (if it is more than a 35km round trip) and travel time (if it is more than a 35km round trip)/waiting time (if time spent waiting is in excess of 2 hours).
- In order to claim these expenses, the non professional needs to be provided with a **FIN 10** (COST CENTRE - 71140, ACCOUNT CODE - 50509 and TAX CODE P2 (GST FREE) & a **Statement by Supplier Form** by the CSSC. They need to complete these forms and forward them to:-

The Manager  
Court Services Unit  
Department of Child Safety  
GPO Box 806  
Brisbane Qld 4001

along with a copy of their subpoena.

**Expenditure Voucher**  
FIN - 10

 Forward completed form to:  
Expenditure and Carer Services  
CorporateLink  
(Level 15 Forestry House, 160 Mary Street)  
GPO Box 1435  
BRISBANE QLD 4001

**The Privacy Statement**

 The collection of personal information on this form and any attachments is authorised under Part 5 of the *Public Service Act 1996* and or, *Financial Administration and Audit Act 1977*. Your personal information will not be disclosed to other parties without your consent unless required to do so by law. Use of personal information on this form is restricted to those involved in the processing of claims and vouchers.

**Agency (please tick)**
 COM    DATSIP    DChS    DSQ    SIS    SSQ    Controlled    Administered

**CLAIMANT'S DETAILS**

Claimant's Name			
Postal Address		Postcode	
Telephone		Facsimile	

**PAYMENT DETAILS**

Vendor Number		Invoice Number		Payment Terms	
Date of Invoice		GST-Inclusive Amount	\$ 60.00		
Details of Claim	WITNESS EXPENSES for Hearing				

Certificate of Claimant: I certify that the sum of \$ \_\_\_\_\_ set forth above is due and payable to me for goods supplied, services rendered, or works constructed as indicated:

Signature: \_\_\_\_\_ Name: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**PARTICULARS OF EXPENDITURE**

GST Exclusive (Net)	GST	GST Inclusive (Gross)	GST Tax Code	Account Code	Cost Centre	Business Area	Statistical Order or WBS Element (Project)	Purpose of Expenditure ( as appears in transaction report)
		\$ 60.00	P2	50509	71140			
\$	\$	\$ 60.00	Total Expenditure ("GST-Exclusive" = "GST-Inclusive" - "GST")					

Remittance Advice Text

**CERTIFICATION DETAILS**

I certify that funds are available; authorise the incurring of liability for this expenditure; and approve this transaction, in compliance with Financial Delegations. Attached are all tax invoices supporting the above expenditure.  _____ Financial Delegate Date: ____ / ____ / ____ PIN: _____ Name: _____	I certify that the claim complies with the provisions of the Financial Management Standard and the Financial Management Practice Manual  _____ Accounting Officer Date: ____ / ____ / ____ Name: _____	All goods/services have been received and appear satisfactory.  _____ Signature Date: ____ / ____ / ____ Name: _____	<b>CorporateLink Use Only</b> Checked by: _____ Finance Officer Date: ____ / ____ / ____ Document Number: _____
			Manual Cheque Details Amount: \$ _____ Cheque No: _____ Date: ____ / ____ / ____ _____ Authorised Officer
Acquittance for Cash Payment/Open Cheque Only Received on the _____ day of _____, 20____. The sum of _____ dollars and _____ cents. Signature: _____ Witness: _____			

## **PREPARING WITNESSES**

Lawyers are used to being on the stage. They are confident when speaking in front of others and tend to be gifted at influencing the opinions of others.

It is important to work with witness so that they are ready for their statements and cross-examination. Witnesses may not be used to a court environment and they may not be comfortable in the spotlight.

Below are a few simple steps that you can use to best prepare witnesses before they take the stand.

### **Set the stage**

One thing that lawyers do for their witnesses is to set the stage. They let them know what to expect when they enter the courtroom. They allow them to sit in the witness box during off hours, so as to get a feel for how the room looks from that seat.

Lawyers paint the picture of what it will be like to serve as a witness. By helping a witness know what the experience will be like, a lawyer will help lessen nerves and fears that the witness naturally feels.

### **Practice**

Lawyers spend a lot of time practicing with their witnesses. They ask them questions that they plan to bring up during the court session. They also ask questions that the other side may have in cross-fire.

Your witnesses need to present as prepared and to be able to share information in an effective manner.

### **Other preparations**

Finally, work with the witnesses to manage logistics and other preparations for court. For example, make sure the witness is ready on the date or dates that s/he will be called to court. Make sure the witness understands what is or is not admissible in court.

Also work with the witness to organise supporting documentation and other things necessary for their role as a witness.

# Statement by a supplier



Australian Taxation Office

## Reason for not quoting an Australian Business Number (ABN) to an enterprise

Name of supplier	<input type="text"/>
	<input type="text"/>
Address of supplier	<input type="text"/>
	<input type="text"/>
	<input type="text"/>

Under the Pay As You Go legislation and guidelines produced by the Australian Taxation Office I provide you with a written statement that, for the supply I am making and further supplies of this type that I make to you:

Tick the appropriate box

The supply is made to you in my capacity as an individual, and the supply is made in the course of an activity that is a **private recreational pursuit or hobby**

The supply is made to you in my capacity as an individual, and the supply is wholly of a **private or domestic nature for me**

I (or the supplier that I represent) am/is a **non-resident who is not carrying on an enterprise in Australia**

The whole of the payment that I (or the supplier that I represent) will receive for the supply is **exempt from income tax**

I (or the partnership that I represent) have **no reasonable expectation of profit or gain** from the activity undertaken and consider that I (or the partnership that I represent) do not meet the definition of enterprise for tax purposes

Therefore, I am not quoting you an ABN. You should not withhold an amount from the payment you make to me for the supply. I agree to advise you in writing if circumstances change to the extent that this statement becomes invalid.

Name of authorised person (if not the supplier)	<input type="text"/>
Signature of supplier or authorised person	<input type="text"/>
Date	<input type="text"/> / <input type="text"/> / <input type="text"/>
Daytime contact phone number	<input type="text"/>

It is an offence to make a false or misleading statement

**The person/entity to whom this statement is made should retain the statement for 5 years**

## Child Protection History for the Jones/Sutton Family obtained from Departmental Records

Date	Child	Type of Harm	Child Protection Concerns Recorded	Action Taken	Outcome
15/03/04	Gary Sutton (4yrs)	Neglect	<ul style="list-style-type: none"> <li>• Notifier reported observing the child crossing the road and playing in the street for 'hours' unsupervised.</li> <li>• Child seen wandering the streets in his underwear on one occasion and in his pajamas on a second occasion.</li> <li>• Notifier stated that they believed the mother was home during these reported occasions due to the family car being in the drive way and the front door being open.</li> </ul>	Information recorded as a notification – investigation undertaken.	Outcome recorded as "Substantiated at Risk" <ul style="list-style-type: none"> <li>• Mother appeared to minimise child protection concerns.</li> <li>• Mother confirmed at times child plays in in the front yard but denied that he had been wandering on the street and would not participate in further discussions in relation to the alleged incidents.</li> <li>• No further action recorded.</li> </ul>
11/11/07	Peter Jones (1 year)	Neglect	<ul style="list-style-type: none"> <li>• Notifier expressed concerns about the father's ability to care for his son. However, was not able to provide information in relation to any specific concerns.</li> </ul>	Due to limited information provided recorded as an "intake".	No further action taken
03/03/08	Gary Sutton (8 years)	Physical	<ul style="list-style-type: none"> <li>• Mother's partner, Barry Jones, is alleged to have physically assaulted the child, Gary Sutton, with a leather strap.</li> <li>• Child is alleged to have been hit on the leg and hands.</li> </ul>	Information recorded as a notification.	No assessment possible due to client reasons – clients moved prior to the initial assessment being undertaken.

**Form 22**  
*Childrens Court Act 1992*  
*Child Protection Act 1999*

**AFFIDAVIT OF SERVICE**

**CHILD: PETER JONES**

Date of Birth: 16/12/06

Sex: Male

In the matter of application for a court assessment order made by Amanda Hall, an authorised officer, in the Childrens Court at Brisbane on the 16<sup>th</sup> January, 2009 in relation to the above-named child –

I: Amanda Hall  
of: 30-40 Quay Street, Brisbane  
occupation: Social Worker  
do swear that:

1. On 15<sup>th</sup> January, 2009 I served Barry Jones with a sealed copy of the following document in the above-mentioned proceedings:

Form 5 – Application for a Court Assessment Order, sworn by Amanda Hall, on the 15<sup>th</sup> January, 2009.

Form 17 – Aboriginal and Torres Strait Islander Recognised Agency.

2. The document was served by -  
giving it to Barry Jones personally
3. I established as follows that the person to whom the document was delivered was the person on whom service of the document/s was to be effected as Barry Jones identified himself as the father of the above mentioned child. I have met Barry Jones on a number of occasions previously and known him as the father of Peter Jones.

**Deponent:**

**SWORN** before:

Justice of the Peace / Commissioner  
for Declarations / Lawyer

Place: Brisbane

Date: 15<sup>th</sup> January, 2009

**Form 8**  
*Childrens Court Act 1992*  
*Child Protection Act 1999*  
(Sections 49, 50)

**COURT ASSESSMENT ORDER**  
EXTENSION / VARIATION / REVOCATION OF ORDER

**CHILD:**

Date of Birth:

Sex

An application to \*extend \*and/ vary / revoke the court assessment order made in the Childrens Court at (place) on (date) in relation to the above-named child was made by (name), an authorised officer, on (date).

\*Having considered the grounds of the application I am satisfied it is in the child's best interests to \*extend \*and vary the court assessment order.

\*I ORDER that the court assessment order in relation to the child be extended until (date).

\*I ORDER a variation of the court assessment order in relation to the child –

- \* authorising an authorised officer or police officer to have contact with the child.
- \* authorising a medical examination or treatment of the child.
- \* authorising an authorised officer or police officer to enter and search any place the officer reasonably believes the child to be, to find him/her.
- \* granting temporary custody of the child to the chief executive and authorising an authorised officer or police officer to \*take/take and keep the child in the chief executive's custody while the order is in force.
- \* directing (name of parent) not to have contact (direct or indirect) with the child.
- \* directing (name of parent) not to have contact (direct or indirect) with the child other than when #(person's details) is present.
- \* making the following provisions as to the child's contact with his/her family during the period of time he/she is in the chief executive's custody.

\*Having considered the grounds of the application I am satisfied it is in the child's best interests to revoke the court assessment order.

\*I ORDER that the court assessment order be revoked.

**Magistrate**

Place:

Date:

**FILE NO.:**

**Form 9**  
*Childrens Court Act 1992*  
*Child Protection Act 1999*  
(Sections 66, 67)

**ADJOURNMENT OF PROCEEDING FOR A COURT ASSESSMENT ORDER**

**CHILD:**

Date of Birth:

Sex:

Male:

An application for a court assessment order was made by NAME, an authorised officer, in the Childrens Court at PLACE on DATE in relation to the above-named child.

I ORDER that the proceeding is adjourned to DATE and TIME for further mention of the application.

I ALSO ORDER an interim order in relation to the child –

- \* granting temporary custody of the child to the chief executive.
- \* directing NAME and NAME not to have contact, direct or indirect, with the child other than when a departmentally approved person is present.

The interim order has effect for the period of the adjournment.

**Magistrate**

Place:

Date:

**Form 7**  
*Childrens Court Act 1992*  
*Child Protection Act 1999*  
(Sections 44, 45, 47)

**COURT ASSESSMENT ORDER**

**CHILD: PETER JONES**  
Date of Birth: 16 December 2006  
Sex: Male

An application for a Court Assessment Order was made by Amanda Hall, an authorised officer, in the Childrens Court at Brisbane on 15 January 2009 in relation to the above-named child.

Having considered the grounds of the application I am satisfied that an investigation is necessary to assess whether the child is a child in need of protection, and that such investigation cannot be properly carried out unless the order is made.

I MAKE a court assessment order in relation to the child –

- \* authorising a medical examination or treatment of the child, Peter Jones.
- \* granting temporary custody of the child to the chief executive and authorising an authorised officer or police officer to keep the child in the chief executive's custody while the order is in force.
- \* directing Barry Jones not to have contact Peter Jones with the child other than when a departmental officer is present.

This court assessment order will continue in force until 15<sup>th</sup> February 2009.

**Magistrate**  
Place: Brisbane  
Date: 15<sup>th</sup> January 2009

## Case Scenario: The Jones Family

### Initial Information:

On the 9<sup>th</sup> January, 2009 a notification was recorded at the Caboolture Child Safety Service Centre. A child, Peter Jones (Date of Birth – 16/12/06) presented at the emergency department of the Redcliffe Hospital with head injuries and significant bruising to his body. The injuries were of such a nature that the child was immediately transferred to the Mater Children's Hospital, where he was admitted to the intensive care unit for treatment.

The child's father and partner reported to hospital staff that they were in the living room watching the television when they heard a crash from the kitchen. When they went to investigate what the noise was they found the child lying on the ground amongst a number of cereal boxes and other food items. The child appeared to be having a seizure. The father and his partner stated that it appeared that the child had fallen whilst trying to climb up on his high chair to get some food from the pantry. The father advised that he called an ambulance immediately given that the child was "fitting".

The father and his partner are being cooperative and have indicated that they are willing to work with the Department. They appear to be generally concerned for the child's welfare and have given consent for the child to undergo all relevant medical assessments and receive all necessary treatment.

Initial medical observations by Doctors at the Mater Hospital suggest that the injuries may be non-accidental and appear to have been consistent with the child receiving a severe blow to the head.

The details of the family are as follows:

<b>Father:</b>	Barry Jones Date of Birth: 26/12/71 Address: 24 Lynfield Drive, Caboolture
<b>Mother:</b>	Mary Bell Date of Birth: 14/03/71 Address: unknown
<b>Father's Current Partner:</b>	Denise Sutton Date of Birth: 18/04/1970 Address: 24 Lynfield Drive, Caboolture
<b>Subject child:</b>	Peter Jones Date of Birth: 16/12/2006 Address: 24 Lynfield Drive, Caboolture
<b>Denise Sutton's child:</b>	Gary Sutton Date of Birth: 23/11/2000 Address: 24 Lynfield Drive, Caboolture

### Initial Assessment:

In the week following the admission of Peter Jones to hospital the following assessments were undertaken:

- Checks of the departmental Child Protection System were undertaken and revealed that the Department had previously received two notifications in relation to the child, Gary Sutton. For one of the notifications the child's mother, Denise Sutton, was the alleged perpetrator whilst for the other, the mother's partner, Barry Jones was the alleged perpetrator. There was also one previous intake in relation to the child, Peter Jones. A summary of the details of the child protection history for the Jones/ Sutton family is attached.
- On the 11<sup>th</sup> January, 2009 medical staff from the Mater Hospital advised the Department that the child's injuries on admission included:
  - A subdural haemorrhage (bleeding between the skull and the brain).
  - Retinal haemorrhaging in both eyes
  - Bruising to the left side of the face, this was estimated to be approximately two days old.
  - Bruising to the left knee, this was also estimated to be approximately two days old.

Medical staff advised that on the basis of the CT scan and professional opinion it was likely that the child had suffered a severe blow to the head approximately 24 to 48 hours prior to his presentation to the Redcliffe Hospital. The retinal haemorrhaging was thought to be consistent with the child being severely shaken. The injuries are considered by the medical profession to be non-accidental.

Medical staff was unable to indicate what the long-term implications may be for the child but were suggesting that it was likely that the child may suffer some motor dysfunction and long term learning difficulties. They also indicated that if medical assistance had not been sought it is likely that the child would have died.

- Separate interviews were conducted with Barry Jones and Denise Sutton on the 11<sup>th</sup> and 12<sup>th</sup> of January, 2009, respectively. These interviews were conducted in conjunction with the police. The father and his partner maintained that the child appeared to have fallen whilst attempting to climb up on his high chair. The explanation offered by the father and his partner are not considered to be consistent with the presenting injuries.

When questioned in relation to the timing of the injuries Barry Jones and Denise Sutton maintained that an ambulance was called immediately following the incident. This also appears to be inconsistent with medical staff advising that the injuries appears to have occurred approximately 24 to 48 hours prior to the child's admission to the Redcliffe Hospital.

During the interview on the 12<sup>th</sup> January, 2009 Barry Jones became verbally abusive to departmental staff and the police. Given his behaviour the interview was terminated. Prior to leaving the interview Barry Jones indicated that he was not willing to participate in any further interviews regarding the matter with either the Department or the police.

- On the 12<sup>th</sup> January, 2009 staff from the Caboolture Child Safety Centre participated in Mater SCAN. Based on the inconsistencies between the

presenting injuries and the explanations offered by Barry Jones and Denise Sutton the SCAN team were of the opinion that the child was "at risk". Given that the father was no longer willing to cooperate with the Department's inquiries SCAN recommended that the Department apply for a court assessment order to gain custody of the child, whilst further assessments were undertaken. The SCAN team also recommended that further investigations be undertaken to ensure the safety of the child, Gary Sutton. During the SCAN discussions medical staff indicated that Peter would be likely to remain in intensive care unit for another 3-4 days before being moved to a general ward for further follow-up treatment.

- In relation to the child's mother, Mary Bell, the father advised that she had experienced difficulties when giving birth to Peter. These complications resulted in the mother being left intellectually impaired and requiring 24-hour care. Barry Jones advised that he had not had contact with Mary Bell since the birth of their son. He advised that Mary Bell's parents, Gordon and Sandra Bell, had come to Brisbane and assumed responsibility for their daughter after she became disabled.

Barry Jones stated that he had never had a good relationship with Mary's parents and this deteriorated further following Peter's birth. He indicated that he believed that they blamed him for Mary's condition. Barry informed the Department that at the time of Peter's birth, Gordon and Sandra Bell were residing in New South Wales, but he was not able to provide a current address for them given that he had not had contact with them for the past two years.

- Barry Jones further advised that Mary was of Aboriginal decent.

## Court Assessment Orders

### **Part 3      Sections 37 – 51 of the *Child Protection Act 1999***

#### **Purpose:**

The purpose of a Court Assessment Order (CAO) is to facilitate the assessment of a child's possible need for protection.

Assessment orders are used during the phase of the departmental intervention when we are seeking to answer the question "is this child a child in need of protection?"

The main difference between TAOs and CAOs is the length of the order.

Because a CAO can be granted for a longer period of time (up to 4 weeks), the process of the application is different so as to allow parents, and children/young people, where applicable, to have their say about the making of the order.

#### **Use of CAOs:**

CAOs should be applied for when –

- The assessment action required is likely to take more than a few days to complete; and
- The child/young person is not at immediate risk of significant harm at home or elsewhere (i.e – it is possible to withdraw from the premises to make arrangements and consult with others).

CAOs should also be applied for –

- Before a TAO has expired if further assessment action is required (so as to ensure that the child's interim protection is covered by s99 of the Act).

CAOs can also be considered where a young person of 12 years or over refuses to agree to initial assessment action.

It is important not to confuse the purpose of a CAO with the purpose of a Child Protection Order. The assessment that is to be completed is only the initial assessment – that which allows a decision about whether a child is in need of protection to be made. This is the same decision for all initial assessments. For example: whether the concerns are substantiated and if so whether ongoing intervention is required and at what level.

The decision about:

- Whether a child is in need of protection; and if so
  - Whether the protection of an order is needed at this time;
- can normally be made within 4 weeks, so extensions of CAOs should rarely be necessary for assessment purposes.

Decisions about the type of intervention (ie what type of Child Protection Order) and the length of intervention needed can, if necessary, be made after the application for a child protection order.

It is not appropriate to make a Court Assessment Order application or extension for the simple purpose of ensuring time to gather evidence to support an application for a Child Protection Order once a decision has already been made. Instead, apply for the Child Protection Order and seek an adjournment of the proceedings to assemble the evidence.

### **Features of a CAO:**

#### **Duration**

Maximum of 4 weeks initially.

That is, 28 days – therefore, if order is made on a Monday it expires 4 weeks later on the Monday night at midnight.

#### **Provisions of a CAO**

Provisions that can be sought under CAOs are contained in s45 of the Act. The provisions for CAOs are as follows:

- Authorising an authorised officer or police officer to have contact with the child;
- Take the child into the chief executive's custody and keep the child in the chief executive's custody while the investigation is carried out;
- Authorising a medical examination or treatment;
- Making provisions about the child's contact with the child's family during the chief executive's custody of the child;
- Directing that the parents not have contact or only supervised contact with the child;
- Authorising an authorised officer or police officer to enter and search a place where a child is reasonably believed to be; and
- Authorising an authorised officer or police officer to remain in this place for as long as the officer reasonably considers necessary.

#### **Application Process**

Section 39 of Act sets out the requirements for making an application for a CAO.

The application must:

- be sworn;
- state the grounds on which the application is made;
- state the nature of the order sought;
- comply with applicable rules of the court; and
- be filed in the court.

Note: an affidavit is not necessary as the application is sworn and contains full details of why the order is required. However, in some situations affidavits may be required to be prepared to support the application. These affidavits may come from persons' other than the applicant. For example: a doctor.

### **Making of a CAO**

In order to make a CAO the Magistrate must be satisfied as per s38 of the Act that the:

- Consent of a parent is not able to be gained or is not practicable; and
- More than 3 days is needed to complete the assessments.

Section 44 of the Act sets out what the Magistrate must be satisfied of to make a CAO. These include:

- An investigation is necessary to assess whether the child is in need of protection; and
- The investigation cannot be properly carried out unless the order is made.

### **Extension or Variation**

Section 49 of the Act sets out the conditions upon which a CAO is to be extended.

These include:-

- An authorised officer may apply to the Childrens Court for an order to extend the term of a CAO.
- In doing so, the original CAO must not have expired.
- An extension must be considered to be in the child's best interests.
- An extension cannot be granted more than once and cannot be made for a period any longer than 4 weeks.

CAOs can be varied or revoked – this is outlined in s50 of the Act.

***NB: A Court Assessment Order can only be extended once. The application for an extension MUST be heard prior to the initial Court Assessment Order expiring.***

### **Provisions for indigenous children**

If the child is indigenous a Form 17 – Aboriginal or Torres Strait Islander Recognised Agency should be filed with the application for a CAO.

This has the dual purpose of:

- Advising the parents of an indigenous child/young person that a representative of a recognised agency is involved and may be present in Court.
- Advising the Court which recognised agency will provide advice to the Court required under s6(3) of the Act.

Consultation should occur with the recognised agency prior to the application being made. If this is not possible then consultation should be made as soon as possible after the order is made.

### **Other Provisions**

The application for a CAO must be “personally” served on the parents by the applicant. If it is not practical to serve a copy on the parents personally, a copy of the application may be served on the parent by leaving it at or sending it by post to the parents last known residential address. This is outlined in s41 of the Act.

Once a CAO has been served a Form 22 – Affidavit of Service must be completed and lodged with the Court.

The Chief Executive's obligations after the making of a CAO are as follows:

- Providing a copy of the order to the parents / parties;
- Providing the parents/parties with a written notice explaining the terms and effect of the order.
- Providing the parents/parties with written notice stating that a party may appeal against the decision with 28 days and how the appeal is made.

### **Effect of CAO on existing Child Protection Orders**

If a CAO is made for a child for whom a child protection order is already in force, the CAO prevails to the extent of any inconsistency between the orders. This is outlined in s49 of the Act.

### **Grounds for Applications for CAO's**

Applications for CAOs (and for extensions / variations / revocations / etc of these orders) must include the grounds of the application.

The grounds should include a summary of the main reasons for the order. These reasons should be supported by key facts.

The grounds should address the key issues that the Magistrate needs to be satisfied of to make the order.

Specify why an assessment is required and include the reasons why the specific provisions sought are needed. Most assessment occurs without orders so you will need to explain why, in this case, an order is required and why the provisions you are seeking are required (e.g: why the child needs to be in custody while the assessment is carried out).

The following questions provide prompts to guide the type of information which Child Safety Officers should include in the grounds of each application.

### **Questions to assist in the Application for CAO:**

- Why is the assessment necessary in relation to this child now?

- Why is a CAO needed to carry out the assessment?
- What assessments are proposed to be carried out over the term of the order?
- Why are each of the particular authorities/directives that you are seeking needed?
- Why is the timeframe sought required – for example, why is a CAO of a shorter duration not appropriate?
- What steps have been taken to obtain the consent of the parents for the actions which you are seeking the order to authorise, or why is it not practicable (or appropriate) to obtain consent?

#### **Application to extend a CAO**

- Why is an extension of the order necessary?
- What assessments have already been completed and what further ones need to be?
- How is the extension in the child's best interest?

#### **Application to vary CAO**

- Why does the existing order need to be varied?

#### **Application to extend and vary the CAO**

- Why is an extension of the order necessary?
- How is the extension in the child's best interest?
- What assessments have already been completed and what further ones need to be?
- Why does the existing order need to be varied?

#### **Application to revoke an CAO**

- Why the order is no longer needed?

## How to apply for a Court Assessment Order

- 1. Complete Form 5 “Application for CAO” on ICMS.**
- 2. If the application relates to an indigenous child – complete Form 17 “Aboriginal and Torres Strait Islander Recognised Agency”.**
- 3. Contact court to arrange filing of the application and to establish a court date for the application.**  
Record court date and time on “Notice to Parents” section of Form 5.  
Advise parents of court details and confirm a time to serve copy of application.
- 4. Arrange for application to be sworn before a JP or Commissioner of Declarations.** At least 3 copies of the application are needed – court’s copy, parents’ copy and file copy.
- 5. File the application in the court** by taking copies of Form 5 (and Form 17 if relevant) to court registrar to be stamped and signed. File at least 1 full business day before the proposed court date.
- 6. Personally serve each of the parents with a copy of Form 5 (and Form 17 if relevant).** Explain the application and provide brochure on CAOs. Tell the child/young person about the application and if appropriate provide a copy. If unable to personally serve the application, a copy may be posted by certified mail or left at the last known residential address. If the parents are represented by a solicitor, the application may be served upon the solicitor.
- 7. Complete the Form 22 “Affidavit of Service” and file in the court.**  
This can be done just prior to the court date. 2 copies are needed – court’s copy and file copy.
- 8. Attend court to apply for order.** The **applicant MUST** be in court whilst the Court Coordinator is making submissions in relation to the CAO application.
- 9. Obtain the order from the court as soon as practicable. Provide a copy to the parents with a letter explaining the order and the appeal rights.** An automated letter is available on ICMS for this purpose.  
  
**Tell the child/young person about the order** and, if appropriate, provide a copy of the order and written information explaining the order.
- 10. Record details of the court matter on ICMS.**

It is assumed that a process in which parties can, by question and answer, develop their own case and challenge that of their adversaries maximises the presentation of the facts.

Cross-examination is seen as an accountability measure for the witness.

Solicitors/Barristers may distort the professional's findings to support their client or theory of the case as well as directly challenge the professional's techniques, assumptions, competence, assessment process, qualifications, validity of the data used, basis (organisational, confirmatory), use of suggestibility or coaching, professional's history and predisposition.

Often professional's are treated by Solicitors/Barristers in a manner that they are not use to within a professional arena. Both the tone of voice and the way questions are asked may be quite offensive.

### **Strategy:**

It is important to anticipate that you are likely to be challenged in a range of areas and have a considered response prepared.

Maintain an up-to-date resume or curriculum vitae that includes all continuing education. Have relevant statistics in mind or recent publications that you have referred to as a means to support your assessment and opinions.

Be cautious not to provide one-sided testimony. Consider the weakness of your assessment and be prepared to respond. (eg: I did not have an opportunity to speak with the father therefore the results are inconclusive, none-the-less the child continues to present with anxiety in a range of environments ...)

## **2. Putting your point of view across:**

Testifying to represent your view accurately is a difficult process.

### **Strategies:**

Be prepared! Be very familiar with reports, notes ect. Have facts easily accessible or memorised as shuffling through records to ascertain case facts may interrupt the pace of the testimony and make the witness appear unprepared, indecisive or lacking in knowledge.

NB: However, this can be used as a strategy for the witness to control the pace of the cross-examination. If you need time to think, settle yourself down. You must seek leave from the Judge/Magistrate to refer to your notes.

Have the main points that you would like to get across in cross-examination in the forefront of your mind (even on notes that you bring in with you – eg: covering page to your report. Don't get flustered if the Barrister asks to see these notes, this is a common request and all material that is taken into court must be shared if asked.)

Remember, it is the judge whose opinion you want to influence, not the Solicitors /Barristers. Look to the judge to educate him/her about the topic you are addressing. Discuss concepts that are necessary for the judge to understand and then develop explanations of them in lay language, using concrete illustrations.

- (c) that the questioning of the special witness must be restricted to a stated time limit;
- (d) that a particular person must be obscured from the view of the special witness while the special witness is giving evidence;
- (e) that a particular person must be excluded from the place where the hearing is held while the special witness is giving evidence;
- (f) that the special witness must give evidence in a place other than where the hearing is held and in the presence of only stated persons or with stated persons being excluded from the room;

[  
 (g) that a person, including, for example, a support person under section 91, must be present while the special witness is giving evidence to give emotional support to the special witness;

(h) that an audiovisual record of the evidence given by the special witness be made and that the record be viewed and heard at the hearing instead of the special witness giving direct testimony at the hearing.

(3) The tribunal may make an order under subsection (2) on the application of a party to the proceeding or on its own initiative.

(4) In this section—  
 relevant matter, for a person, means—

- (a) the person's age, education, level of understanding or cultural background; or
- (b) the person's relationship to a party to the proceeding; or
- (c) the nature of the subject matter of the evidence; or
- (d) another matter the tribunal considers relevant.

special witness means a witness who is—

- (a) a child; or
- (b) another person who the tribunal considers would be likely, if the person were required to give evidence according to the tribunal's usual practices and procedures, to—
  - (i) be disadvantaged as a witness because of the person's mental, intellectual or physical impairment or a relevant matter; or
  - (ii) suffer severe emotional trauma; or
  - (iii) be so intimidated as to be disadvantaged as a witness.

## **Preparation for Cross-Examination**

### **1. Understanding the nature of the adversarial system:**

A court of law is an arena in which parties compete, presenting their various perspective to be examined by an impartial arbiter (judge or jury), who then makes findings of fact and ultimately decides what the remedy should be.

(4) Evidence in a hearing—

- (a) may be given orally or in writing; and
- (b) if the tribunal requires, must be given on oath or by affidavit.

(5) A member or adjudicator may administer or cause to be administered an oath for the purpose of taking evidence at a hearing.

(6) A child can not be compelled to take an oath.

*Section 97 - Requiring witness to attend or produce document or thing*

(1) The tribunal may, by written notice, require a person to—

- (a) attend at a stated hearing of a proceeding to give evidence; or
- (b) produce a stated document or other thing to the tribunal.

Note— See section 214 for consequences of failing to comply with a notice under this subsection.

(2) The tribunal may give a notice under subsection (1) on the application of a party to a proceeding or on its own initiative.

(3) A person who is given a notice under subsection (1) is entitled to be paid the fees and allowances prescribed under a regulation or, if no fees and allowances are prescribed, the fees and allowances decided by the tribunal.

(4) Fees and allowances payable to a person under subsection (3) must be paid—

- (a) if the person was given the notice on the application of a party to the proceeding—by the party; or
- (b) otherwise—by all of the parties in the proportions decided by the tribunal.

(5) The fees and allowances must be paid at the time prescribed under a regulation.

*Section 98 - Powers relating to witnesses*

(1) In a hearing of a proceeding, the tribunal may—

- (a) on its own initiative call any person to give evidence; or
- (b) examine a witness on oath or require a witness to give evidence by affidavit; or
- (c) examine or cross-examine a witness to the extent the tribunal considers appropriate to obtain information relevant to performing its functions in the proceeding; or
- (d) compel a witness to answer questions the tribunal considers relevant to the proceeding.

(2) Subsection (1) does not allow the tribunal to compel a witness to answer a question if the witness has a reasonable excuse for refusing to answer the question.

(3) Without limiting subsection (2), it is a reasonable excuse for a witness to refuse to answer a question if answering the question might tend to incriminate the person.

*Section 99 - Dealing with special witnesses*

(1) This section applies in relation to a special witness giving evidence at a hearing of a proceeding.

(2) The tribunal may make any of the following orders—

- (a) that only particular persons may be present when the special witness gives evidence;
- (b) that only particular persons may ask questions of the special witness;

## **PREPARING WITNESSES**

Many professionals feel uncertain about their ability to give convincing testimony in court. This uncertainty often stems from a lack of knowledge and experience in either court procedures and/or on devices used by counsel during cross-examination.

This following information attempts to identify some of the more common procedural aspects and techniques used by counsel, to help the witness feel more confident and prepared when giving evidence.

### **Legislative bases for a witness to provide evidence:**

All persons' that provide affidavit material for child protection court proceedings or statements for the Children Services Tribunal have the potential to be called as a witness for the hearing. This information should be provided to the potential witness at the time when they are preparing their material so that if the person is required to provide evidence to a children's court or the Children Services Tribunal, at some later stage, it will not come as a shock to the witness.

### **Proceedings in the Children's Court**

Section 16 – Examination of person making an affidavit - *Children's Court Rules, 1997* states:

(1) If an affidavit is to be relied on at a hearing, the court may order the person making it to be examined and cross-examined before the court and may order the person to attend the court for the purpose.

### **Proceedings in the Queensland Civil and Administrative Tribunal**

The *Queensland Civil and Administrative Tribunal Act 2000* (Qld) outlines the following sections in relation to evidence and witnesses in proceedings before the Tribunal:

#### *Section 95 - Evidence*

(1) The tribunal must allow a party to a proceeding a reasonable opportunity to—

- (a) call or give evidence; and
- (b) examine, cross-examine and re-examine witnesses; and
- (c) make submissions to the tribunal.

(2) Despite subsection (1)—

- (a) the tribunal may refuse to allow a party to a proceeding to call evidence on a matter if the tribunal considers there is already sufficient evidence about the matter before the tribunal; and
- (b) the tribunal may refuse to allow a party to a proceeding to cross-examine a witness about a matter if the tribunal considers—
  - (i) there is sufficient evidence about the matter before the tribunal; and
  - (ii) the evidence has been sufficiently tested by cross-examination; and
- (c) for an expedited hearing under section 94, cross-examination or re-examination of witnesses is at the discretion of the tribunal, subject to the rules.

(3) Also, the tribunal may place time limits on the giving of evidence and on the examination, cross-examination and re-examination of witnesses.

- Complete the Form 24 – Subpoena and make three copies of this document
- Keep copies of the Form 23 and the Form 24 for departmental records
- Take the original and the remaining copies to the Justice of the Peace at the court where the application is to be heard.

The Registrar will make a decision regarding the issue of the subpoena. If the subpoena is issued, two copies of the Form 24 are returned to the departmental officer for one for personal service on the witness and one for the departmental file.

Once the subpoena has been served on the witness the departmental officer that served the witness needs to complete a Form 22 – Affidavit of Service.

**Note:**

The applicant applying for the subpoena does not necessary need to be the applicant for the child protection order.

The person that serves the subpoena does not need to be the applicant for the subpoena or the applicant for the child protection order. However, the person who serves the subpoena needs to complete the Form 22 – Affidavit of Service.

### Framework for an "Advice in Conference"

- The Court Services Adviser chairs the AIC.
- The AIC will commence with an introduction of all participants
- Checks are made to ensure that all parties have the same material
- In some cases, Crown Law will have prepared a memo that will form part of the discussions.
- The Child Safety Service Centre is required to summarise the child protection issues, which form the basis of the application.
- The Child Safety Service Centre is required to provide a case update.
- The Child Safety Service Centre is required to provide confirmation of the child protection order being sought
- A review of the evidence to date and suggestions for further evidence required is undertaken
- A list of witnesses that would be required for the hearing is generated. This would include those to be subpoenaed and any file documents that need to be subpoenaed from external agencies.

In general "Advice in Conferences" is conducted by teleconference. However, for some of the Brisbane Child Safety Service Centres, participants may chose to attend Court Services, in person.

Following the "Advice in Conference" the Court Services Adviser will complete and circulate the minutes to all parties.

In a complex matter, it may be necessary to have multiple AIC's.

**In some case the Court Services Adviser may request a case discussion (without Crown Law being involved) if there are policy or procedural issues that need to be discussed prior to Crown Law involvement.**

### SUBPOENAS

The provisions in relation to subpoenas are outlined in Rule 27 – "Subpoenas" of the *Children's Court Rules, 1997*.

Rule 27 states: "On application by a party to a proceeding, the registrar may issue a subpoena requiring the attendance of person before the court to give evidence in the proceeding or produce stated documents or things".

A witness will require a subpoena to attend court if they refuse to attend. Some witnesses may request a subpoena in order for them to be released from their place of work.

Files of another Department or agency may also be required. If so, a subpoena is to be prepared in the name of the Director-General, Manager or Superintendent of that organisation. That particular person will not appear, but may delegate a representative to attend with the files.

The procedure for preparing and serving a subpoena involves:

- Completing a copy of the Form 23 – Request for a Subpoena
- A separate Form 23 needs to be completed for each witnesses

## **BRIEF TO CROWN LAW**

Briefs for Crown Law are prepared by Court Services when advised that a contested child protection application has not resolved at the Court Ordered Conference, or when Crown Law advice or representation is required.

In relation to contested child protection applications the brief is basically a letter to the Crown Solicitor requesting that they legally represent the department in relation to the matter.

Briefs canvas the following information:

- Brief details in relation to the application – For example, details of the child protection order sought; the date, time and place of the hearing
- Nature of the instructions
- Court history
- Current Status of the child
- Family constellation
- Summary of the child protection concerns
- Case Plan
- Respondent details, including solicitor acting for the respondents
- Evidence obtained and attached
- Suggestions for further evidence to be obtained
- Potential witnesses
- Departmental contacts

Briefs are prepared from the information provided in the "Request for additional information re contested child protection applications" form and from the court material that has been sent to Court Services.

A copy of the "Review of Court Material" will normally be attached to the brief for Crown Law.

A hard copy of the brief for Crown Law is provided to the relevant CSSC and a copy is retained on the Court Services file.

## **ADVICE IN CONFERENCE (AIC)**

An "Advice in Conference" (AIC) is a discussion that involves Crown Law, Court Services and the Child Safety Services Centre. The following persons' would participate in an "AIC":

- Crown Law Officer – Crown Law
- Court Services Adviser – Court Services
- Child Safety Officer
- Team Leader
- Court Co-ordinator

### **Purpose of an Advice in Conference**

- Review available evidence
- Provide legal advice
- Planning and strategising the application
- Exploring alternative options
- Determining negotiation stance

## Contested Child Protection Matters

### INTRODUCTION:

Upon the Court Services Unit receiving instructions from the CSSC that a child protection matter has been set down for a hearing, the following process occur:

1. The Court Coordinator to fill out the “**Request for additional information re contested child protection applications**” form and email it to [Melissa.scott@communities.qld.gov.au](mailto:Melissa.scott@communities.qld.gov.au)

Please ensure that you provide **TWO** copies of all court material filed in the proceeding to date (including adjournment notices) to Court Services.

2. The matter will then be allocated to a Court Services Adviser
3. The Court Services Adviser will prepare a “**Review of Court Material**” document.
4. The Court Services Adviser will also prepare a “**Brief to Crown Law**”.
5. The Court Services Adviser will make arrangements to conduct an “**Advice in Conference**” between the CSSC and Crown Law.
6. The Court Services Adviser will provide ongoing consultation and support to the CSSC throughout the duration of the contested matter
7. During the review of court material and the advice in conference a number of witnesses will be identified. **Subpoenas** for those witnesses will need to be prepared. The witnesses themselves will need to be contacted, served with the subpoena document and provided with information and support to prepare them for **giving evidence**.

### REVIEW OF COURT MATERIAL

This document is prepared by the Court Services Adviser upon the allocation of a contested child protection file. The purpose of this document is to outline the following:

- The name of the matter
- The Court Services Adviser with carriage of the matter
- The child protection order sought
- A brief summary of the child protection concerns
- Evidence provided to Court Services to date
- Suggestions for additional evidence to be obtained to support the application
- List of potential witnesses
- Feedback in relation to the current filed material
- Other relevant information and advise

Upon completion, this document is then electronically sent to the relevant persons including the Court Coordinator, Team Leader and the Child Safety Officer.

**Advice In Conference Minutes – [family name/s]**

**Date:**

**Present:** Crown Law Officer  
Court Services Adviser/Officer  
CSO, Child Safety Service Centre  
Team Leader, Child Safety Service Centre  
Court Co-ordinator

**Case update:**

**Material to be filed by [date – 5 days prior to hearing date/s]:**

**Material provided to Court Services/Crown Law to date:**

**Things to do:**

**Additional affidavits/material required:**

**Potential witnesses required (and order if possible):**

\*N.B. Witnesses to be subpoenaed.

**Court Services  
[date]**

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such as are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

\*Sworn / Affirmed by *(full name of deponent)* on *(date)* at *(place)* in the presence of:

*(signed by deponent)*

Deponent

*(signed by Justice of the Peace)*

Justice of the Peace / Commissioner for  
declarations

Training document

Training document

Peter's injuries.

47. Once released from hospital Peter will be highly vulnerable and will need to be in an environment where he is safe. Peter will also need to be nurtured and encouraged to develop and rehabilitate from his injuries at his own pace. This will involve constant supervision of his learning and rehabilitation needs. It is assessed that Peter would be at too higher risk of further harm should he be returned to the care of Mr Jones and Ms Sutton at this time
48. I have formed the opinion that Peter Jones is a child in need of protection and that such protection is not likely to be ensured by any other less intrusive order the Court may make. I now make application, for a child protection order granting custody of the child Peter Jones to the Chief Executive for a period of two years.

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such as are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

Sworn by on Amanda Hall on the 19<sup>th</sup> January, 2009 at Brisbane in the presence of:

*(signed by deponent)*

Deponent

*(signed by Justice of the Peace)*

Justice of the Peace /Commissioner for  
declarations

- f) The current contact arrangements which involve Mr Jones and Ms Sutton having supervised contact with Peter twice per week will remain in place in the short-term. Monthly reviews of the contact arrangements will occur, with a view to increasing contact, if considered appropriate;
- g) Attempts will be made to locate Peter's mother, Ms Bell and other maternal family members, with a view to establishing a positive relationship between Peter and his maternal family;
- h) Referrals for appropriate discipline and parenting strategy programs will be made for Mr Jones and Ms Sutton. The Department's expectation is that Mr Jones and Ms Sutton attend these programs and then demonstrate their understanding of age appropriate discipline techniques and parenting strategies. Consultation and feedback will be sought by the Department in relation to Mr Jones and Ms Sutton's participation and progress in relation to these programs.
- i) The case plan will be reviewed every three months to ensure that Peter's welfare and best interests remain paramount.
- j) A true copy of the case plan is attached and marked exhibit 'C',

### **Conclusion**

45. Peter Jones is a child who has suffered life-threatening injuries. There remains some doubt as to how these injuries were inflicted upon Peter but assessments undertaken by medical staff suggest that the injuries were nonaccidental.

46. Mr Jones has been charged by Police with Grievous Bodily Harm as a result of

Child Safety Support Officer, with the Caboolture Child Safety Service Centre has supervised these visits. Pam Cassidy has informed me that Mr Jones and Ms Sutton have acted appropriately during each of the visits and appear to be concerned for Peter's welfare.

### **Wishes of the Child**

43. Peter is two and a half years of age. Given Peter's age, I have not discussed the details of this application with him.

### **Caseplan**

44. The current departmental case plan is as follows:
- a) Following his discharge from hospital Peter will be placed with indigenous carers that will be able to support and assist him with his rehabilitation needs;
  - b) In consultation with the Mater Children's Hospital and the carers the Department will ensure that Peter attends all required medical and rehabilitation appointments;
  - c) In consultation with the Mater Children's Hospital and the carers the Department will ensure that Mr Jones and Ms Sutton have an opportunity to attend all medical and rehabilitation appointments with Peter;
  - d) Mr Jones and Ms Sutton will be advised on an on-going basis of Peter's medical and rehabilitation progress through involvement in regular case discussions between hospital staff, the Department and the carers;
  - e) Mr Jones and Ms Sutton, with the assistance of hospital staff, will be provided with education opportunities to assist in Peter's rehabilitation;

Peter's current rehabilitation needs.

38. Mr Jones and Ms Sutton were also advised that following his release from hospital it was the Department's intention to place Peter with indigenous carers, Mr and Mrs Bond. Mr Jones and Ms Sutton initially questioned the need for the carers to be indigenous. The details of the "Child Placement Principle" applied by the Department was then discussed with Mr Jones and Ms Sutton and it was explained to them that given Peter is Aboriginal the Department is required in the first instance to attempt to place Peter with indigenous carers. It was also explained to Mr Jones and Ms Sutton that Mr and Mrs Bond were experienced carers who had previously cared for children with physical disabilities and learning needs.
39. During this meeting Mr Jones and Ms Sutton were also advised that in relation to Gary, the Department would like the opportunity to further assess his care and protection needs and given they were not willing to consent to this process, the department is making an application for a Court Assessment Order in relation to Gary.
40. Mr Jones and Ms Sutton advised my Team Leader, Sharon Upton and myself that they would be contesting these applications.
41. I provided numbers to assist Mr Jones in accessing legal advice, to which he indicated that he would follow-up.

### **Contact**

42. For the duration of the court assessment order Mr Jones and Ms Sutton have visited Peter Jones twice weekly at the Mater Children's Hospital. Pam Cassidy, a

placement. Gloria did state that it would be important for the Department to continue to attempt to locate Peter's mother, Ms Bell, as contact with his maternal family would be vital in terms of Peter's cultural and spiritual identity.

### **Family Group Meetings**

36. A Family Group Meeting was held on the 17<sup>th</sup> January, 2009 at the Caboolture Child Safety Service Centre. In attendance were Mr Jones, Ms Sutton, Sharon Upton, Team Leader for Child and Family Team at the Caboolture Child Safety Service Centre and myself. The details of the court assessment order were explained to Mr Jones and Ms Sutton. Arrangements were made for Mr Jones and Ms Sutton to visit Peter twice per week for the duration of the court assessment order.
37. A further family Group Meeting was held on the 10<sup>th</sup> February, 2009. During this meeting it was explained to Mr Jones and Ms Sutton that in relation to Peter the Department would be applying for a child protection order granting custody to the Chief Executive for a period of two years. The current child protection concerns were discussed. It was explained to Mr Jones and Ms Sutton that given the inconsistencies between the extent of the injuries and explanation for how these injuries occurred the Department was of the opinion that Peter would be at risk if he was returned home at this time. It was further explained that the Department was seeking a two year order on the basis that Peter's rehabilitation needs are likely to be intensive over the next twelve to twenty-four months and that the Department currently held concerns in relation to Mr Jones and Ms Sutton's ability to meet

twenty-four months.

32. On the 10<sup>th</sup> February, 2009, Mater SCAN further recommended that the Department make application for a child protection order, granting custody of Gary to the Chief Executive for a period of one year. This recommendation was made on the basis that given the serious nature and the extent of Peter's injuries, Gary was also considered to be at risk.

**Consultation with Recognised Aboriginal Agency**

33. On the 17<sup>th</sup> January, 2009 I meet with Gloria Cobbo from the Karbul Indigenous Placement Agency, the recognised Aboriginal and Torres Strait Islander Agency. I advised her that Peter was subject to a court assessment order granting custody to the Chief Executive for a period of four weeks.
34. On the 6<sup>th</sup> February, 2009 I contacted Gloria Cobbo and invited the Karbul Indigenous Placement Agency to participate in a Family Meeting that was to be held on the 10<sup>th</sup> February, 2009, in relation to the Peter. Gloria Cobbo advised that she would be present.
35. On the 10<sup>th</sup> of February, 2009 I consulted with Gloria Cobbo from the Karbul Indigenous Placement Agency, regarding the Department's intention to make application for a child protection order, in relation to Peter, granting custody to the Chief Executive for a period of two years. I further advised Gloria that following his discharge from hospital it was the Department's intention to place Peter with Mr and Mrs Bond, indigenous carers. Gloria advised that the Karbul Indigenous Placement Agency were supportive of the Department's decision and the intended

Campbell that this matter has been listed for mention in the Caboolture Magistrates Court on the 22<sup>nd</sup> February, 2009.

30. The outcome of the initial investigation in relation to the notification received at the Caboolture Child Safety Service Centre on the 9<sup>th</sup> January, 2009 was substantiated for physical and emotional harm in relation to Peter and substantiated at risk of physical and emotional harm in relation to Gary.
31. On the 10<sup>th</sup> February, 2009, Mater SCAN recommended that the Department make application for a child protection order, granting custody of Peter to the Chief Executive for a period of two years. This recommendation was based on the following:
- a) Peter suffered life-threatening injuries, to the extent that if medical assistance had not been sought it is likely that the child would have died.
  - b) Inconsistencies between the extent of the injuries and the explanation for how these injuries occurred by Mr Jones and Ms Sutton, remain unresolved.
  - c) Inconsistencies exist between the timing of the child's injuries with medical opinion suggesting that the injuries occurred approximately twenty-four to forty-eight hours before the child was presented to the Redcliffe Hospital. Mr Jones and Ms Sutton maintain that following the incident the child was immediately taken by ambulance to the Redcliffe Hospital.
  - d) Peter is likely to suffer some motor dysfunction and long term learning difficulties. A high level of support will be required from his caregivers to assist in his rehabilitation. This support will be intensive over the next twelve to

Sutton. On the 2<sup>nd</sup> February, 2009 the Queensland Police Service advised me that neither Mr Jones nor Ms Sutton have any previous criminal history.

28. On the 7<sup>th</sup> February, 2009 I met with Dr Lewis to discuss Peter's current situation and rehabilitation requirements. Dr Lewis advised me of the following:

- a) It is difficult to say with any certainty the long-term prognosis for Peter.
- b) It is highly likely that Peter will have some motor dysfunction on the left side of his body.
- c) Peter may have difficulty walking.
- d) Peter may have some long term learning problems.
- e) Whilst Peter's rehabilitation needs are likely to be on-going throughout his childhood, they will be intensive over the next twelve to twenty-four months.
- f) A more definitive prognosis could be given after one to two months of rehabilitation.
- g) Peter will require a high level of support from his caregivers in order to assist him in the rehabilitation process.
- h) Dependent upon his rate of recovery, Peter is likely to remain in hospital until mid-April, 2009.

29. On the 9<sup>th</sup> February, 2009, Jack Campbell advised me by telephone that he had arrested and charged Mr Jones with one count of Grievous Bodily Harm, as a result of the injuries that Peter had sustained. He further advised that Mr Jones had been granted watchhouse bail, and there were no conditions that would prohibit Mr Jones from having contact with Peter. I was further advised by Officer

interviews were also conducted in the presence of Police Officers, Jack Campbell and Susan Wall. I was also present during these interviews. During both interviews Ms Sutton maintained that she was in the living room with Mr Jones, when she heard a large bang come from the kitchen. She stated that whilst she did not witness the incident, Peter's injuries must have occurred whilst he was attempting to climb up on his high chair. Ms Sutton advised that when she and Mr Jones found Peter lying on the floor Mr Jones had immediately called an ambulance.

25. On the 12<sup>th</sup> January, 2009, Sharon Upton, Team Leader for Child and Family Team at the Caboolture Child Safety Service Centre, and myself participated in the Suspected Child Abuse and Neglect (SCAN) forum at the Mater Hospital (hereinafter referred to as "Mater SCAN"). Based on the inconsistencies between the presenting injuries and the explanations offered by Mr Jones and Ms Sutton the Mater SCAN team were of the opinion that the child was "at risk". Given that Mr Jones was no longer willing to cooperate with the Department and the Police's inquiries it was recommended that the Department apply for a court assessment order to gain custody of the child, whilst further assessments were undertaken.
26. On the 19<sup>th</sup> January, 2009 further attempts were made by Jack Campbell, Susan Wall, and myself to interview Mr Jones and Ms Sutton in relation to the alleged incident on the 9<sup>th</sup> January, 2009. Mr Jones and Ms Sutton refused to discuss the matter further.
27. Criminal history checks were undertaken in relation to both Mr Jones and Ms

and Susan Wall, Police Officers attached to the Brisbane Child Abuse Unit, conducted these interviews. I was also present when these interviews were conducted. Mr Jones maintained that he and Ms Sutton were in the living room when the child was injured. He stated that he did not actually see how the injuries were caused but the only possible explanation is that the child fell whilst climbing up his on his high chair. Mr Jones further stated that he "called an ambulance, immediately, once he saw Peter lying on the ground having what appeared to be a fit".

21. During the interview on the 12<sup>th</sup> January, 2009 it was put to Mr Jones that the explanation he had provided was not consistent with the presenting injuries. The issue of timing between when the injuries occurred and when the child was presented to the Redcliffe Hospital was also raised.
22. In response to this Mr Jones started banging the table and began yelling "you are all out to get me.... I can't fucking believe this..... I'm not saying anything else; you guys will just twist my words.... You don't know what happened and you're trying to pin it on me.....you've got no fucking proof....my kid's lying there nearly dead and you're trying to screw me for this.....this is so fucking typical of the cops and welfare". Mr Jones terminated the interview by walking out.
23. Prior to the conclusion of the interview Mr Jones once again indicated that he was not willing to discuss the events of the 9<sup>th</sup> January, 2009 again with either the Police or the Department.
24. Ms Sutton was also interviewed on the 11<sup>th</sup> and 12<sup>th</sup> January, 2009. These

- c) When Peter was presented at the Redcliffe Hospital, Mr Jones and Ms Sutton appeared to be very distressed. They also appeared to be generally concerned for Peter's welfare.
18. On the 11<sup>th</sup> January, 2009 I spoke with Doctor Anthony Lewis, a consulting paediatrician, from the Mater Children's Hospital. He advised that Peter's injuries on admission included:
- a) A subdural haemorrhage (bleeding between the skull and the brain);
  - b) Retinal haemorrhaging in both eyes;
  - c) Bruising to left side of the face, which was estimated to be approximately two days old;
  - d) Bruising to the left side of the body, which was estimated to be approximately two days old.
19. Dr Lewis described Peter's injuries as being non-accidental. This was on the basis that the explanations offered by Mr Jones as to how the injuries occurred were not consistent with his assessment of the presenting injuries, which were of a serious nature. Dr Lewis stated that the retinal haemorrhaging in both eyes was consistent with a child who has been shaken. Dr Lewis further indicated that it was likely that Peter had suffered a severe blow to the head. Dr Lewis also stated that the timing of the injuries offered by Mr Jones varies from his professional opinion, which suggests that the injuries occurred approximately twenty-four to forty-eight hours prior to child's admission to the Redcliffe Hospital.
20. Mr Jones was interviewed on the 11<sup>th</sup> and 12<sup>th</sup> of January, 2009. Jack Campbell

action as Gary was "playing up" and not following his instructions.

15. Mr Jones stated that on this occasion, Gary had locked himself in the family car and was playing with matches. He refused to open the car despite numerous requests by him so he ended up calling the RACQ to unlock the car. Once the car was unlocked he removed the matches from Gary and smacked him with the belt he was wearing for being so disobedient and putting himself at risk and damaging the car. Gary had burnt holes in the car seats. He said that at the time Denise was at work.

#### **Current Child Protection Concerns**

16. On the 9<sup>th</sup> January, 2009 a child protection notification was recorded at the Caboolture Child Safety Service Centre. Peter was presented at the Redcliffe Hospital Emergency Department, by ambulance, with head injuries and significant bruising to his body. The injuries were of a serious nature, resulting in Peter being immediately transferred to the intensive care unit of the Mater Children's Hospital.
17. The notifier advised the Department of the following:
  - a) Mr Jones advised that he and Ms Sutton were in the living room when they heard a crash from the kitchen. Mr Jones went to the kitchen and found Peter lying on the ground amongst some cereal boxes and other food items. He appeared to be "fitting". Mr Jones presumed that Peter had fallen while trying to climb up on his high chair to get some food.
  - b) Mr Jones advised that given Peter appeared to be "fitting" he had immediately called an ambulance.

in Brisbane Children's Court on 15<sup>th</sup> January, 2009. This order is due to expire on the 15<sup>th</sup> February, 2009. Exhibit "A" to this application is a true copy of the Form 7 – court assessment order.

### **History of Departmental Contact**

11. I have prepared a report outlining previous child protection history in relation to Mr Jones and Ms Sutton. This report was prepared from departmental files and records. Exhibit "B" to this affidavit is a true copy of this report.
12. As outlined in Exhibit "B", departmental files indicate that a notification was received on the 3<sup>rd</sup> March, 2008 by the Logan Child Safety Service Centre in relation to the child, Gary Sutton. The notifier alleged that the child had been physically assaulted by Mr Jones, with a leather strap. It was alleged that the child was hit on his legs and hands. The outcome of the initial assessment was "no assessment was possible due to client reasons – the clients had moved prior to the initial assessment being undertaken".
13. On the 11<sup>th</sup> January, 2009 I spoke with Mr Jones and Ms Sutton regarding the above concerns. Ms Sutton stated that she could not remember the alleged assault on Gary as it was so long ago; however she stated that "both of them tell me when something happens like that. There are no secrets between us. I have never seen any marks or bruising on Gary. I have never had any concerns about how Barry disciplines Gary. Sometimes he needs a firm hand."
14. Mr Jones admitted that he has smacked Gary with a leather strap once. He indicated that he did not hit him with "any real force" and that he had taken this

by posting a letter to this address by registered mail. This letter was returned to me by Australia Post. The explanation provided as to why the letter could not be delivered was that Ms Bell was no longer residing at the address provided. I am currently attempting to locate Ms Bell through Centrelink.

6. Denise Sutton (hereinafter referred to as "Ms Sutton") is Barry Jones' current partner. She is presently residing at the same address as Mr Jones. I first met Ms Sutton at the Mater Children's Hospital on the 11<sup>th</sup> January, 2009, whilst undertaking an initial assessment in relation to Mr Jones' son, Peter Jones. I have met with Ms Sutton on numerous occasions since this time.
7. Ms Sutton has one son, Gary Sutton (hereinafter referred to as "Gary") (DOB: 23/11/2000) from a previous relationship. Gary resides with Ms Sutton and Mr Jones.
8. I have met Gary Sutton on the 11<sup>th</sup> January, 2009 whilst undertaking the initial assessment with Ms Sutton. I have subsequently asked Ms Sutton if I could interview Gary at his school in relation to the incident involving Peter. Ms Sutton refused this request stating that it would be too upsetting and confusing for Gary to be interviewed by departmental staff. Therefore I have not been able to have further contact with Gary Sutton at this time.
9. Peter Jones (hereinafter referred to as "Peter") is the subject child.

#### **Current Departmental Involvement**

10. Peter is currently the subject of a court assessment order, granting custody to the Chief Executive for a period of four weeks. This court assessment order was made

2. I am the applicant seeking a child protection order granting custody of the subject child, Peter Jones, to the Chief Executive for a period of two years. This affidavit is sworn in support of my application.

### Family Details

3. Barry Jones (hereinafter referred to as "Mr Jones") is the father of the subject child. I first met Mr Jones on the 11<sup>th</sup> January, 2009 at the Mater Children's Hospital whilst undertaking an initial assessment in relation to his son, Peter Jones. Since this time I have met with Mr Jones on a number of occasions.
4. During my discussions with Mr Jones on the 11<sup>th</sup> January, 2009 he identified the mother of Peter to be Ms Mary Bell (hereinafter referred to as "Ms Bell"). In relation to Ms Bell, Mr Jones advised of the following:
- a) Ms Bell suffered medical complications whilst giving birth to Peter. This left Ms Bell intellectually impaired and requiring twenty-four hour care.
  - b) Ms Bell's mother and father, Sandra and Gordon Bell, travelled to Brisbane and assumed responsibility for their daughter after she became disabled.
  - c) Mr Jones had not had contact with Ms Bell since the birth of their son.
  - d) Mr Jones is not presently aware of Ms Bell's address.
  - e) Ms Bell is of Aboriginal descent.
5. I have attempted to locate Ms Bell. On the 18<sup>th</sup> January, 2009 I contacted the Royal Brisbane Hospital, which was the hospital where Peter was born. They provided me with an address in New South Wales. I attempted to contact Ms Bell,

**Form 25**  
**Childrens Court Act 1992**  
**Child Protection Act 1999**

AFFIDAVIT

CHILDRENS COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER:

**Child:** Peter Jones – (DOB: 16/12/06)

**Applicant:** Amanda Hall

AND

**[First] Respondent:** Barry Jones

AND

**[Second] Respondent:** Mary Bell

I, Amanda Hall, Child Safety Officer of 30-40 Quay Street in the State of Queensland, make oath and say as follows:-

1. I am an officer of the Department of Communities (Child Safety) (hereinafter referred to as "the Department"). I am appointed as an authorised officer under the *Child Protection Act 1999*. I hold a Bachelor of Social Work Degree from the University of Queensland, which was conferred in 1997.

---

Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Witness list completed including contact numbers, place of employment, qualifications and order of witnesses organised to be provided to CS	X			As soon as possible	
Complete list of all material with sworn and filed dates to be provided to CS	X			After all material obtained	
Ensure copies of all material filed is provided to Court Services	X			As soon as possible after material is filed	
Ensure copies of all material filed is provided to Crown Law		X		As soon as possible after material is provided to CS	
Discussion with parties about which Witnesses are required for Cross Examination	X	X	X	(responsibility is dependent on situation)  At least 2 days prior to hearing (if possible)	
Organisation of witness order			X	After availability known and evidence obtained	
Organisation of who will instruct CL at hearing and who will organise witnesses	X	X	X	Prior to hearing	

CC = Court Coordinator  
CS = Court Services  
AIC = Advice In Conference

CL = Crown Law  
CSSC = Child Safety Service Centre

# Checklist for Preparation for INTERIM Contested CP Hearing

## WITNESSES REQUIRED

Task	Who is responsible?			Approximate timeframe	Date completed
	CC	CS	CL		
Seek clarification from Magistrate whether the matter will be heard on the papers or if witness's will be required to give evidence – consider other directions that may be required.	X			At the time the matter is listed for an interim hearing	
CC to advise Court Services that an Interim Hearing has been listed and that witness's will be required	X			As soon as possible after matter is listed for interim hearing	
CC to send completed Contested CP summary, with two copies of all material filed, to CS	X			As soon as possible after matter is listed for interim hearing	
Review of material undertaken which includes suggestions for further evidence to be obtained and possible witness list		X			
Brief to Crown Law (includes all material filed in this proceedings)		X			
Inform CSSC of which CL officer has been allocated and arrange time for AIC		X		When CL have advised CS	
Participation in AIC by all relevant officers	X	X	X		
Preparation of memo detailing outcome of AIC in relation to legal advice / case specific matters		X			
Ensure tasks undertaken / affidavits obtained as per AIC and Review document	X			Ongoing process (CS to support CSSC in this)	
Subpoena all witnesses, documents, etc (if witnesses are being called)	X			As soon as possible	
Service of all material on all parties. Affidavits of Service to be required.	X			At least 5 working days prior to hearing (or as directed by Court)	
Letter to other parties completed re which witnesses required for Cross-examination (CS has a draft of this letter)	X			When material served on parties	

Name and contact details of legal rep/s:

Separate Representative:

**Has this family been mentioned in any of the following forums?**

Tribunal	Yes	No
Family Court	Yes	No
Children's Court of QLD	Yes	No

If yes, please provide details:

**Are there any interstate components? (ie: family members in other state?)**

Yes          No

If yes, please provide details:

Name of departmental officer completing form:

Position:

Date:

Your timely assistance in providing this information to Court Services will assist in securing Crown Law representation if required. Thank you.



**Court Services: Request for additional information re contested Child Protection Applications**

**Subject child/ren**

Name/s:

DOB:

**Details of Child Safety Service Centre**

Location:

Child Safety Officer:

Team Leader:

Senior Practitioner:

Court Co-ordinator:

**Court details**

Court Location:

Initial mention date:

Other mention dates:

Court ordered conference date:

Hearing date: *(include start time)*

Filing dates:

**Existing order/s**

CPO sought:

Existing CPO (if relevant):

Any current Family Court order/s:      Yes                  No

Residency in favour of:

**Current status of child/ren**

Temporary custody to Chief Executive:      Yes                  No

Placement:

**Family constellation**

Mother:

Father:

Siblings:

Non Party Status:

Indigenous:    Yes                  No

Other cultural background:

**Grounds of application *(brief)***

**Departmental case plan**

**Parent's position and legal representative/s**

Contesting/consenting:

# Checklist for Preparation for INTERIM Contested CP Hearing ON THE PAPERS

Task	Who is responsible?			Approximate timeframe	Date completed
	CC	CS	CL		
Seek clarification from Magistrate whether the matter will be heard on the papers or if witness's will be required to give evidence	X			At the time the matter is listed for an interim hearing	
CC to advise Court Services that an interim hearing has been listed and that the Magistrate has indicated the hearing will be <b>run on the papers</b> .	X			As soon as possible after matter is listed for interim hearing	
Review of material undertaken which includes suggestions for further evidence to be obtained and possible witness list	X	X			
CC and CSA to arrange Case Discussion	X	X			
Case Discussion record to be sent to CSSC		X			
Ensure tasks undertaken / affidavits obtained as per Case Discussion	X			Ongoing process (CS to support CSSC in this)	
Service of all material on all parties	X			At least 5 working days prior to hearing (or as directed by Court)	

CC = Court Coordinator  
CS = Court Services  
AIC = Advice In Conference

CL = Crown Law  
CSSC = Child Safety Service Centre

Task	Who is responsible?			Approximate timeframe	Date completed
	AO	CS	CL		
Minutes from AIC to be taken and sent to all participants		X		As soon as possible after AIC	
Ensure tasks undertaken / affidavits obtained as per AIC and Review document	X			Ongoing process (CS to support SC in this)	
Subpoena all witnesses, documents, etc	X			As soon as possible	
Service of all material on all parties	X			At least 5 working days prior to hearing (or as directed by Court)	
Letter to other parties completed re which witnesses required for Cross-examination (CS has a draft of this letter)	X			When material served on parties	
Witness list completed including contact numbers, place of employment, qualifications and availability of witnesses to be provided to CS	X			As soon as possible	
Complete list of all material with sworn and filed dates to be provided to CS	X			After all material obtained	
Ensure copies of all material filed is provided to Court Services	X			As soon as possible	
Ensure copies of all material filed is provided to Crown Law		X		As soon as possible	
Organisation and chairing of another Advice In Conference to finalise arrangements		X		Approx. 3 days prior to hearing and after all material filed	
Discussion with parties about which Witnesses are required for Cross Examination	X		X	(responsibility is dependent on situation)  At least 2 days prior to hearing (if possible)	
Organisation of witness order			X	After availability known and evidence obtained	
Discussion of Witness expenses with relevant witnesses and approval memo to Manager, Court Services	X			Prior to hearing	
Arrangements made in relation to who will organise witnesses for the hearing	X			Prior to hearing	

# Checklist for Preparation for Contested CP matter

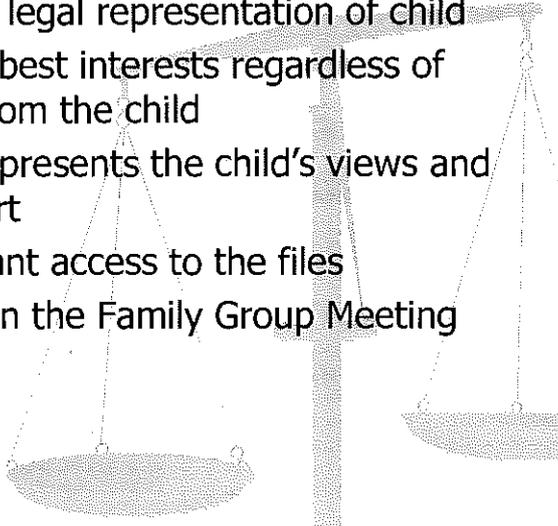
**Key:**

SC= Child Safety Service Centre  
 COC = Court Ordered Conference  
 CL = Crown Law

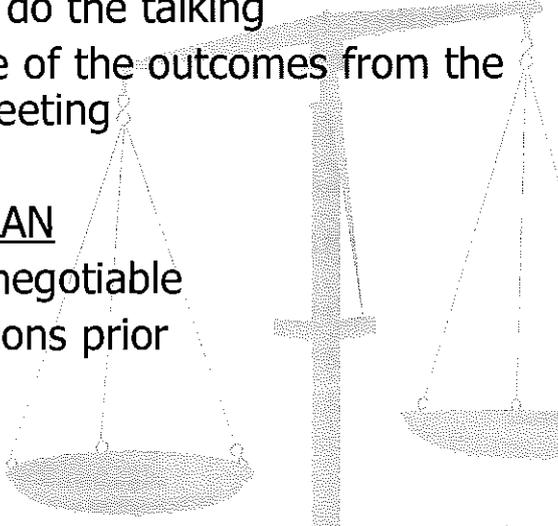
CS = Court Services  
 AIC = Advice In Conference

Task	Who is responsible?			Approximate timeframe	Date completed
	SC	CS	CL		
Contact CS to have a Case Discussion (if required)	X			At any point prior to or during the court process	
Contact CP Team Leader, CS to inform that a Hearing has been set	X			Straight after court mention and hearing dates set	
SC to send Contested CP summary to CS	X			Straight after hearing dates have been set	
All Material filed in current proceedings to be sent to Court Services (including Affidavits of Service, Adjournment Orders, etc) along with completed Contested CP summary <b>PLUS</b> a brief review of evidence is completed	X			Immediately after Hearing dates have been set	
Review of material undertaken which includes suggestions for further evidence to be obtained and possible witness list		X		Approx 2 weeks after material sent to CS	
Brief to Crown Law (includes all material filed in this proceedings)		X		Following the review of material received (eg less than 4 weeks)	
Inform SC of which CL officer has been allocated and arrange time for AIC		X		When CL have advised CS	
Organisation of AIC with CL and SC		X		When hearing definitely going ahead	
Preparation of memo for AIC in relation to legal advice / case specific matters			X	Prior to AIC	
First Advice in Conference with CL		X		As early as possible at least 4 weeks prior to hearing	

## Child Separate Representative

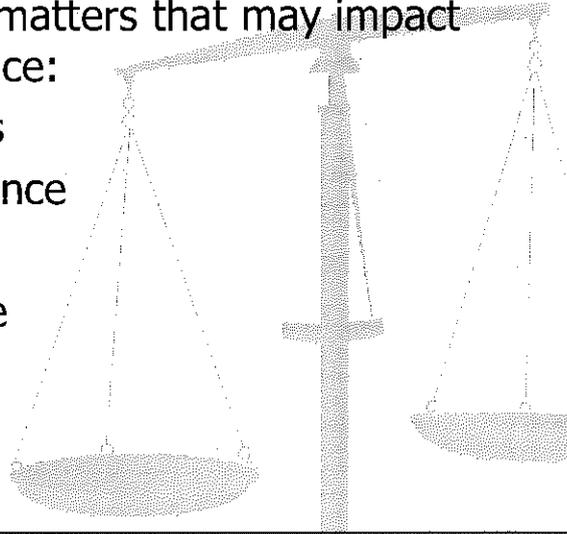
- s.110(1) Separate legal representation of child
  - Acts in the child's best interests regardless of any instructions from the child
  - As far as possible presents the child's views and wishes to the Court
  - Department to grant access to the files
  - Must be included in the Family Group Meeting
- 

## How to prepare for a conference

- Decide who will do the talking
  - Have knowledge of the outcomes from the Family Group Meeting
  - Know the case
  - Have a CASE PLAN
  - Decide what is negotiable
    - discuss all options prior
    - least intrusive
- 

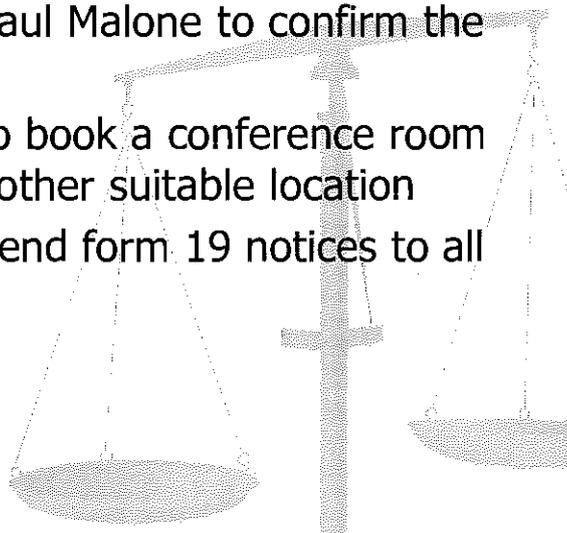
## Contacting Conference Coordinator

- Consider other matters that may impact on the conference:
  - security issues
  - domestic violence
  - prisoner
  - teleconference
  - interpreter



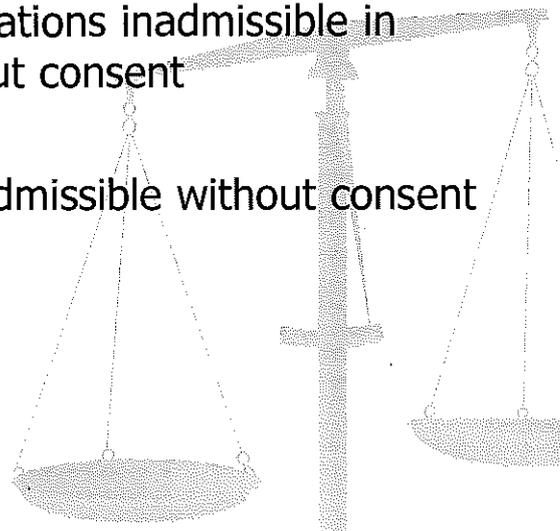
## After the Court orders the conference

- Again contact Paul Malone to confirm the date and time
- Paul arranges to book a conference room at the Court or other suitable location
- The Court will send form 19 notices to all parties



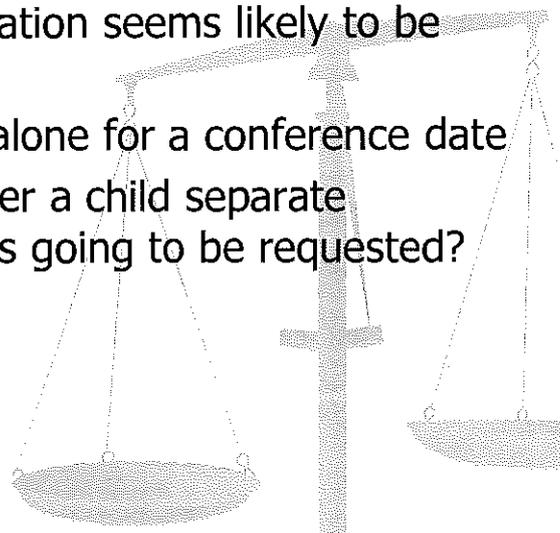
## Confidentiality

- s.71 Communications inadmissible in evidence without consent
- Discussions inadmissible without consent of parties

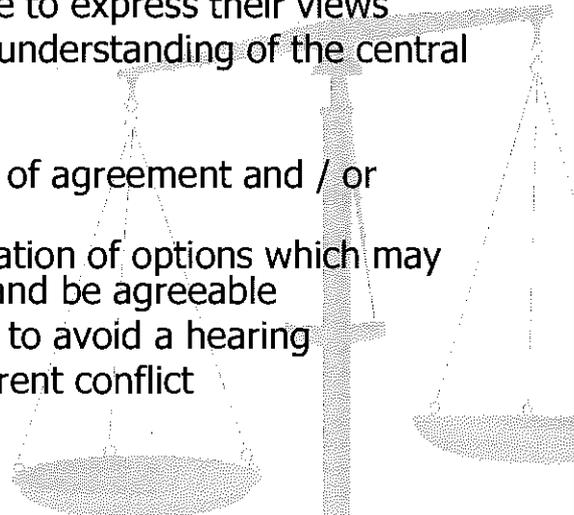


## Contacting Conference Coordinators

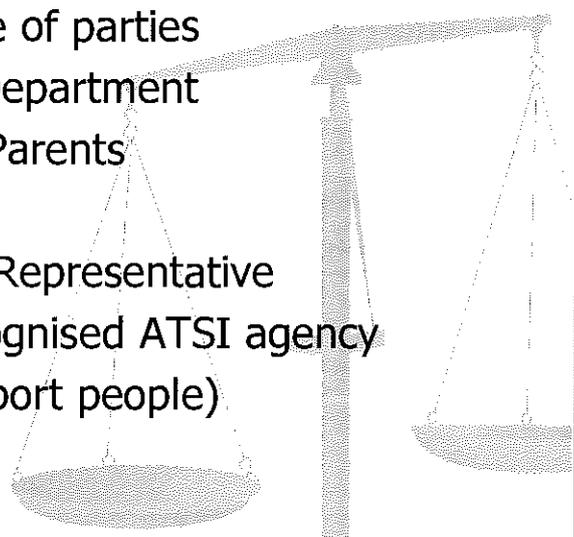
- When an application seems likely to be contested
- Contact Paul Malone for a conference date
- Consider whether a child separate representative is going to be requested?



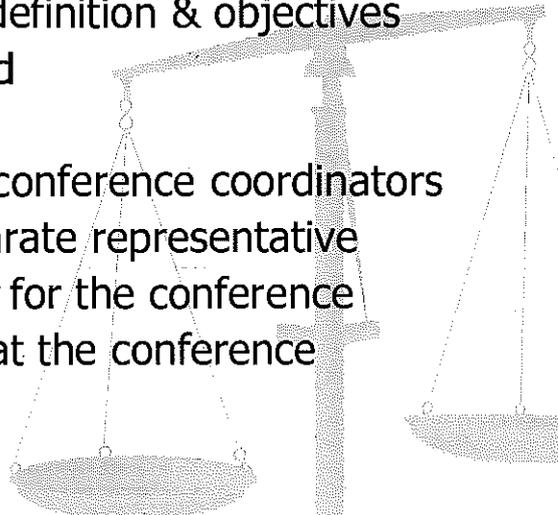
## Objectives of a court ordered conference

- All parties are able to express their views
  - Improves parties understanding of the central issues
  - Clarifies positions
  - Determines areas of agreement and / or disagreement
  - Facilitate identification of options which may protect the child and be agreeable
  - Reach agreement to avoid a hearing
  - Minimise the inherent conflict
- 
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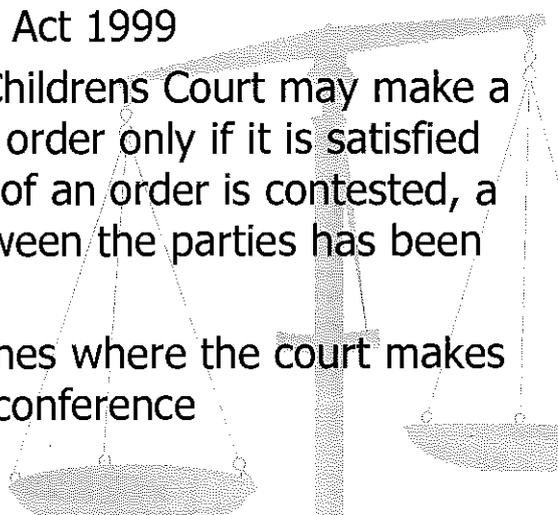
## Who may attend the conference?

- s.70 attendance of parties
  - The parties - Department
    - Parents
  - Legal reps
  - Child Separate Representative
  - Member of recognised ATSI agency
  - Others (eg support people)
- 
- A faint, stylized illustration of a pair of scales of justice is visible in the background of the slide, positioned to the right of the text.

## Today's agenda

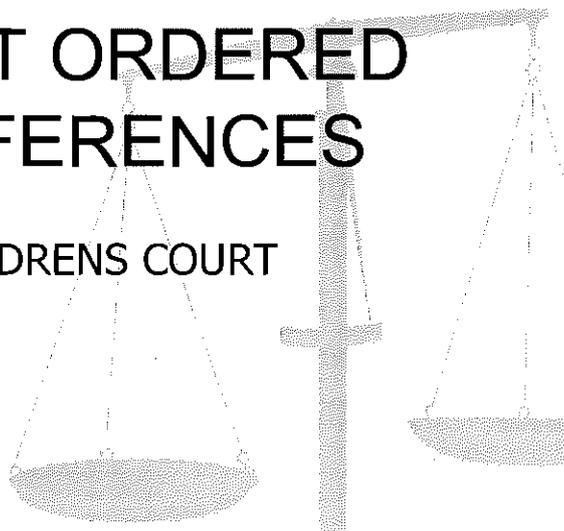
- Conferences – definition & objectives
  - Who may attend
  - Confidentiality
  - Contacting the conference coordinators
  - The child's separate representative
  - How to prepare for the conference
  - What happens at the conference
  - Questions
- 

## What is a court ordered conference?

- Child Protection Act 1999
  - s.59(1)(c) the Children's Court may make a child protection order only if it is satisfied – if the making of an order is contested, a conference between the parties has been held .....
  - s.68(1) .... outlines where the court makes the order for a conference
- 

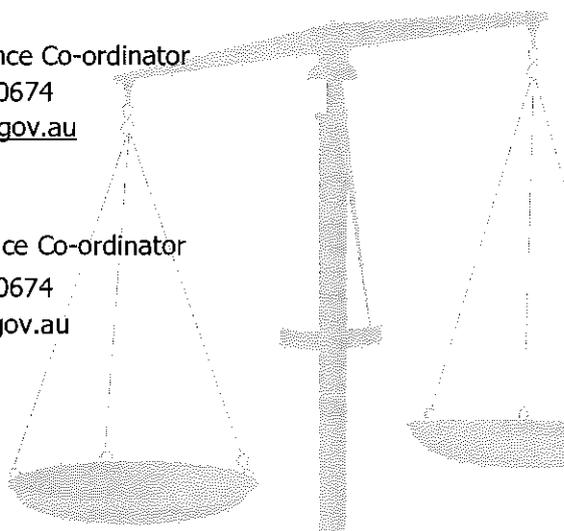
# COURT ORDERED CONFERENCES

CHILDRENS COURT



## Who are we?

- Paul Malone  
Child Protection Conference Co-ordinator  
0402 457 351 / 07 383 60674  
[paul.malone@justice.qld.gov.au](mailto:paul.malone@justice.qld.gov.au)
- Rob Turra  
Child Protection Conference Co-ordinator  
0428 714 344 / 07 383 60674  
[robert.turra@justice.qld.gov.au](mailto:robert.turra@justice.qld.gov.au)



**Form 24**  
*Childrens Court Act 1992*  
*Child Protection Act 1999*

**SUBPOENA**

**CHILD:** (name)  
Date of Birth:  
Sex \*Female/Male

**TO:**  
of:

In the matter of application/s \*for / in relation to \*a court assessment order / a child protection order or orders made by (name of applicant), an \*authorised officer / police officer, in the Childrens Court at (place) on (date) in relation to the above-named child –

**YOU ARE REQUIRED TO APPEAR \*AND / OR PRODUCE DOCUMENTS**  
*(specify documents to be produced)*

**before the Childrens Court at:**

**Place:**

**Date:**

**Time:**

to provide \*evidence in the above matter / produce documents.

**Registrar**

Date:

**NOTE: IN DEFAULT OF YOUR ATTENDANCE THE COURT MAY ISSUE A  
WARRANT TO COMPEL YOUR ATTENDANCE**

Form 24 – Version 1, March 2000

**Form 23**  
Childrens Court Act 1992  
Child Protection Act 1999

**REQUEST FOR SUBPOENA**

**CHILD:** (name)

**(Please note – multiple children can be listed on the one subpoena. ie – multiple sibling groups).**

Date of Birth:

Sex \*Female/Male

**APPLICANT:** *(This is the person who is applying for the subpoena – this does not necessarily have to be the applicant for the court assessment order/ child protection order. For example it could be another authorised officer ie Team Leader)*

Address:

TO the Registrar of the Childrens Court at (place) –

In the matter of application/s \*for / in relation to a \*court assessment order / child protection order or orders made by (name of applicant) **(this is the applicant for the court assessment /child protection order)** an \*authorised officer / police officer, in the Childrens Court at (place) on (date) **(this is the initial mention date)** in relation to the above-named child –

Please seal a subpoena on behalf of: **(This is the applicant applying for the subpoena)**

direct to:

of:

returnable before the Childrens Court at:

**Place:**

**Date:** *(this relates to the date of the hearing or the mention date if the court has ordered an earlier return date – particularly in relation to files).*

**Time:** *(this is the time the hearing is to start)*

**\*Applicant / Respondent** *(This is the applicant applying for the subpoena)*

Place:

Date:

\*delete whichever is not applicable  
Form 23 – Version 1, March 2000

## Subpoenas

The provisions in relation to subpoenas are outlined in Rule 27 – “Subpoenas” of the *Children’s Court Rules, 1997*.

Rule 27 states: “On application by a party to a proceeding, the registrar may issue a subpoena requiring the attendance of person before the court to give evidence in the proceeding or produce stated documents or things”.

A witness will require a subpoena to attend court if they refuse to attend. Some witnesses may request a subpoena in order for them to be released from their place of work.

Files of another Department or agency may also be required. If so, a subpoena is to be prepared in the name of the Director-General, Manager or Superintendent of that organisation. That particular person will not appear, but may delegate a representative to attend with the files.

The procedure for preparing and serving a subpoena involves:

- Completing a copy of the Form 23 – Request for a Subpoena
- A separate Form 23 needs to be completed for each witnesses
- Complete the Form 24 – Subpoena and make three copies of this document.
- Keep copies of the Form 23 and the Form 24 for departmental records
- Take the original and the remaining copies to the Justice of the Peace at the court where the application is to be heard.

The Registrar will make a decision regarding the issue of the subpoena. If the subpoena is issued, two copies of the Form 24 are returned to the departmental officer for one for personal service on the witness and one for the departmental file.

Once the subpoena has been served on the witness the departmental officer that served the witness needs to complete a Form 22 – Affidavit of Service.

### **Note:**

The applicant applying for the subpoena does not necessary need to be the applicant for the child protection order.

The person that serves the subpoena does not need to be the applicant for the subpoena or the applicant for the child protection order. However, the person who serves the subpoena needs to complete the Form 22 – Affidavit of Service.

## **Advice in Conference (AIC)**

An "Advice in Conference" (AIC) is a discussion that involves Crown Law, Court Services and the Child Safety Services Centre. The following persons' would participate in an "AIC":

- Crown Law Officer – Crown Law
- Court Services Adviser – Court Services
- Child Safety Officer
- Team Leader
- Court Co-ordinator

### **Purpose of an Advice in Conference**

- Review available evidence
- Provide legal advice
- Planning and strategising the application
- Exploring alternative options
- Determining negotiation stance

### **Framework for an "Advice in Conference"**

- The Court Services Adviser chairs the AIC.
- The AIC will commence with an introduction of all participants
- Checks are made to ensure that all parties have the same material
- In some cases, Crown Law will have prepared a memo that will form part of the discussions.
- The Child Safety Service Centre is required to summarise the child protection issues, which form the basis of the application.
- The Child Safety Service Centre is required to provide a case update.
- The Child Safety Service Centre is required to provide confirmation of the child protection order being sought
- A review of the evidence to date and suggestions for further evidence required is undertaken
- A list of witnesses that would be required for the hearing is generated. This would include those to be subpoenaed and any file documents that need to be subpoenaed from external agencies.

In general "Advice in Conferences" are conducted by teleconference. However, for some of the Brisbane Child Safety Service Centres, participants may chose to attend Court Services, in person.

Following the "Advice in Conference" the Court Services Adviser will complete and circulate the minutes to all parties.

Refer [REDACTED]  
Telephone No: 3235 9859  
Email: [REDACTED]@childsafety.qld.gov.au

B/c: Manager  
**CABOOLTURE  
CHILD SAFETY SERVICE  
CENTRE**

21 April 2009

The Crown Solicitor  
State Law Building  
50 Ann Street  
**BRISBANE QLD 4000**

For your information

[REDACTED]  
**Court Services Adviser**

**Attention: Civil Advocacy and Family Law Group - [REDACTED]**

Dear Sir / Madame,

**Re: Application for a child protection order granting custody of Peter Jones (born 16/12/06), to the Chief Executive, Department of Communities (Child Safety Services), Queensland, pursuant to the *Child Protection Act 1999*, to be heard at the Brisbane Children's Court on 10<sup>th</sup> August 2009 at 10.00am.**

---

On the 19<sup>th</sup> January, 2009 at the Brisbane Children's Court, [REDACTED] Child Safety Officer of the Caboolture Child Safety Service Centre, made an application for a child protection order granting custody of the abovenamed child to the Chief Executive, Department of Communities (Child Safety Services) for a period of two years. The application has been adjourned for hearing to the 10<sup>th</sup> August 2009.

**Nature of instructions**

It would be appreciated if one of your officers would represent the Chief Executive, Department of Communities (Child Safety Services) at the hearing on the 10<sup>th</sup> August 2009 at 10a.m. It would also be appreciated if one of your officers would participate in an Advice in Conference at your earliest convenience.

Court Services  
GPO Box 806  
Brisbane Queensland 4001  
**Telephone 3235 9859**  
**Facsimile 3235 9851**  
**Website**  
www.childsafety.qld.gov.au  
ABN 42 458 314 937

#### Court history

Initial mention: 22<sup>nd</sup> January, 2009  
Adjourned to: 23<sup>rd</sup> February, 2009  
3<sup>rd</sup> March, 2009  
29<sup>th</sup> April, 2009 (COC and mention)  
10<sup>th</sup> August, 2009 (Hearing)

#### Current status of child

The child is subject to an interim order granting temporary custody of the child to the Chief Executive, Department of Communities (Child Safety Services), Queensland, until the date fixed for hearing or further orders. The child is currently placed with departmental carers, [REDACTED]

#### Family constellation

Mother: Mary Bell (whereabouts unknown)  
Father: Barry Jones  
Subject child: Peter Jones  
Father's Current Partner: Denise Sutton  
Denise Sutton's Son: Gary Sutton

#### Summary of child protection issues

Peter Jones was presented to the Emergency Department of the Redcliffe Hospital on the 9<sup>th</sup> January, 2009 with head injuries and significant bruising to his body. The injuries were of such a serious nature that he was immediately transferred to the Mater Children's Hospital.

Medical professionals have assessed the injuries to be non-accidental.

Barry Jones has been charged with Grievous Bodily Harm in relation to the child's injuries.

The child is considered to be at risk if returned to the fathers' care due to the following:

- The child has suffered life-threatening injuries, to the extent that if medical assistance had not be sought it is likely that the child would have died;
- Inconsistencies between the extent of the injuries and the explanation for how these injuries occurred by Barry Jones and his partner remain unresolved;
- Inconsistencies exist between the timing of the child's injuries, with medical opinion suggesting that the injuries occurred approximately twenty-four to forty-eight hours before the child was presented at the Redcliffe Hospital. Barry

Jones and his partner maintain that following the incident the child was immediately taken by ambulance to the Redcliffe Hospital;

- The child is likely to suffer some motor dysfunction and long term learning difficulties. A high level of support will be required from his caregivers over the next twelve to twenty-four months. The Department has concerns regarding Barry Jones' ability to provide this level of care.

The child's mother allegedly suffered complications when giving birth to Peter. As a result she was left with an intellectual disability and requires twenty-four hour care. The mother's current whereabouts are unknown. Attempts have been made to locate the child's mother but to date these have been unsuccessful.

#### Respondents

Barry Jones is contesting this application. His legal representative is [REDACTED] of the Brisbane Legal Aid Office, telephone [REDACTED]

Mary Bell's current whereabouts are unknown and the Department has been unable to serve her with any material in relation to the Child Protection Application for Peter Jones.

#### Evidence obtained and attached

- Form 10 Application for a Child Protection Order  
(Dated the 19<sup>th</sup> January, 2009)
- Form 16 Adjournment of proceeding for a Child Protection Order
- Form 19 Notice of Court Ordered Conference
- Form 20 Report of Court Ordered Conference
- Form 25 Affidavit by [REDACTED]  
(Dated the 19<sup>th</sup> January 2009)
- Form 25 Affidavit by [REDACTED] Mater Children's Hospital  
(Dated the 19<sup>th</sup> January 2009)  
Exhibit 'A' – Medical report
- Form 25 Affidavit of [REDACTED]  
(Dated 19<sup>th</sup> February 2009)

#### Material from the Respondents:

- Form 25 Affidavit of Barry Jones  
(Dated 4<sup>th</sup> February 2009)

- Form 25 Affidavit of Patricia Jones  
(Dated 19<sup>th</sup> February 2009)

Suggestions for evidence to be obtained.

Please refer to the "Review of court material" document.

Potential witnesses

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]

Departmental contacts

The departmental contacts in relation to this matter are [REDACTED] Child Safety Officer [REDACTED], Team Leader, [REDACTED] Court Co-ordinator, Caboolture Child Safety Service Centre, phone [REDACTED] and [REDACTED] Court Services, telephone [REDACTED]

It would be appreciated if one of your officers would represent the department in this matter and as further evidence may be required; your advice is sought as to what evidence may strengthen the case.

Yours faithfully,

[REDACTED]  
**Manager**  
**Court Services**  
**Department of Communities (Child Safety Services)**  
Encs

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such as are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

\*Sworn / Affirmed by *(full name of deponent)* on *(date)* at *(place)* in the presence of:

*(signed by deponent)*

Deponent

*(signed by Justice of the Peace)*

Justice of the Peace / Commissioner for  
declarations

Training document

Training document

Peter's injuries.

47. Once released from hospital Peter will be highly vulnerable and will need to be in an environment where he is safe. Peter will also need to be nurtured and encouraged to develop and rehabilitate from his injuries at his own pace. This will involve constant supervision of his learning and rehabilitation needs. It is assessed that Peter would be at too higher risk of further harm should he be returned to the care of Mr Jones and Ms Sutton at this time
48. I have formed the opinion that Peter Jones is a child in need of protection and that such protection is not likely to be ensured by any other less intrusive order the Court may make. I now make application, for a child protection order granting custody of the child Peter Jones to the Chief Executive for a period of two years.

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such as are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

Sworn by on Amanda Hall on the 19<sup>th</sup> January, 2009 at Brisbane in the presence of:

*(signed by deponent)*

Deponent

*(signed by Justice of the Peace)*

Justice of the Peace /Commissioner for  
declarations

- f) The current contact arrangements which involve Mr Jones and Ms Sutton having supervised contact with Peter twice per week will remain in place in the short-term. Monthly reviews of the contact arrangements will occur, with a view to increasing contact, if considered appropriate;
- g) Attempts will be made to locate Peter's mother, Ms Bell and other maternal family members, with a view to establishing a positive relationship between Peter and his maternal family;
- h) Referrals for appropriate discipline and parenting strategy programs will be made for Mr Jones and Ms Sutton. The Department's expectation is that Mr Jones and Ms Sutton attend these programs and then demonstrate their understanding of age appropriate discipline techniques and parenting strategies. Consultation and feedback will be sought by the Department in relation to Mr Jones and Ms Sutton's participation and progress in relation to these programs.
- i) The case plan will be reviewed every three months to ensure that Peter's welfare and best interests remain paramount.
- j) A true copy of the case plan is attached and marked exhibit 'C',

### **Conclusion**

45. Peter Jones is a child who has suffered life-threatening injuries. There remains some doubt as to how these injuries were inflicted upon Peter but assessments undertaken by medical staff suggest that the injuries were nonaccidental.

46. Mr Jones has been charged by Police with Grievous Bodily Harm as a result of

Child Safety Support Officer, with the Caboolture Child Safety Service Centre has supervised these visits. Pam Cassidy has informed me that Mr Jones and Ms Sutton have acted appropriately during each of the visits and appear to be concerned for Peter's welfare.

### **Wishes of the Child**

43. Peter is two and a half years of age. Given Peter's age, I have not discussed the details of this application with him.

### **Caseplan**

44. The current departmental case plan is as follows:
- a) Following his discharge from hospital Peter will be placed with indigenous carers that will be able to support and assist him with his rehabilitation needs;
  - b) In consultation with the Mater Children's Hospital and the carers the Department will ensure that Peter attends all required medical and rehabilitation appointments;
  - c) In consultation with the Mater Children's Hospital and the carers the Department will ensure that Mr Jones and Ms Sutton have an opportunity to attend all medical and rehabilitation appointments with Peter;
  - d) Mr Jones and Ms Sutton will be advised on an on-going basis of Peter's medical and rehabilitation progress through involvement in regular case discussions between hospital staff, the Department and the carers;
  - e) Mr Jones and Ms Sutton, with the assistance of hospital staff, will be provided with education opportunities to assist in Peter's rehabilitation;

Peter's current rehabilitation needs.

38. Mr Jones and Ms Sutton were also advised that following his release from hospital it was the Department's intention to place Peter with indigenous carers, Mr and Mrs Bond. Mr Jones and Ms Sutton initially questioned the need for the carers to be indigenous. The details of the "Child Placement Principle" applied by the Department was then discussed with Mr Jones and Ms Sutton and it was explained to them that given Peter is Aboriginal the Department is required in the first instance to attempt to place Peter with indigenous carers. It was also explained to Mr Jones and Ms Sutton that Mr and Mrs Bond were experienced carers who had previously cared for children with physical disabilities and learning needs.
39. During this meeting Mr Jones and Ms Sutton were also advised that in relation to Gary, the Department would like the opportunity to further assess his care and protection needs and given they were not willing to consent to this process, the department is making an application for a Court Assessment Order in relation to Gary.
40. Mr Jones and Ms Sutton advised my Team Leader, Sharon Upton and myself that they would be contesting these applications.
41. I provided numbers to assist Mr Jones in accessing legal advice, to which he indicated that he would follow-up.

### **Contact**

42. For the duration of the court assessment order Mr Jones and Ms Sutton have visited Peter Jones twice weekly at the Mater Children's Hospital. Pam Cassidy, a

placement. Gloria did state that it would be important for the Department to continue to attempt to locate Peter's mother, Ms Bell, as contact with his maternal family would be vital in terms of Peter's cultural and spiritual identity.

### **Family Group Meetings**

36. A Family Group Meeting was held on the 17<sup>th</sup> January, 2009 at the Caboolture Child Safety Service Centre. In attendance were Mr Jones, Ms Sutton, Sharon Upton, Team Leader for Child and Family Team at the Caboolture Child Safety Service Centre and myself. The details of the court assessment order were explained to Mr Jones and Ms Sutton. Arrangements were made for Mr Jones and Ms Sutton to visit Peter twice per week for the duration of the court assessment order.
37. A further family Group Meeting was held on the 10<sup>th</sup> February, 2009. During this meeting it was explained to Mr Jones and Ms Sutton that in relation to Peter the Department would be applying for a child protection order granting custody to the Chief Executive for a period of two years. The current child protection concerns were discussed. It was explained to Mr Jones and Ms Sutton that given the inconsistencies between the extent of the injuries and explanation for how these injuries occurred the Department was of the opinion that Peter would be at risk if he was returned home at this time. It was further explained that the Department was seeking a two year order on the basis that Peter's rehabilitation needs are likely to be intensive over the next twelve to twenty-four months and that the Department currently held concerns in relation to Mr Jones and Ms Sutton's ability to meet

twenty-four months.

32. On the 10<sup>th</sup> February, 2009, Mater SCAN further recommended that the Department make application for a child protection order, granting custody of Gary to the Chief Executive for a period of one year. This recommendation was made on the basis that given the serious nature and the extent of Peter's injuries, Gary was also considered to be at risk.

**Consultation with Recognised Aboriginal Agency**

33. On the 17<sup>th</sup> January, 2009 I meet with Gloria Cobbo from the Karbul Indigenous Placement Agency, the recognised Aboriginal and Torres Strait Islander Agency. I advised her that Peter was subject to a court assessment order granting custody to the Chief Executive for a period of four weeks.
34. On the 6<sup>th</sup> February, 2009 I contacted Gloria Cobbo and invited the Karbul Indigenous Placement Agency to participate in a Family Meeting that was to be held on the 10<sup>th</sup> February, 2009, in relation to the Peter. Gloria Cobbo advised that she would be present.
35. On the 10<sup>th</sup> of February, 2009 I consulted with Gloria Cobbo from the Karbul Indigenous Placement Agency, regarding the Department's intention to make application for a child protection order, in relation to Peter, granting custody to the Chief Executive for a period of two years. I further advised Gloria that following his discharge from hospital it was the Department's intention to place Peter with Mr and Mrs Bond, indigenous carers. Gloria advised that the Karbul Indigenous Placement Agency were supportive of the Department's decision and the intended

Campbell that this matter has been listed for mention in the Caboolture Magistrates Court on the 22<sup>nd</sup> February, 2009.

30. The outcome of the initial investigation in relation to the notification received at the Caboolture Child Safety Service Centre on the 9<sup>th</sup> January, 2009 was substantiated for physical and emotional harm in relation to Peter and substantiated at risk of physical and emotional harm in relation to Gary.
31. On the 10<sup>th</sup> February, 2009, Mater SCAN recommended that the Department make application for a child protection order, granting custody of Peter to the Chief Executive for a period of two years. This recommendation was based on the following:
- a) Peter suffered life-threatening injuries, to the extent that if medical assistance had not been sought it is likely that the child would have died.
  - b) Inconsistencies between the extent of the injuries and the explanation for how these injuries occurred by Mr Jones and Ms Sutton, remain unresolved.
  - c) Inconsistencies exist between the timing of the child's injuries with medical opinion suggesting that the injuries occurred approximately twenty-four to forty-eight hours before the child was presented to the Redcliffe Hospital. Mr Jones and Ms Sutton maintain that following the incident the child was immediately taken by ambulance to the Redcliffe Hospital.
  - d) Peter is likely to suffer some motor dysfunction and long term learning difficulties. A high level of support will be required from his caregivers to assist in his rehabilitation. This support will be intensive over the next twelve to

Sutton. On the 2<sup>nd</sup> February, 2009 the Queensland Police Service advised me that neither Mr Jones nor Ms Sutton have any previous criminal history.

28. On the 7<sup>th</sup> February, 2009 I met with Dr Lewis to discuss Peter's current situation and rehabilitation requirements. Dr Lewis advised me of the following:
- a) It is difficult to say with any certainty the long-term prognosis for Peter.
  - b) It is highly likely that Peter will have some motor dysfunction on the left side of his body.
  - c) Peter may have difficulty walking.
  - d) Peter may have some long term learning problems.
  - e) Whilst Peter's rehabilitation needs are likely to be on-going throughout his childhood, they will be intensive over the next twelve to twenty-four months.
  - f) A more definitive prognosis could be given after one to two months of rehabilitation.
  - g) Peter will require a high level of support from his caregivers in order to assist him in the rehabilitation process.
  - h) Dependent upon his rate of recovery, Peter is likely to remain in hospital until mid-April, 2009.
29. On the 9<sup>th</sup> February, 2009, Jack Campbell advised me by telephone that he had arrested and charged Mr Jones with one count of Grievous Bodily Harm, as a result of the injuries that Peter had sustained. He further advised that Mr Jones had been granted watchhouse bail, and there were no conditions that would prohibit Mr Jones from having contact with Peter. I was further advised by Officer

interviews were also conducted in the presence of Police Officers, Jack Campbell and Susan Wall. I was also present during these interviews. During both interviews Ms Sutton maintained that she was in the living room with Mr Jones, when she heard a large bang come from the kitchen. She stated that whilst she did not witness the incident, Peter's injuries must have occurred whilst he was attempting to climb up on his high chair. Ms Sutton advised that when she and Mr Jones found Peter lying on the floor Mr Jones had immediately called an ambulance.

25. On the 12<sup>th</sup> January, 2009, Sharon Upton, Team Leader for Child and Family Team at the Caboolture Child Safety Service Centre, and myself participated in the Suspected Child Abuse and Neglect (SCAN) forum at the Mater Hospital (hereinafter referred to as "Mater SCAN"). Based on the inconsistencies between the presenting injuries and the explanations offered by Mr Jones and Ms Sutton the Mater SCAN team were of the opinion that the child was "at risk". Given that Mr Jones was no longer willing to cooperate with the Department and the Police's inquiries it was recommended that the Department apply for a court assessment order to gain custody of the child, whilst further assessments were undertaken.
26. On the 19<sup>th</sup> January, 2009 further attempts were made by Jack Campbell, Susan Wall, and myself to interview Mr Jones and Ms Sutton in relation to the alleged incident on the 9<sup>th</sup> January, 2009. Mr Jones and Ms Sutton refused to discuss the matter further.
27. Criminal history checks were undertaken in relation to both Mr Jones and Ms

and Susan Wall, Police Officers attached to the Brisbane Child Abuse Unit, conducted these interviews. I was also present when these interviews were conducted. Mr Jones maintained that he and Ms Sutton were in the living room when the child was injured. He stated that he did not actually see how the injuries were caused but the only possible explanation is that the child fell whilst climbing up his on his high chair. Mr Jones further stated that he "called an ambulance, immediately, once he saw Peter lying on the ground having what appeared to be a fit".

21. During the interview on the 12<sup>th</sup> January, 2009 it was put to Mr Jones that the explanation he had provided was not consistent with the presenting injuries. The issue of timing between when the injuries occurred and when the child was presented to the Redcliffe Hospital was also raised.
22. In response to this Mr Jones started banging the table and began yelling "you are all out to get me.... I can't fucking believe this..... I'm not saying anything else; you guys will just twist my words.... You don't know what happened and you're trying to pin it on me....you've got no fucking proof....my kid's lying there nearly dead and you're trying to screw me for this.....this is so fucking typical of the cops and welfare". Mr Jones terminated the interview by walking out.
23. Prior to the conclusion of the interview Mr Jones once again indicated that he was not willing to discuss the events of the 9<sup>th</sup> January, 2009 again with either the Police or the Department.
24. Ms Sutton was also interviewed on the 11<sup>th</sup> and 12<sup>th</sup> January, 2009. These

- c) When Peter was presented at the Redcliffe Hospital, Mr Jones and Ms Sutton appeared to be very distressed. They also appeared to be generally concerned for Peter's welfare.
18. On the 11<sup>th</sup> January, 2009 I spoke with Doctor Anthony Lewis, a consulting paediatrician, from the Mater Children's Hospital. He advised that Peter's injuries on admission included:
- a) A subdural haemorrhage (bleeding between the skull and the brain);
  - b) Retinal haemorrhaging in both eyes;
  - c) Bruising to left side of the face, which was estimated to be approximately two days old;
  - d) Bruising to the left side of the body, which was estimated to be approximately two days old.
19. Dr Lewis described Peter's injuries as being non-accidental. This was on the basis that the explanations offered by Mr Jones as to how the injuries occurred were not consistent with his assessment of the presenting injuries, which were of a serious nature. Dr Lewis stated that the retinal haemorrhaging in both eyes was consistent with a child who has been shaken. Dr Lewis further indicated that it was likely that Peter had suffered a severe blow to the head. Dr Lewis also stated that the timing of the injuries offered by Mr Jones varies from his professional opinion, which suggests that the injuries occurred approximately twenty-four to forty-eight hours prior to child's admission to the Redcliffe Hospital.
20. Mr Jones was interviewed on the 11<sup>th</sup> and 12<sup>th</sup> of January, 2009. Jack Campbell

action as Gary was “playing up” and not following his instructions.

15. Mr Jones stated that on this occasion, Gary had locked himself in the family car and was playing with matches. He refused to open the car despite numerous requests by him so he ended up calling the RACQ to unlock the car. Once the car was unlocked he removed the matches from Gary and smacked him with the belt he was wearing for being so disobedient and putting himself at risk and damaging the car. Gary had burnt holes in the car seats. He said that at the time Denise was at work.

### **Current Child Protection Concerns**

16. On the 9<sup>th</sup> January, 2009 a child protection notification was recorded at the Caboolture Child Safety Service Centre. Peter was presented at the Redcliffe Hospital Emergency Department, by ambulance, with head injuries and significant bruising to his body. The injuries were of a serious nature, resulting in Peter being immediately transferred to the intensive care unit of the Mater Children’s Hospital.
17. The notifier advised the Department of the following:
- a) Mr Jones advised that he and Ms Sutton were in the living room when they heard a crash from the kitchen. Mr Jones went to the kitchen and found Peter lying on the ground amongst some cereal boxes and other food items. He appeared to be “fitting”. Mr Jones presumed that Peter had fallen while trying to climb up on his high chair to get some food.
  - b) Mr Jones advised that given Peter appeared to be “fitting” he had immediately called an ambulance.

in Brisbane Children's Court on 15<sup>th</sup> January, 2009. This order is due to expire on the 15<sup>th</sup> February, 2009. Exhibit "A" to this application is a true copy of the Form 7 – court assessment order.

### **History of Departmental Contact**

11. I have prepared a report outlining previous child protection history in relation to Mr Jones and Ms Sutton. This report was prepared from departmental files and records. Exhibit "B" to this affidavit is a true copy of this report.
12. As outlined in Exhibit "B", departmental files indicate that a notification was received on the 3<sup>rd</sup> March, 2008 by the Logan Child Safety Service Centre in relation to the child, Gary Sutton. The notifier alleged that the child had been physically assaulted by Mr Jones, with a leather strap. It was alleged that the child was hit on his legs and hands. The outcome of the initial assessment was "no assessment was possible due to client reasons – the clients had moved prior to the initial assessment being undertaken".
13. On the 11<sup>th</sup> January, 2009 I spoke with Mr Jones and Ms Sutton regarding the above concerns. Ms Sutton stated that she could not remember the alleged assault on Gary as it was so long ago; however she stated that "both of them tell me when something happens like that. There are no secrets between us. I have never seen any marks or bruising on Gary. I have never had any concerns about how Barry disciplines Gary. Sometimes he needs a firm hand."
14. Mr Jones admitted that he has smacked Gary with a leather strap once. He indicated that he did not hit him with "any real force" and that he had taken this

by posting a letter to this address by registered mail. This letter was returned to me by Australia Post. The explanation provided as to why the letter could not be delivered was that Ms Bell was no longer residing at the address provided. I am currently attempting to locate Ms Bell through Centrelink.

6. Denise Sutton (hereinafter referred to as "Ms Sutton") is Barry Jones' current partner. She is presently residing at the same address as Mr Jones. I first met Ms Sutton at the Mater Children's Hospital on the 11<sup>th</sup> January, 2009, whilst undertaking an initial assessment in relation to Mr Jones' son, Peter Jones. I have met with Ms Sutton on numerous occasions since this time.
7. Ms Sutton has one son, Gary Sutton (hereinafter referred to as "Gary") (DOB: 23/11/2000) from a previous relationship. Gary resides with Ms Sutton and Mr Jones.
8. I have met Gary Sutton on the 11<sup>th</sup> January, 2009 whilst undertaking the initial assessment with Ms Sutton. I have subsequently asked Ms Sutton if I could interview Gary at his school in relation to the incident involving Peter. Ms Sutton refused this request stating that it would be too upsetting and confusing for Gary to be interviewed by departmental staff. Therefore I have not been able to have further contact with Gary Sutton at this time.
9. Peter Jones (hereinafter referred to as "Peter") is the subject child.

#### **Current Departmental Involvement**

10. Peter is currently the subject of a court assessment order, granting custody to the Chief Executive for a period of four weeks. This court assessment order was made

2. I am the applicant seeking a child protection order granting custody of the subject child, Peter Jones, to the Chief Executive for a period of two years. This affidavit is sworn in support of my application.

### Family Details

3. Barry Jones (hereinafter referred to as "Mr Jones") is the father of the subject child. I first met Mr Jones on the 11<sup>th</sup> January, 2009 at the Mater Children's Hospital whilst undertaking an initial assessment in relation to his son, Peter Jones. Since this time I have met with Mr Jones on a number of occasions.
4. During my discussions with Mr Jones on the 11<sup>th</sup> January, 2009 he identified the mother of Peter to be Ms Mary Bell (hereinafter referred to as "Ms Bell"). In relation to Ms Bell, Mr Jones advised of the following:
- a) Ms Bell suffered medical complications whilst giving birth to Peter. This left Ms Bell intellectually impaired and requiring twenty-four hour care.
  - b) Ms Bell's mother and father, Sandra and Gordon Bell, travelled to Brisbane and assumed responsibility for their daughter after she became disabled.
  - c) Mr Jones had not had contact with Ms Bell since the birth of their son.
  - d) Mr Jones is not presently aware of Ms Bell's address.
  - e) Ms Bell is of Aboriginal descent.
5. I have attempted to locate Ms Bell. On the 18<sup>th</sup> January, 2009 I contacted the Royal Brisbane Hospital, which was the hospital where Peter was born. They provided me with an address in New South Wales. I attempted to contact Ms Bell,

Form 25  
**Childrens Court Act 1992**  
*Child Protection Act 1999*

AFFIDAVIT

CHILDRENS COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER:

**Child:** Peter Jones – (DOB: 16/12/06)

**Applicant:** Amanda Hall

AND

**[First] Respondent:** Barry Jones

AND

**[Second] Respondent:** Mary Bell

I, Amanda Hall, Child Safety Officer of 30-40 Quay Street in the State of Queensland, make oath and say as follows:-

1. I am an officer of the Department of Communities (Child Safety) (hereinafter referred to as "the Department"). I am appointed as an authorised officer under the *Child Protection Act 1999*. I hold a Bachelor of Social Work Degree from the University of Queensland, which was conferred in 1997.

---

Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

**Form 23**  
Childrens Court Act 1992  
Child Protection Act 1999

**REQUEST FOR SUBPOENA**

**CHILD:** (name)

**(Please note – multiple children can be listed on the one subpoena. ie – multiple sibling groups).**

Date of Birth:

Sex \*Female/Male

**APPLICANT:** *(This is the person who is applying for the subpoena – this does not necessarily have to be the applicant for the court assessment order/ child protection order. For example it could be another authorised officer ie Team Leader)*

Address:

TO the Registrar of the Childrens Court at (place) –

In the matter of application/s \*for / in relation to a \*court assessment order / child protection order or orders made by (name of applicant) **(this is the applicant for the court assessment /child protection order)** an \*authorised officer / police officer, in the Childrens Court at (place) on (date) **(this is the initial mention date)** in relation to the above-named child –

Please seal a subpoena on behalf of: **(This is the applicant applying for the subpoena)**

direct to:

of:

returnable before the Childrens Court at:

**Place:**

**Date:** *(this relates to the date of the hearing or the mention date if the court has ordered an earlier return date – particularly in relation to files).*

**Time:** *(this is the time the hearing is to start)*

**\*Applicant / Respondent** *(This is the applicant applying for the subpoena)*

Place:

Date:

\*delete whichever is not applicable  
Form 23 – Version 1, March 2000

**Form 24**  
*Childrens Court Act 1992*  
*Child Protection Act 1999*

**SUBPOENA**

**CHILD:** (name)  
Date of Birth:  
Sex \*Female/Male

**TO:**  
of:

In the matter of application/s \*for / in relation to \*a court assessment order / a child protection order or orders made by (name of applicant), an \*authorised officer / police officer, in the Childrens Court at (place) on (date) in relation to the above-named child –

**YOU ARE REQUIRED TO APPEAR \*AND / OR PRODUCE DOCUMENTS**  
*(specify documents to be produced)*

**before the Childrens Court at:**

**Place:**

**Date:**

**Time:**

to provide \*evidence in the above matter / produce documents.

**Registrar**

**Date:**

**NOTE: IN DEFAULT OF YOUR ATTENDANCE THE COURT MAY ISSUE A  
WARRANT TO COMPEL YOUR ATTENDANCE**

Form 24 – Version 1, March 2000

## Subpoenas

The provisions in relation to subpoenas are outlined in Rule 27 – “Subpoenas” of the *Children’s Court Rules, 1997*.

Rule 27 states: “On application by a party to a proceeding, the registrar may issue a subpoena requiring the attendance of person before the court to give evidence in the proceeding or produce stated documents or things”.

A witness will require a subpoena to attend court if they refuse to attend. Some witnesses may request a subpoena in order for them to be released from their place of work.

Files of another Department or agency may also be required. If so, a subpoena is to be prepared in the name of the Director-General, Manager or Superintendent of that organisation. That particular person will not appear, but may delegate a representative to attend with the files.

The procedure for preparing and serving a subpoena involves:

- Completing a copy of the Form 23 – Request for a Subpoena
- A separate Form 23 needs to be completed for each witnesses
- Complete the Form 24 – Subpoena and make three copies of this document.
- Keep copies of the Form 23 and the Form 24 for departmental records
- Take the original and the remaining copies to the Justice of the Peace at the court where the application is to be heard.

The Registrar will make a decision regarding the issue of the subpoena. If the subpoena is issued, two copies of the Form 24 are returned to the departmental officer for one for personal service on the witness and one for the departmental file.

Once the subpoena has been served on the witness the departmental officer that served the witness needs to complete a Form 22 – Affidavit of Service.

### **Note:**

The applicant applying for the subpoena does not necessary need to be the applicant for the child protection order.

The person that serves the subpoena does not need to be the applicant for the subpoena or the applicant for the child protection order. However, the person who serves the subpoena needs to complete the Form 22 – Affidavit of Service.

## **Advice in Conference (AIC)**

An "Advice in Conference" (AIC) is a discussion that involves Crown Law, Court Services and the Child Safety Services Centre. The following persons' would participate in an "AIC":

- Crown Law Officer – Crown Law
- Court Services Adviser – Court Services
- Child Safety Officer
- Team Leader
- Court Co-ordinator

### **Purpose of an Advice in Conference**

- Review available evidence
- Provide legal advice
- Planning and strategising the application
- Exploring alternative options
- Determining negotiation stance

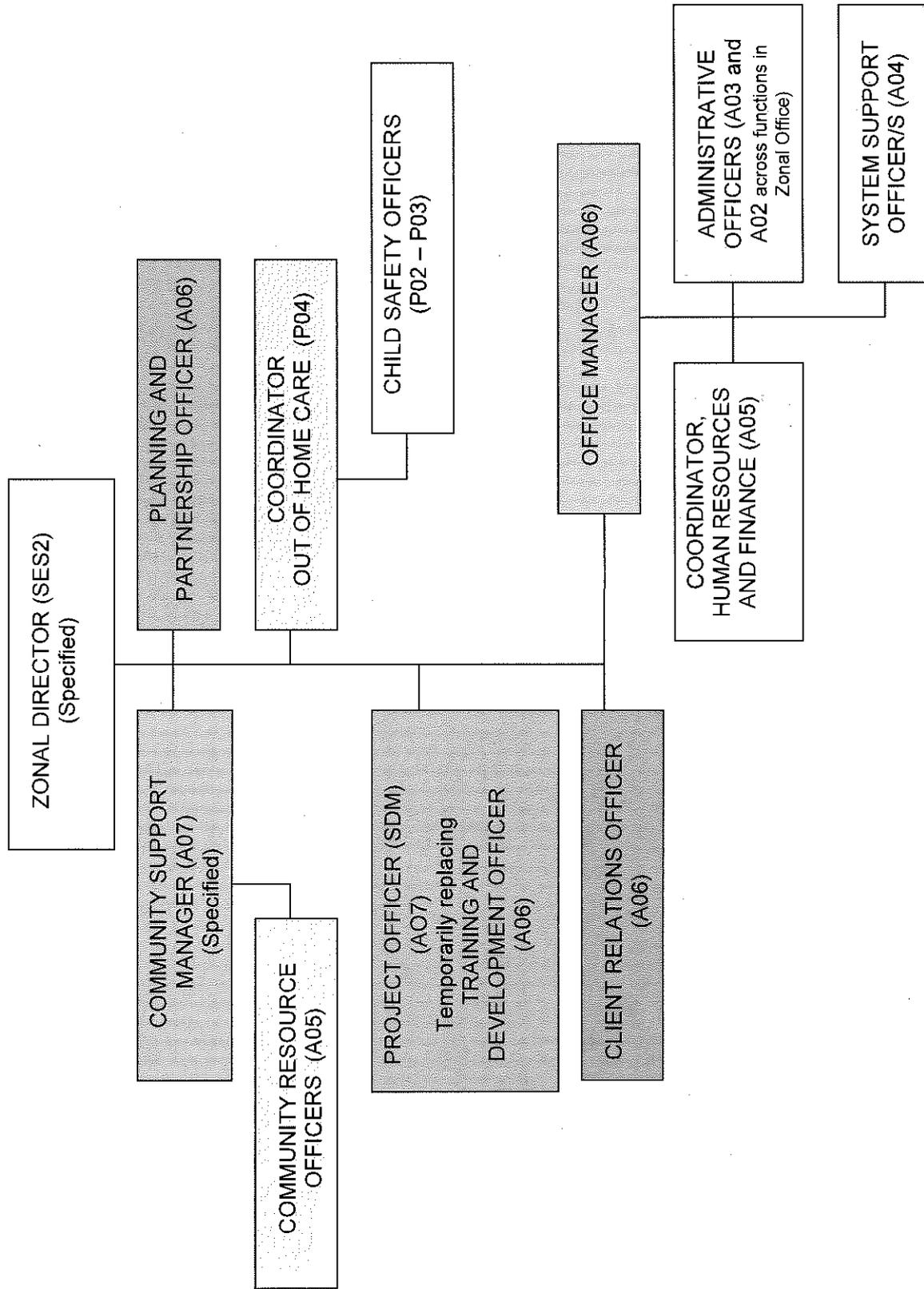
### **Framework for an "Advice in Conference"**

- The Court Services Adviser chairs the AIC.
- The AIC will commence with an introduction of all participants
- Checks are made to ensure that all parties have the same material
- In some cases, Crown Law will have prepared a memo that will form part of the discussions.
- The Child Safety Service Centre is required to summarise the child protection issues, which form the basis of the application.
- The Child Safety Service Centre is required to provide a case update.
- The Child Safety Service Centre is required to provide confirmation of the child protection order being sought
- A review of the evidence to date and suggestions for further evidence required is undertaken
- A list of witnesses that would be required for the hearing is generated. This would include those to be subpoenaed and any file documents that need to be subpoenaed from external agencies.

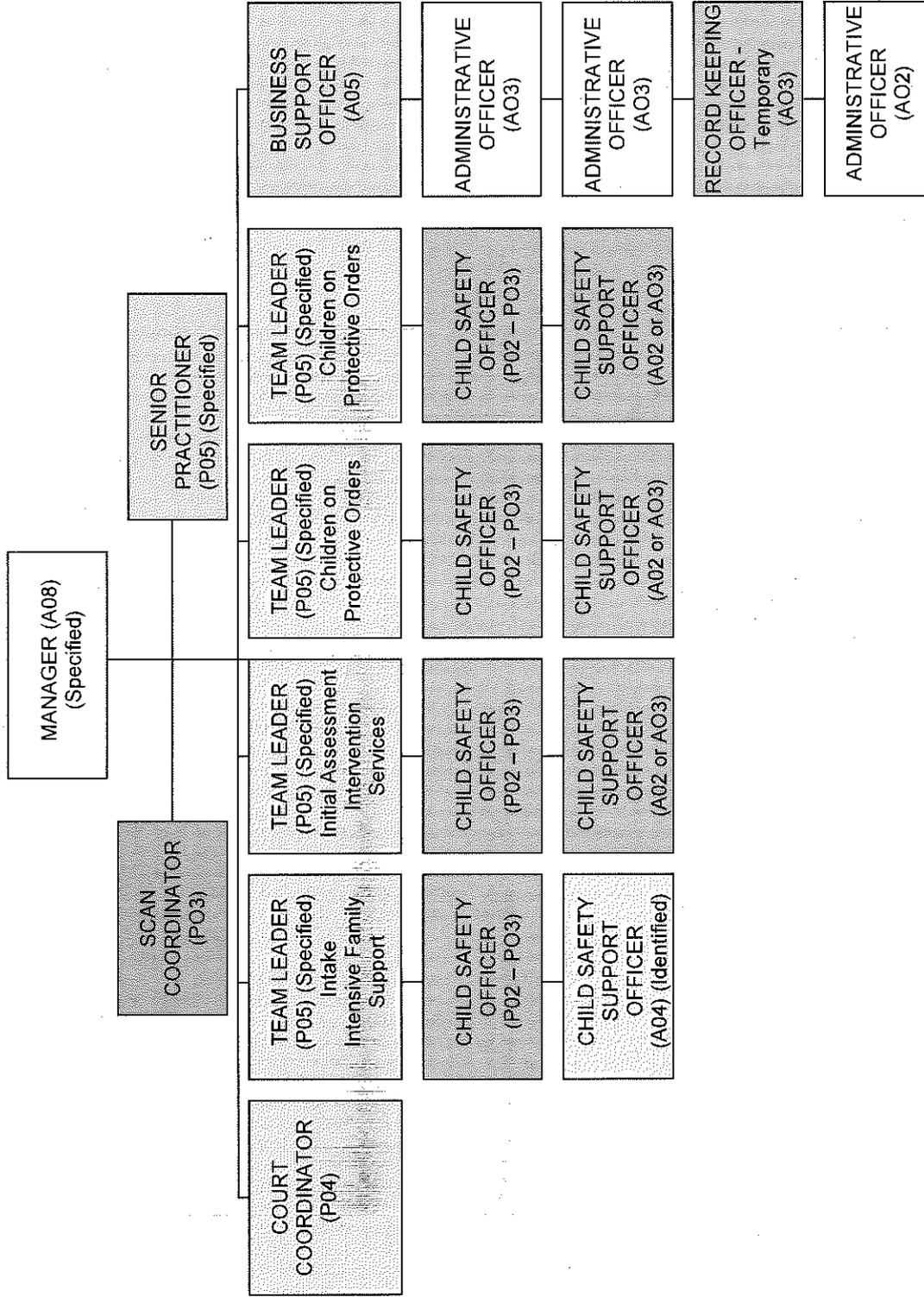
In general "Advice in Conferences" are conducted by teleconference. However, for some of the Brisbane Child Safety Service Centres, participants may chose to attend Court Services, in person.

Following the "Advice in Conference" the Court Services Adviser will complete and circulate the minutes to all parties.

# Zonal office - organisational structure



# Child safety service centre (CSC) - example organisational structure



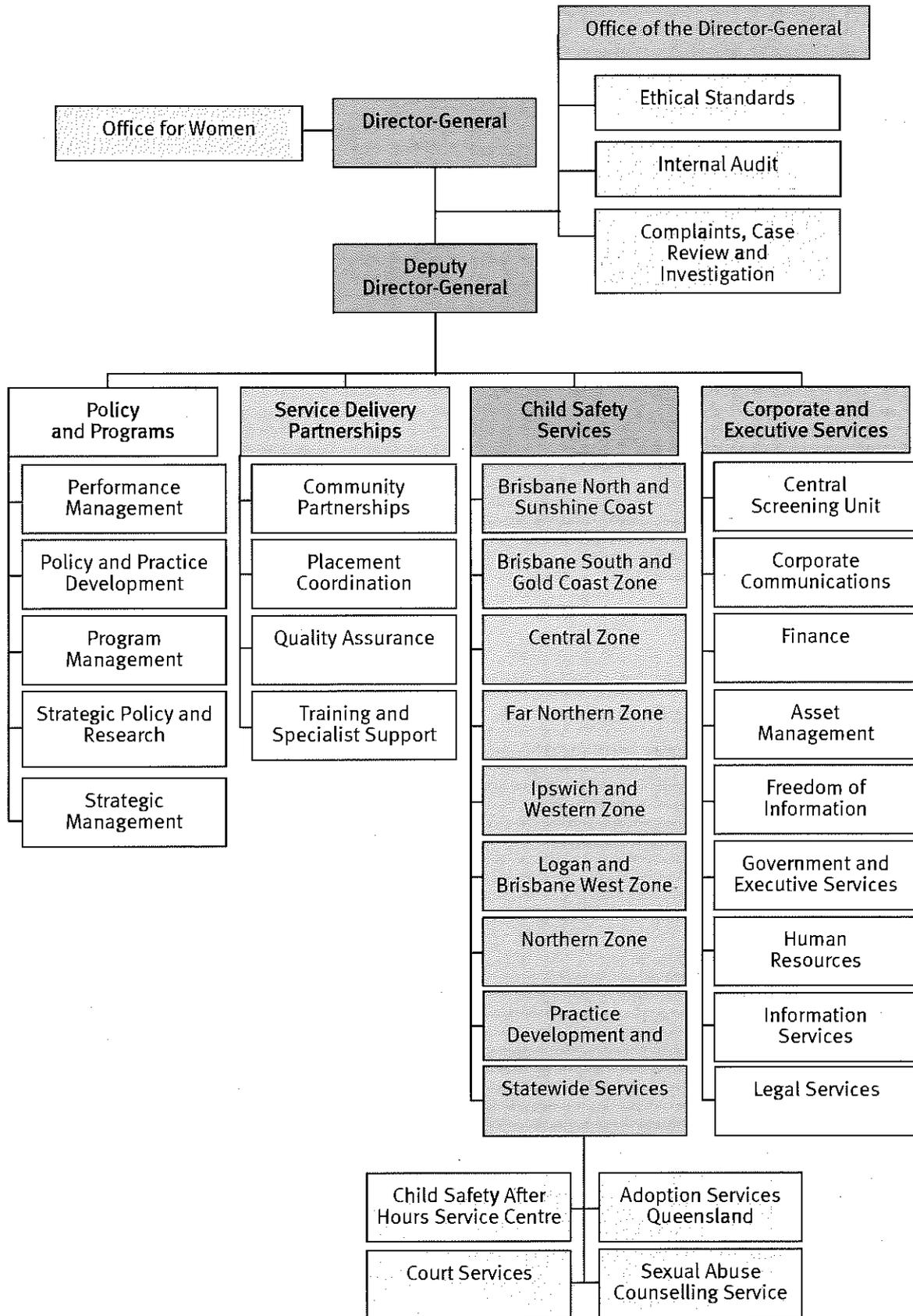


**CONFIDENTIALITY PROVISIONS IN THE  
CHILD PROTECTION ACT 1999**

Section	Section title	Summary
186	Confidentiality of notifiers of harm	<p>Notifier information is strictly confidential. Disclosure can only occur:</p> <ul style="list-style-type: none"> <li>- in the course of performing functions under this Act to someone else performing functions under this Act eg to a police officer involved in a joint investigation.</li> <li>- to the Ombudsman when an investigation is being conducted.</li> <li>- when giving evidence in legal proceedings – only with the leave of the court.</li> </ul>
187	Confidentiality of information obtained by persons involved in the administration of Act	<p>This is the main confidentiality provision. It prohibits departmental staff, police officers and others performing duties under the Act from disclosing personal information about children and families. This provision also applies to foster cares and Recognised Entity staff.</p> <p>Disclosure of this information can only occur for purposes related to carrying out duties under the Act and for purposes directly related to the welfare of any child.</p>
188	Confidentiality of information given by persons involved in administration of Act to other persons	<p>If information is disclosed under s187, this provision requires that the person who receives the information must not disclose it to anyone else.</p> <p>Disclosure can only occur for purposes directly related to a child's welfare or as otherwise required by law.</p>
189	Prohibition of publication of information leading to identity of children	<p>This section prohibits the media or anyone else from publishing information which identifies a child as a child subject to an investigation, a child under an order, or a child who has allegedly been or is at risk of being harmed by a family member.</p>
190-193	Confidentiality in relation to proceedings	<p>These provisions cover confidentiality in relation to subpoena of departmental records, disclosure of information to courts or tribunals and reporting of court proceedings.</p>
194	Release of information by health service employees	<p>This provision clarifies that health employees can disclose information relevant to the protection or welfare of a child to departmental and police officers, even though it is subject to confidentiality under the <i>Health Services Act</i>.</p>

# Department of Child Safety

## Organisational structure





## DRAFT CONSENT FORMS

Consent by parents/guardians where a child protection order is sought granting short/long term custody/guardianship of the child/ren to the Chief Executive, Department of Child Safety / relative / other person.

I, (*parent/s or guardian's name*), consent to the Children's Court making a child protection order granting *short/long term custody/guardianship* of *my/our child/ren* to the *Chief Executive, Department of Child Safety* (hereafter referred to as the "Chief Executive) *relative / other person*.

By consenting *I/we* acknowledge the following:

- *I/we* are the parent/s (or guardians) of (*child/ren's full name/s, date/s of birth*).
- *I/we* have been advised by officers of the Department of Child Safety to give consideration to obtaining independent legal advice in relation to the effect of a court making a child protection order granting *short/long term custody/guardianship* of *my/our child/ren* to the *Chief Executive/relative/other person*.
- *I/we have/have not* taken the opportunity to obtain legal advice of *my/our* own free will.

**(delete whichever not applicable)**

- If the court makes a child protection order, by law, the *custody/guardianship* of *my/our child/ren* shall pass to the *chief executive/relative/other person* for so long as *my/our child/ren is/are* subject to this order; or
- If the court makes a child protection order, by law, the supervision of *my/our child/ren's* protective needs shall pass to the Chief Executive for so long as *my/our child/ren is/are* subject to this order. I understand that if the court makes a Protective Supervision Order the Chief Executive must supervise (*state matters to be supervised*).

**(delete whichever not applicable)**

- I understand what it means if the court makes a ***child protection order granting long term guardianship of my/our child/ren to the Chief Executive/relative other person's name***. It means that *departmental officers/relative/other persons name* have/has the authority to make all of the decision that would be made by a guardian. This includes decisions about where (*child/ren's names*) will live, *his/her/their* daily care and other decisions about *his/her/their* long term welfare; or
- I understand what it means if the court makes a ***child protection order granting short term guardianship of my/our child/ren to the chief executive***. It means that departmental officers have the authority to make all of the decisions that would be made by a guardian for the period of the order. This includes decisions about where (*child/ren's names*) will live, *his/her/their* daily care and other decisions about *his/her/their* long term welfare. This means that *I/we* must not remove (*child/ren's name*) from the care of the person with whom *he/she/they* have been placed; or

## APPLICATIONS FOR CHILD PROTECTION ORDERS BY CONSENT

When parents/respondents are consenting to a child protection order it can be beneficial to get them to sign a document which outlines their consent.

A signed consent by parents/respondents should only be used if the parents/respondents are not attending court, or are not legally represented. This document should not replace the parents' own attendance/representation at court. It is merely a tool that can:

- assist officers with pre and post court processes
- assist the court
- assist in meeting the information requirements of Section 106 – court to ensure parties understand proceedings of the *CPA1999*.

Whilst it is useful to hand up to the court a signed consent form it is vital that when making submissions to the court in relation to the making of the child protection order that the Court Coordinator/Department officer undertakes the following:

- advises the Court that the parents/respondents are consenting to the order
- outlines for the Court that the relevant provisions of Section 59 – making of a child protection order under the *CPA1999* have been met (The court still needs to be satisfied that the child is a child in need of protection.)

Role of Court Coordinator in relation to consent orders:

- assist CSO to draft appropriate consent forms
- provide quality assurance role in terms of checking the details of consent forms that have been drafted
- ensure that prior to the matter being mentioned in Court that the relevant provisions of Section 59 *CPA1999* have been complied with.

What is JR?

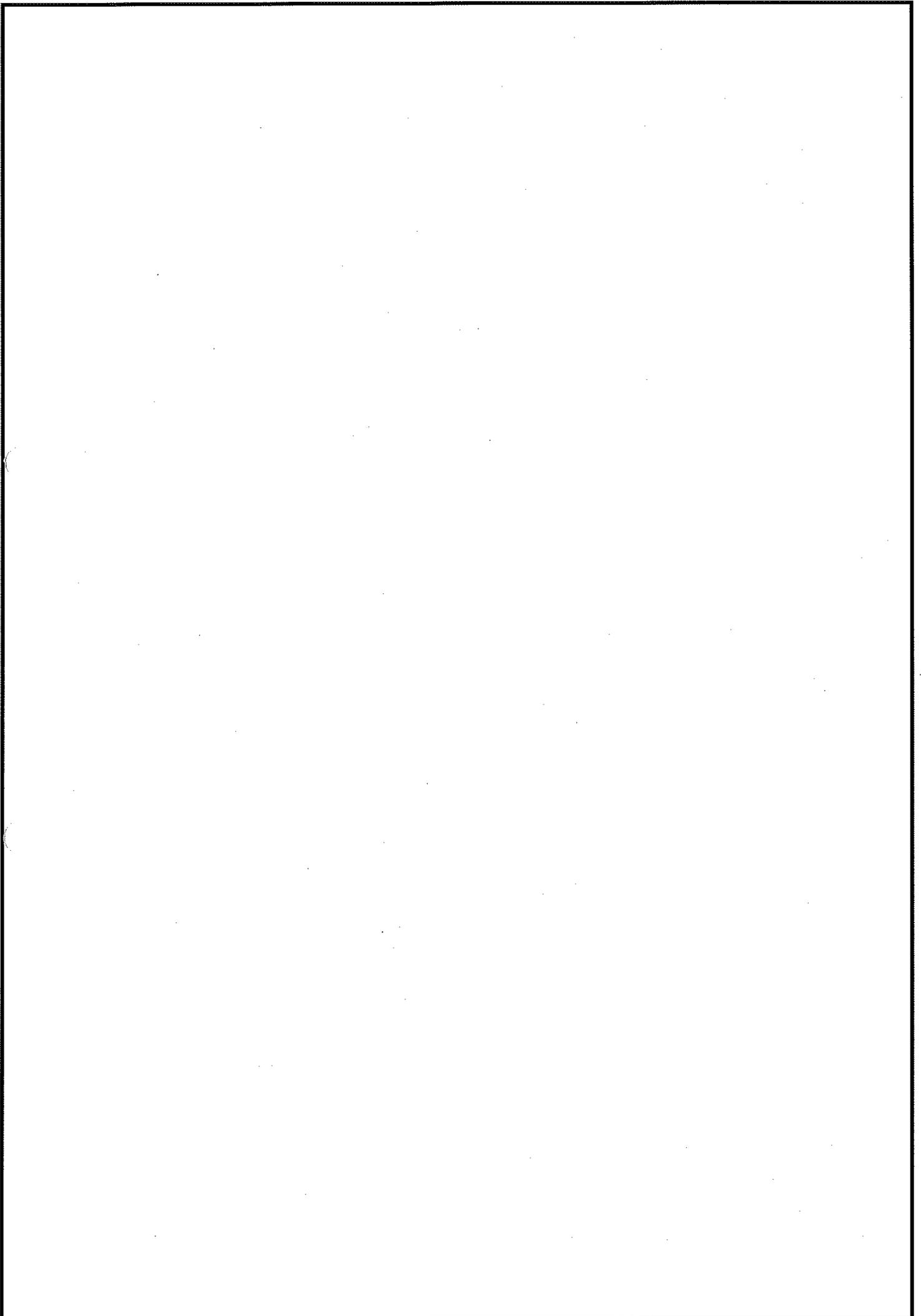
Judicial Review

A re-examination by judges / a reassessment or re-examination by judges of a decision or proceeding by a lower court or a government department

What is AR?

Admin review

When?



- Casework - manage and participate in ongoing legal casework as required.
- Policy and strategic legal compliance - contribute to the development of departmental policy and other strategic initiatives that involve a significant level of legal content, hence ensuring consistency in legal compliance.
- Instruction on legislation to Parliamentary Counsel - provide instruction to Parliamentary Counsel in respect of new or amending departmental legislation for which the branch has been allocated responsibility.
- Cabinet submissions - draft submissions on behalf of the Director-General for consideration by Cabinet.

The branch provides services including:

- in-house legal advice in relation to corporate, case related and policy development issues.
- Management of department's instruction of Crown Law in relation to legal representation and advice.
- case related and policy development issues
- advice on legislative development

**Interface:**

In the first instance Court Coordinators should consult with the Court Services Unit prior to contacting the Legal Services Branch. **NO Child Safety Officer should contact the Branch directly.**

Any contact with the LSB should be instigated by CSU who will advise when contact is appropriate.

The Public Trustee would normally brief the matter to a private firm of solicitors to act for the child. This is appropriate as the State would have a conflict of interest and could not provide instructions on behalf of the child.

3. There are claims by foster carers who have been injured by children in our care. This commonly occurs where we have placed a difficult or violent child with the carer. In the current financial year no such matters were finalised.
  
4. There are claims where the claimants allege that they have suffered as a result of the adoption process. Most of the claims have been made in the last four years.
  
5. There are some claims where a person alleges that the State of Queensland failed to remove them from their parents and or care situation in breach of the duty of care owed by the Department to all children in Queensland.

**Last**, there are a small number of miscellaneous claims, such as work related stress injuries etc.

#### **Who represents the Department in these matters?**

In relation to these matters Crown Law acts on behalf of the department, and performs a significant amount of the legal work. However, the Legal Services Branch locates relevant evidence, considers advice provided, interprets the advice for relevant persons such as the Director General and Minister and will provide opinions on the advice given by Crown Law, suggest the most appropriate course to adopt so that the executive can provide proper instructions back to Crown Law .

Quite separately there are cases where the chief executive of the department acts as litigation guardian for children. In these cases, the department is not being sued. The child is suing someone else for a wrong that it is alleged that other person has committed against the child.

What else does Legal Services Do?

The branch also carries out the following function:

- Legal advice - provide legal advice to the Minister, Minister's Office, Director-General and senior executive in relation to the department's statutory responsibilities.

## THE LEGAL SERVICES BRANCH (LSB)

### Overview of the Role, Function and Interface of the Legal Services Branch:

The Legal Services Branch is part of Corporate and Executive Services Division. As the name of the Division suggests, the Legal Services Branch serves as a primary role the Executive of the department.

The branch will take care, for the executive, of all of its legal requirements

One of the major matters that the branch administers is the litigation that exists, essentially with the department being nominated as defendant. In fact it is the State of Queensland that is actually named as defendant in any such proceedings.

#### What litigation do we do?

Currently there are a number of legal claims against the department. The majority of these are "abuse" claims. Of these, some legal claims have been progressed by the claimants in the past year. The other matters remain current as they have not been removed from the legal process by the claimants.

The majority of the claims are personal injuries claims brought by former residents of Queensland institutions as well as former children in foster care.

Overall there are four main types of claims:

1. **First**, and in the **majority**, are **"abuse" claims** where the **statute of limitations does apply**. Claims have been brought by former residents of Queensland institutions as well as former children in foster care. The claimants will have to demonstrate to a court why they should not be barred from bringing their claims because the claims have been commenced "out of time". The claimants allege that they were abused whilst in care of the State and that the State failed in its duty of care to them. Most of the claims have been made in the last four years

There is a new scheme that will become operational soon whereby an administrative process can be followed by previous foster children that have been in an orphanage. If an application is lodged and some money is received there is the possibility to claim an extra amount, however once the process is finalised the person cannot go to sue the State of Queensland separately.

2. **Second**, there are **abuse claims** where the **statute of limitations does not apply** - that is, the claims have been commenced within the time limits provided for by the *Limitation of Actions Act 1974*. Where the alleged abuse is said to have occurred within the limitation period and the Director-General is still the guardian of the child then the State will refer the matter to the Public Trustee to act in the child's interests.

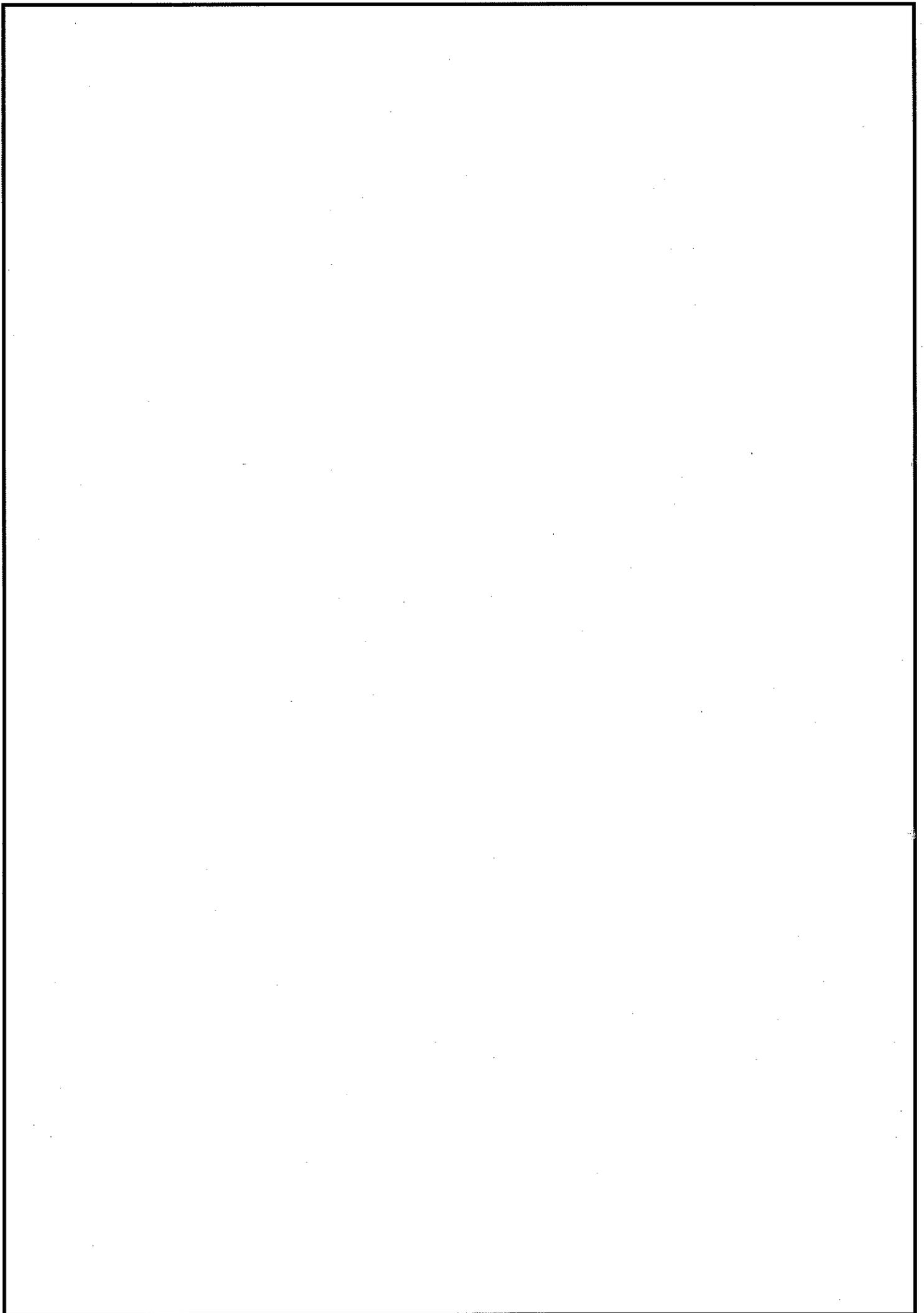
## **Legal Services**

### **Purpose**

Provide high quality legal advice to the Director-General, Minister and other departmental officers.

### **Function**

- **Legal advice** - provide legal advice to the Minister, Minister's Office, Director-General and senior executive in relation to the department's statutory responsibilities.
- **Policy and strategic legal compliance** - contribute to the development of departmental policy and other strategic initiatives that involve a significant level of legal content, hence ensuring consistency in legal compliance.
- **Instruction on legislation to Parliamentary Counsel** - provide instruction to Parliamentary Counsel in respect of new or amending departmental legislation for which the branch has been allocated responsibility.
- **Cabinet submissions** - draft submissions on behalf of the Director-General for consideration by Cabinet.
- **Instruction to Crown Law** - provide instruction to Crown Law in relation to departmental litigation.
- **Casework** - manage and participate in ongoing legal casework as required.



- The report writer has a limited amount of time to collect this information and prepare the report. They will decide what is the most information to be included.

The report writer will conduct a series of interviews which may include interviewing the following people:

- the child or young person alone;
- the child or young person with a parent, CSO, foster carer or other significant person;
- the child or young person's parent, and their current partners, separately or together;
- the CSO for the child; and
- other relevant professionals such as teachers, counsellors or doctors.

The interviews may occur at a LAQ office or at the offices of other professional people involved. Some interviews may occur over the telephone. A home visit may be necessary and they will contact those involved to arrange a suitable date and time for the interview. Sometimes the report writer may also want to observe the child or young person on contact visits.

#### **Legal Advice / Legal Representation**

All parents should be referred to legal advice to get some assistance in understanding the legal process. Not all parents will get legal aid for legal representation for the whole proceedings. How a parent's legal representative advocates is a matter of personal style – some are negotiators, some are more adversarial - Don't take it personally!

Lawyers for the parents will want to know why and how the Department have come to decisions and they are entitled to ask. The timely disclosure and service of your material makes everyone's job easier – trial by ambush is not in the child's best interests.

**See also LAQ factsheets 7 & 19**

### **Dealing with the Parties**

The Sep Rep will talk to both separately and together; they will write to both parties. They may deal with the parents through their lawyers if they have them. They may ask parents to complete questionnaire and authorities.

The Sep Rep needs all the material that develops along the way and in a timely manner. The Sep Rep will be interested in the details of case planning for the child.

### **SCAN team and Family Meetings**

The Sep Rep may ask to be invited to SCAN team meetings.

The Sep Rep would like to be given the opportunity to attend family meetings and at the very least the timely provision of minutes.

### **Court Events**

The Sep Rep attends mentions; conferences (court ordered and preliminary – may just listen and observe, may reality test what the parties are saying, may not be prepared to state their position at that stage).

The Sep Rep also attends the hearings – may call expert evidence, may cross examine witnesses, may make submissions making recommendations.

### **Report Writers**

A report writer is a professional person (usually an accredited social worker or psychologist) who has been asked by a Sep Rep to prepare a report for the Children's Court / QCAT. This person is considered by the Court / Tribunal to be an independent expert in child protection matters. This is no confidentiality in communications with the report writer.

In order to assess the child's best interests the report writer will need to collect information about:

- The child or young person's relationship with significant people (eg parents, siblings, extended family and friends)
- The child or young person's views and wishes, if they want to share this with the report writer.
- The child or young person's personal history and emotional attachments
- The child or young person's family history, including any significant issues which have impacted on the child.
- The child or young person's needs.
- What is currently happening in the child or young person's life.
- If the report is required for QCAT, what matters were taken into consideration when the Department made the decision about the child or young person?

### **Do they meet with the child?**

There is a decision made depending on the child and the nature of the matter about whether there is a benefit to the child in meeting with them. When the decision is made the Separate Representative will meet the child with the report writer or sometimes (rarely) with the caseworker.

The reason that the Separate Representative will not meet with a child on their own is to ensure independence and reliance on evidence not on personal opinion. Separate Representatives are lawyers not social scientists.

### **What does the Sep Rep do along the way?**

- Inspects the files
- Has dealings with the Department and parents
- May attend SCAN meetings and Family Meetings
- Attends Court events (mentions, conferences and hearings, appeals)

### **Inspecting the files**

Why?

- To find out how we got to this point
- The only information given to the Sep Rep in the beginning is what has been filed in the Court / Tribunal
- To see the original source material

What do they want to look at?

- Initial Assessments
- Assessment of Protective Needs
- SCAN team minutes
- Record of Family Meetings minutes
- External reports / assessments (eg medical, school)
- Information about suicide risk
- Case notes (eg observation of contact)
- Correspondence – this includes phone messages and emails (eg suspension of contact)
- Birth certificates
- Relevant police checks
- Carer assessments
- Placement meetings
- Any previous Court proceedings

How?

- Looking through computer and paper files
- Requesting notes and copies of what is needed to take away
- There is an inter-agency protocol that support the exchange of information

### **What do the cases say?**

The Full Court of Family Court in *P&P* (1995) FLC 92-615 commented on the role of the Separate Representative, as it was then known in the family law jurisdiction, saying:

The Separate Representative ought to:

- Act in an independent and unfettered way in the best interests of the child.
- Act impartially, but if thought appropriate, make submissions suggesting the adoption by the Court of a particular course of action if s/he considers that the adoption of such course is in the best interests of the child.
- Inform the Court by proper means of the child's wishes in relation to any matter in the proceedings. In this regard the Separate Representative is not bound to make submissions on the instructions of the child or otherwise but is bound to bring the child's expressed wishes to the attention of the Court.
- Arrange for the collation of expert evidence and otherwise ensure that all evidence relevant to the welfare of the child is before the Court.
- Test by cross examination where appropriate the evidence of the parties and their witnesses.
- Ensure that the views and attitudes brought to bear on the issues before the Court are drawn from the evidence and not from a personal view or opinion of the case.
- Minimise the trauma to the child associated with the proceedings.
- Facilitate an agreed resolution to the proceedings.

### **How do they represent the child's best interests?**

Direct Representative – doing what the child wants:

When acting as a direct representative the child gives you instructions, you really test them, give them advice about their options but you are required to act on their instructions. Solicitor / client relationship is privileged.

Separate Representative - doing what you think is in the child's best interests:

The Separate Representative should find out what the child's wishes are (usually through a report writer) and consider them in the context of all the other evidence from the Department and the parents.

The Separate Representative may organise their own evidence, test the other parties' evidence (eg cross examination) and make a recommendation to assist the court or tribunal in making the final decision.

- matters involving a number of siblings where orders are sought for some and not others.

### **What is the process once a Separate Representative is ordered?**

The Children's Court/QCAT sends a copy of the order and all the material filed to date to the GRANTS DIVISION of LAQ. In most cases the appointment will be made but it is a grants decision about funding.

The grants officer must allocate the file to someone in-house or on a preferred supplier list of private solicitors. There is a limited pool of solicitors in Queensland who do this sort of work so sometimes it is a struggle to find someone who is willing and available.

### **What does a Separate Representative actually do?**

- They are independent with no vested interest in the proceedings and the outcome;
- They are like a 'devil's advocate' checking the Department's position and the parent's position on matters along the way;
- How they perform their role is a matter for each Separate Representative to work out for themselves depending on their professional style and the circumstances of the case;
- They act in the child's best interests and make their recommendations based on all the evidence which is why it is important to keep them in the loop by providing information along the way (eg family meeting invitations and minutes) and timely provision of affidavit material;
- Sometimes in a matter the Court, the Department and the Separate Representative may all have different views about what is in the child's best interests – and that's ok;
- Sometimes what is in the child's best interests changes over the course of a matter – and that's also ok.

## **LEGAL AID QUEENSLAND**

### **What does the Child Protection Unit (CPU) do?**

The CPU is set up to do separate representation and direct representation of children and young people (not parents) incorporating:

- Separate representation for children in the Children's Court and Children Services Tribunal;
- Consulting on Family Law, child protection and social work issues relating to all sectors of LAQ, external providers and the community sector;
- Training and information dissemination (internal and external) in relation to the above fields;
- Maintenance of internal and external networks with providers or stakeholders;
- Responding to policy development and law reform.

### **What is a Separate Representative?**

A separate representative is a solicitor appointed to represent the child's best interests before the Children's Court or Children's Services Tribunal. They are party to the proceedings. When the order is made their role is finalised.

### **How does a Separate Representative get involved?**

The court/tribunal decided whether there should be a Separate Representative appointed and makes the order – it is not the decision of the Department or the parents.

Court Coordinators may need to consult with the CSO about whether you should make a recommendation for an order to be made. Section 110 in the *Child Protection Act 1999* gives the Magistrate the power in the Children's Court.

### **When does a Separate Representative get involved?**

#### **Children's Court**

The Court must consider appointing a Separate Representative where the matter is contested or where the child opposes and it must be in the child's best interests to appoint one. The types of matters where the court may consider appointing a Separate Representative vary but include:

- where there are complex issues like mental illness;
- where the child is particularly vulnerable;
- where the child is of an age where they are expressing clear views about what they want to happen; and

## How Child Safety Officers apply for a Temporary Assessment Order

### 1. Complete Form 1 "Application for TAO" which is located on ICMS

- If an application relates to an indigenous child – consult with the recognised Aboriginal or Torres Strait Islander agency.

### 2. Application must be sworn before a JP or Commissioner of Declarations

- If this is not possible prior to contacting the magistrate, application must be sworn ASAP afterwards.
- 2 copies of the application form are needed – magistrate's copy & file copy. Copying does not however need to occur immediately if applying via phone/fax.

### 3. Arrange to meet/speak to magistrate

**Business hours –**  
Contact local court.

**OR**

**After hours (outside Brisbane metro area) –**  
1. Contact a/hrs number for local magistrate.

**OR**

**After hours (Brisbane metro area) –**  
1. Contact on-call magistrate on  
**3247 5089.**

2. If local magistrate unavailable, contact Brisbane on-call magistrate.

### 4. Make application to magistrate by -

**Meeting in person –** hand application form to magistrate

**OR**

**Combination of fax and phone -** fax application form to magistrate and discuss via phone

**OR**

**Phone –** advise the magistrate of the details on the application form

### 5. Obtain copy of order by –

Magistrate handing copy to applicant

**OR**

Magistrate faxing copy to applicant

**OR**

Magistrate providing order details to applicant over phone and applicant recording on TAO form on ICMS or hard copy. Order form must be signed by applicant.

At least 2 copies of the order are needed – parents' copy & file copy.

### 6. Provide copy of order to parents -

- Provide a copy of the order and explain the order and appeal rights to the parents.
- Tell the child/young person about the order if it is considered appropriate in the circumstances having regard to the child's age or ability to understand the matter (S32 & S195).

### 7. If application and order were made over fax/phone, send sworn application form, and TAO form if used, to the court the magistrate is attached to. Send to Brisbane Children's Court for applications made to Brisbane a/hrs magistrates.

- Retain copies of these forms for the file.
- Court will forward copy of the order to Department if order was made over fax/phone.

### 8. Record order details on ICMS

- Why are each of the particular authorities/directives that you are seeking needed?
- Why is the timeframe sought required – for example, why is a TAO of a shorter duration not appropriate?
- What steps have been taken to obtain the consent of the parents for the actions which you are seeking the order to authorise, or why is it not practicable (or appropriate) to obtain consent?
- If applicable, indicate that the child was taken into protective custody under s18.

#### **Application to extend a TAO**

- Why is an extension of the order necessary (remember this is only for one more business day)?
- What assessments have already been completed?
- If applying for an extension beyond the maximum duration of 3 days – do you intend to apply for a Court Assessment Order or a Child Protection Order?

#### **Application to vary TAO**

- Why does the existing order need to be varied?

#### **Application to extend and vary the TAO**

- Why is an extension of the order necessary?
- What assessments have already been completed?
- If applying for extension beyond the maximum duration of 3 days – do you intend to apply for a CAO or a CPO?
- Why does the existing order need to be varied?

## **Provisions for indigenous children**

Consultation should occur with the recognised agency prior to the application being made. If this is not possible then consultation should be made as soon as possible after the order is made.

## **Other Provisions**

### **Section 18**

TAOs are used in all cases when a child is taken into custody under s18 of the Act.

This is even if it is immediately decided that:

- A longer period of assessment is required and therefore a Court Assessment Order will be needed; and/or
- A Child Protection Order will be required.

This is to ensure immediate judicial oversight of the continued custody of the child after action is taken under s18.

### **Effect of a TAO on existing Child Protection Orders**

If a TAO is made for a child for whom a Child Protection Order is already in force, the TAO prevails to the extent of any inconsistency between the orders. This is outlined in s36 of the Act.

### **Grounds for Applications for TAOs:**

Applications for TAOs (and for extensions and variations of these orders) must include the grounds of the application.

'Grounds' mean a summary of the main reasons for why we think an order is necessary. These reasons should be supported by key facts NOT assumptions or opinion.

Remember that a Magistrate is only able to make an order if they are satisfied that an investigation is necessary AND it cannot be done unless an order is made.

Therefore the grounds of the application should address key issues that would convince a Magistrate that court intervention is necessary.

The following questions provide prompts to guide the type of information which should be provided in the grounds of each application. These questions may be useful with assisting Child Safety Officers in writing their applications.

### **Questions to assist in the Application for TAO:**

- Why is the assessment necessary in relation to this child now?
- Why is a TAO needed to carry out the assessment?
- What assessments are proposed to be carried out over the term of the order?

- Authorising an authorised officer or police officer to remain in this place for as long as the officer reasonably considers necessary.

### **Application Process**

Section 25 of Act sets out the requirements for making an application for a TAO:

The application must be sworn and state the following:

- Grounds on which the application is sought (why are we seeking an order – see 'Grounds for Applications for Temporary Assessment Orders');
- The nature of the order sought (what provisions are we seeking and why? For example, if we are seeking temporary custody to the chief executive WHY we think this is necessary);
- If the application seeks custody of the child, the proposed arrangements for the child's care.

### **Making of a TAO**

Section 27 of the Act sets out what the Magistrate must be satisfied of to make a TAO. This includes:

- That an investigation is necessary to assess whether the child is in need of protection;
- That the investigation cannot be properly carried out unless the order is made; and
- That reasonable steps must have been taken to obtain the consent of at least one of the child's parents, to take the action requested in the order.

### **Extension or Variation**

Section 34 of the Act sets out the provisions for a TAO to be extended.

Conditions include:

- That the original order must not have expired;
- That the order can only be extended once; and
- That the order can only be extended until the end of the next business day after it would have otherwise ended if the Magistrate is satisfied that the officer intends to apply for a Court Assessment Order or Child Protection Order for the child within the extended term.

NB: If an application to extend a TAO occurs on a Friday then it is extended until the next business day meaning it will finish on the Monday at 5pm.

TAOs can be varied – this is outlined in s33 of the Act.

TAOs cannot be revoked.

## **Temporary Assessment Orders**

### **Part 2        Sections 23 – 36 of the *Child Protection Act 1999***

#### **Purpose:**

The purpose of a temporary assessment order is to facilitate assessment of a child's possible need for protection if the child is regarded at immediate risk of harm.

Assessment orders are used during the phase of departmental intervention when we are seeking to answer the question "is this child a child in need of protection?"

Assessment orders authorise initial assessment actions when consent has not been obtained because:

- Parents have refused to consent; or
- Parents are not able to consent.

They also authorise the safe placement of a child during the assessment if interim protection is required.

For the purposes of an assessment order, the definition of a "parent" includes the child's mother or father or a person who by law has parental responsibility for the child (section 23 of the Act).

#### **Features of Temporary Assessment Orders (TAOs)**

##### **Duration**

- Maximum of 3 days initially. The timeframe is to be calculated to start from the day after the order is originally made. Therefore, an order made on a Monday for a period of 3 days will expire at midnight on the Thursday.

##### **Provisions of a Temporary Assessment Order**

Provisions that can be sought under TAOs are contained in s28 of the Act. They allow for the following to occur:

- Authorising an authorised officer or police officer to have contact with the child;
- Take the child into the chief executive's custody and keep the child in the chief executive's custody while the investigation is carried out;
- Authorising a medical examination or treatment;
- Directing that the parents not have contact or only supervised contact with the child;
- Authorising an authorised officer or police officer to enter and search a place where a child is reasonably believed to be; and

Form 22	Affidavit of service
Form 23	Request for subpoena
Form 24	Subpoena
Form 25	Affidavit
Form 26	Certificate of exhibit
Form 27	Application for warrant for apprehension of a child
Form 28	Warrant for apprehension of a child

## **Childrens Court Forms**

Form 1	Application for a temporary assessment order
Form 2	Application to extend/vary a temporary assessment order
Form 3	Temporary assessment order
Form 4	Temporary assessment order – extension/variation
Form 5	Application for a court assessment order
Form 6	Application to extend / vary / revoke a court assessment order
Form 7	Court assessment order
Form 8	Court assessment order – extension / variation / revocation
Form 9	Adjournment of proceeding for a court assessment order
Form 10	Application for a child protection order
Form 11	Application to extend and/ vary /revoke a child protection order
Form 12	Application to revoke a child protection order and make another child protection order
Form 13	Child protection order
Form 14	Child protection order – extension / variation / revocation
Form 15	Child protection order made in place of revoked order
Form 16	Adjournment of proceeding for a child protection order
Form 17	Recognised Aboriginal or Torres Strait Islander agency
Form 18	Report of a family meeting
Form 19	Notice of court ordered conference
Form 20	Report of court ordered conference
Form 21	Notice to parties (following court ordered conference)

Notifier two advised me that due to the mother's current condition an Involuntary Mental Health Order has been invoked. The notifier is of the opinion that, at this time, the mother does not have the capacity to care for or make decisions in the best interest of her children. The notifier advised that the mother is likely to be hospitalised for at least three days.

The purpose of this order is to assess the following:

- The mother's capacity to care for her two children, given the current concerns regarding her mental health;
- Alternative placement options if the children are unable to be cared for by their mother.

Custody is considered necessary to secure the child's protection during the duration of the order given the mother's current mental health state.

This application seeks an order –

- Authorising an authorised officer or police officer to take the child, John Smith and keep the child in the chief executive's custody while the order is in force.
- Directing Karen Smith not to have contact, direct or indirect, with the child other than when a departmental officer is present.

Proposed arrangements for the child's care are as follows:

- The child is currently placed with a foster carer and will remain in this placement. Contact between the child and the mother will be facilitated by the department.

The order is sought for a period of 3 days.

This application is made by means of fax, pursuant to section 30 of the *Child Protection Act 1999*.

**PARENTS NAMES:**

Mother's name: Karen Smith  
Address: Unknown

Father's name: Unknown  
Address: Unknown

**Signature of Applicant:**

**SWORN / AFFIRMED** before:

Justice of the Peace / Commissioner for Declarations  
Place: Brisbane  
Date: 12<sup>th</sup> January, 2009

**Form 1**

*Children's Court Act 1992*  
*Child Protection Act 1999*  
(Section 25)

**APPLICATION FOR A TEMPORARY ASSESSMENT ORDER**

**CHILD: JOHN SMITH**

Date of Birth: 25<sup>th</sup> September, 2000  
Sex: Male

Aboriginal: unknown  
Torres Strait Islander: unknown

**APPLICANT DETAILS:**

Name: Amanda Hall

an authorised officer under the *Child Protection Act 1999*.

Address: 30-40 Quay Street, Brisbane.

**APPLICATION DETAILS:**

This is an application for a temporary assessment order.

The grounds on which this application is made are:

At approximately 10am on the 12<sup>th</sup> January, 2009 the Intake Officer at the Stones Corner Child Safety Service Centre received a notification in relation to two children, John and Wendy Smith. The notifier advised that the children's mother had been admitted to the Mental Health Unit of the Princess Alexander Hospital due to:

- A belief that she and the children are being followed by the devil;
- Clawing and scratching of the skin on her face, forearms and thighs resulting in bruising and bleeding;
- Cutting her upper thighs and upper arms with a sharp object;

I attended the hospital where the mother initially requested a voluntary placement for her two children to enable her to remain in hospital for treatment. She advised that she had recently arrived in Queensland and had no family or supports that could care for her children. Arrangements were made for the children to be placed in voluntary care with a foster carer.

At approximately 3pm on the 12<sup>th</sup> January, 2009 notifier two (2) contacted the department and spoke with myself. They advised that the mother's condition had deteriorated since her admission to hospital. The mother had withdrawn her consent for the children to be in the Department's care on the basis that she believes that the foster carers are "possessed by the devil and are extremely dangerous".

Signature of Applicant

Justice of the Peace/  
Commissioner for Declarations

## Case Scenario One: The Smith Family

### Current Information:

On the 12<sup>th</sup> January, 2009 at approximately 10am, the "Intake Officer" based at the Stones Corner Child Safety Service Centre received a call in relation to two children.

The notifier advised that Ms Karen Smith (the mother) has been admitted to the mental health unit at the Princess Alexander Hospital due to:

- A belief that she and the children are being followed by the devil;
- Clawing and scratching of the skin on her face, forearms and thighs resulting in bruising and bleeding;
- Cutting her upper thighs and lower arms with a sharp object;

The mother has requested a voluntary placement for her two children to enable her to remain in hospital for treatment, as she has no family, or supports in Queensland that could care for her children, as she had only recently arrived in Queensland, having previously lived in South Australia and New South Wales.

The details of the family are as follows:

**Mother:** Karen Smith  
Date of Birth - 13<sup>th</sup> June 1970  
Address: no fixed place of abode.

**Father:** details unknown

**Children:** John Smith  
Date of Birth – 25<sup>th</sup> September, 2000  
Address: No fixed place of abode

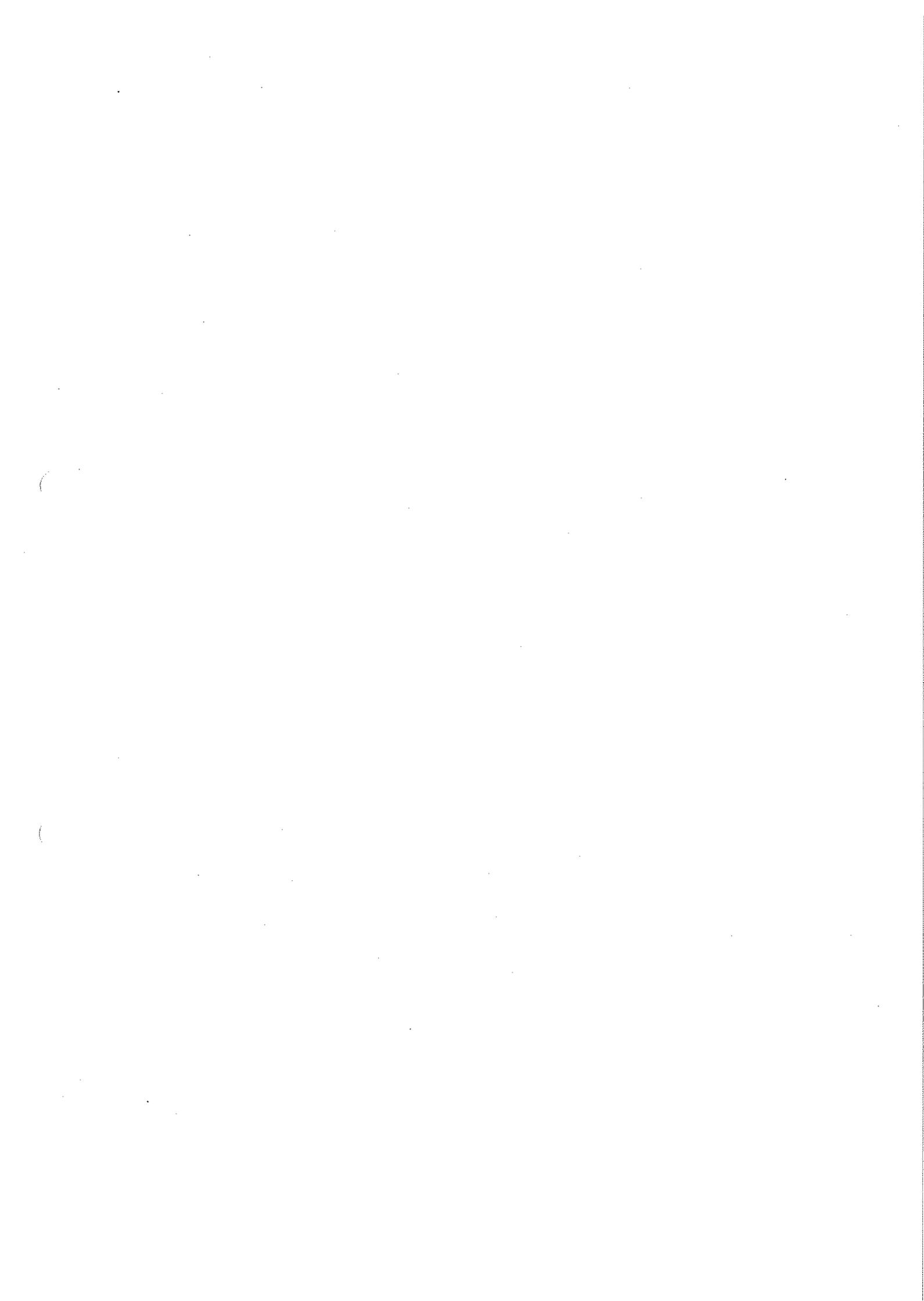
Wendy Smith  
Date of Birth – 9<sup>th</sup> November, 2003  
Address: No fixed place of abode

Departmental staff attends the hospital and the mother signs a consent form agreeing to the children being placed in the voluntary care of the Department. A temporary placement is located and the children are placed with a foster carer.

At approximately 3pm, of the same day, notifier two (2) contacts the Department and advises that the mother's mental state has deteriorated since her admission to hospital.

The mother has indicated to notifier two that she is no longer consenting to her children being in the care of the department as she believes that the foster carers are "possessed by the devil and are extremely dangerous". She is reported to be presenting in an extremely anxious state and is very concerned about the safety of her children.

Notifier two advises that an Involuntary Mental Health Order has been invoked. The notifier is of the opinion that the mother does not currently have the capacity to care for or make decisions in the best interest of her children, at this time. The notifier also advised that at this stage, the mother is likely to be hospitalised for a minimum of three days.



**Form 3**  
*Childrens Court Act 1992*  
*Child Protection Act 1999*  
(Sections 27, 28, 29)

**TEMPORARY ASSESSMENT ORDER**

**CHILD:** JOHN SMITH  
Date of Birth: 25<sup>th</sup> September 2000  
Sex: Male

An application for a temporary assessment order was made by Amanda Hall an authorised officer, to me, Mr Bruce Wayne Magistrate, on 12 January 2009 in relation to the above-named child.

Having considered the grounds of the application, I am satisfied that an investigation is necessary to assess whether the child is a child in need of protection, and that such investigation can not be properly carried out unless the order is made.

I MAKE a temporary assessment order in relation to the child –

- authorising an authorised officer or police officer to have contact with the child;
- to take and keep the child in the chief executive's custody while the order is in force;
- authorising a medical examination or treatment of the child;
- directing Karen Smith not to have contact, direct or indirect, with the child other than when an authorised officer is present.

This temporary assessment order will continue in force until Thursday, 15<sup>th</sup> January 2009, Midnight.

**Magistrate**

Place: Brisbane  
Date order made: 12 January 2009  
Time order made: 5.45pm

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This order was made by means of telephone pursuant to section 30 of the *Child Protection Act 1999*.

I hereby certify that this document is a true representation of the order made by the above-named Magistrate.

**Signed:**

Name: Amanda Hall  
Authorised officer



### **Case planning for sibling groups**

Where there is a sibling group, one family group meeting will be held for all children, but a separate case plan will be developed for each child. Where children have different parents, however, separate family group meetings may be required.

### **Preparing the case plan if not developed at a family group meeting**

If the case plan is not developed at a family group meeting because a meeting was unable to be convened, or people were unable to reach agreement about the matters to be addressed in the case plan, the CSO and the team leader will be responsible for preparing the case plan for the child, taking reasonable steps to obtain the views of the following people, if they were not obtained previously:

- the child, unless it would be inappropriate because of his or her age or ability to understand;
- the child's parents;
- other members of the child's family group who are considered likely to make a useful contribution;
- other significant people for the child (for example, a foster carer);
- any legal representative for the child;
- a recognised entity for an Aboriginal or Torres Strait Islander child;
- a relevant service provider; and
- anyone else considered likely to make a useful contribution to the plan.

### **Record why the case plan was developed without a family group meeting**

Where the case plan has been developed by the convenor or team leader and an application for a child protection order is made, an authorised officer is required to provide the court with evidence about why the case plan was developed in this way.

Where a family group meeting was not convened, the CSO is required to satisfy the court that it was not possible to convene a meeting within the terms of the *Child Protection Act 1999*, section 51S(2).

The threshold of 'not possible to convene a family group meeting' is high, and will require a court to be satisfied that all steps were taken by the department to convene a meeting in compliance with the *Child Protection Act 1999*, chapter 2, part 3A. A lack of time and resources will not be sufficient criteria to meet this threshold.

## **Case plan requirements for the Children's Court**

### **Case plan requirement for a final child protection order**

An application to the Children's Court for a child protection order can be made at any stage, with or without the consent of the child's parents, however, the court cannot grant a final child protection order for a child unless it is satisfied that there is an endorsed case plan that responds to the child's assessed needs.

Where possible, the CSO should not apply for a child protection order until a family group meeting has been convened to develop the case plan, however, the child's welfare and best interests must be of paramount importance at all times.

Where agreement is reached at the family group meeting that a child protection order will be sought, an application is then able to be made with the consent of the parent/s. In this case, the court must still be satisfied that the provisions in the *Child Protection Act 1999*, section 59, are fulfilled, before granting the child protection order.

### **Applying for a child protection order where there is no case plan**

If an application for a child protection order must be made before a family group meeting, the CSO will lodge the application and the court may then adjourn the proceeding under the *Child Protection Act 1999*, section 67, and:

- make an interim order granting temporary custody of the child to the chief executive or a suitable person who is a member of the child's family; or
- make directions about a parent's contact with the child; and
- order that a family group meeting be convened to develop the case plan and that the plan be filed in court (*Child Protection Act 1999*, section 68(1)(d)(i)).

Note: the court cannot make an interim order for a protective supervision order.

### **Material to be provided with the case plan to the court**

In cases where an application for a child protection order is made, an affidavit must be filed with the case plan and other evidence in support of the application attached, addressing the following:

- the process used to develop or review the case plan; and
- the child's assessed protection and care needs.

If the case plan has been reviewed, a copy of the most recent review report and the current case plan, must be filed with the court (*Child Protection Act 1999*, section 51X).

If the case plan and supporting material have been filed in court and the case plan is subsequently reviewed, all review reports and revised case plans prepared under the *Child Protection Act 1999*, section 51X, should be filed with the court, until such time as the court makes a final determination about the application for an order.

The following people must be given the opportunity to participate in the family group meeting (*Child Protection Act 1999*, section 51L):

- the child, unless it would be inappropriate because of the child's age or ability to understand;
- the child's parents as defined in the *Child Protection Act 1999*, section 51F;
- members of the child's family group who the convenor considers likely to make a useful contribution to the plan's development at the meeting. A child's family group is defined broadly in the *Child Protection Act 1999*, section 51E;
- other people with whom the child has a significant relationship, for example, the approved carer for the child;
- any legal representative for the child;
- a member of the recognised Aboriginal and Torres Strait Islander entity for an Aboriginal or Torres Strait Islander child;
- anyone else who the convenor considers likely to make a useful contribution to the development of the case plan at the meeting, for example:
  - a service provider who has an established working relationship with the child and family, including government child protection partners; and
  - a cultural representative or elder, who could assist in developing the case plan by providing information and advice;
  - if the convenor is a private convenor, the chief executive (or delegate); and
  - any support person nominated by the child or parent, for example: a youth worker;
  - an Aboriginal or Torres Strait Islander elder; or
  - a legal representative.

If a SCAN CI Team has been convened as a SCAN System strategy, members of that team should also be invited to attend the meeting.

The CSO who has case responsibility for the child must attend the family group meeting. If the case is to be transferred to another CSO, the CSO who will have ongoing case responsibility will also attend the family group meeting. In the rare circumstance that the CSO is not able to attend, both CSOs will ensure that the case plan developed is discussed with the family when the new CSO is introduced to the family.

These participants **must be sufficiently prepared and informed** for the meeting (*Child Protection Act 1999*, section 51D and 51M) so that they can fully participate in the development of the plan.

Participants are to be invited to the family group meeting, using either the 'FGM invitation letter' or 'FGM invitation and essential information letter'.

## **Case planning requirements**

Case planning is a process for managing ongoing intervention for a child in need of protection, in accordance with the *Child Protection Act 1999*, section 51A-Y, and the principles of case planning (*Child Protection Act 1999*, section 51D). It involves a cycle of assessment, planning, implementation, and review.

A case plan must be developed and regularly reviewed for any child considered in need of protection (*Child Protection Act 1999*, section 51H(1)). The case plan is a written document that outlines the reasons why the child is considered in need of protection and outlines strategies for addressing a child's protection and care needs during ongoing intervention. It is recorded in an approved form under the *Child Protection Act 1999*.

The requirement to develop a case plan applies, whether or not a parent is being criminally prosecuted for a matter relating to a child protection concern.

## **Family Group Meeting to develop a case plan**

A family group meeting to develop a case plan may be initiated by the department (*Child Protection Act 1999*, section 51H(1)) or directed by the Children's Court (*Child Protection Act 1999*, section 68(1)(d)(i)). The family group meeting must be held **within 30 days of the decision that a child is in need of protection**, or within the timeframe set by the court on an adjournment.

The purposes of family group meetings are:

- to provide family-based responses to children's protection and care needs; and
- to ensure an inclusive process for planning and making decisions relating to children's well-being and protection and care needs.

A family group meeting may also be convened to:

- review the existing case plan and prepare a new case plan; and
- consider, make recommendations about, or deal with other matters relating to the child's well-being and protection and care needs.

## **People who must be given the opportunity to attend a family group meeting**

All people who are significant to the child must be given a reasonable opportunity to participate in, and attend the family group meeting which is convened to develop a high quality and holistic case plan for the child. The case plan should reflect and combine the knowledge, strengths, resources and supports of the child's family and support network, with the professional expertise and resources of the department and other service providers.

## **FAMILY GROUP MEETINGS & CASE PLANNING**

### **What is a family group meeting?**

A family group meeting is held by the department to develop a case plan when we believe that a child or young person is in need of protection.

It provides an opportunity for families to be involved in decisions about their child, and builds on the strengths and resources within the child or young person's family group, cultural community and wider community.

The family group meeting is organised by a convenor who prepares and facilitates the meeting. The convenor may be a departmental officer or a person independent of the department, but will not be the child safety officer involved with the child, young person or their family.

The family group meeting brings together the child or young person (where appropriate), the family, those who best know the child and their family, and other relevant persons and agencies, such as a Recognised Entity for an Aboriginal or Torres Strait Islander child or young person.

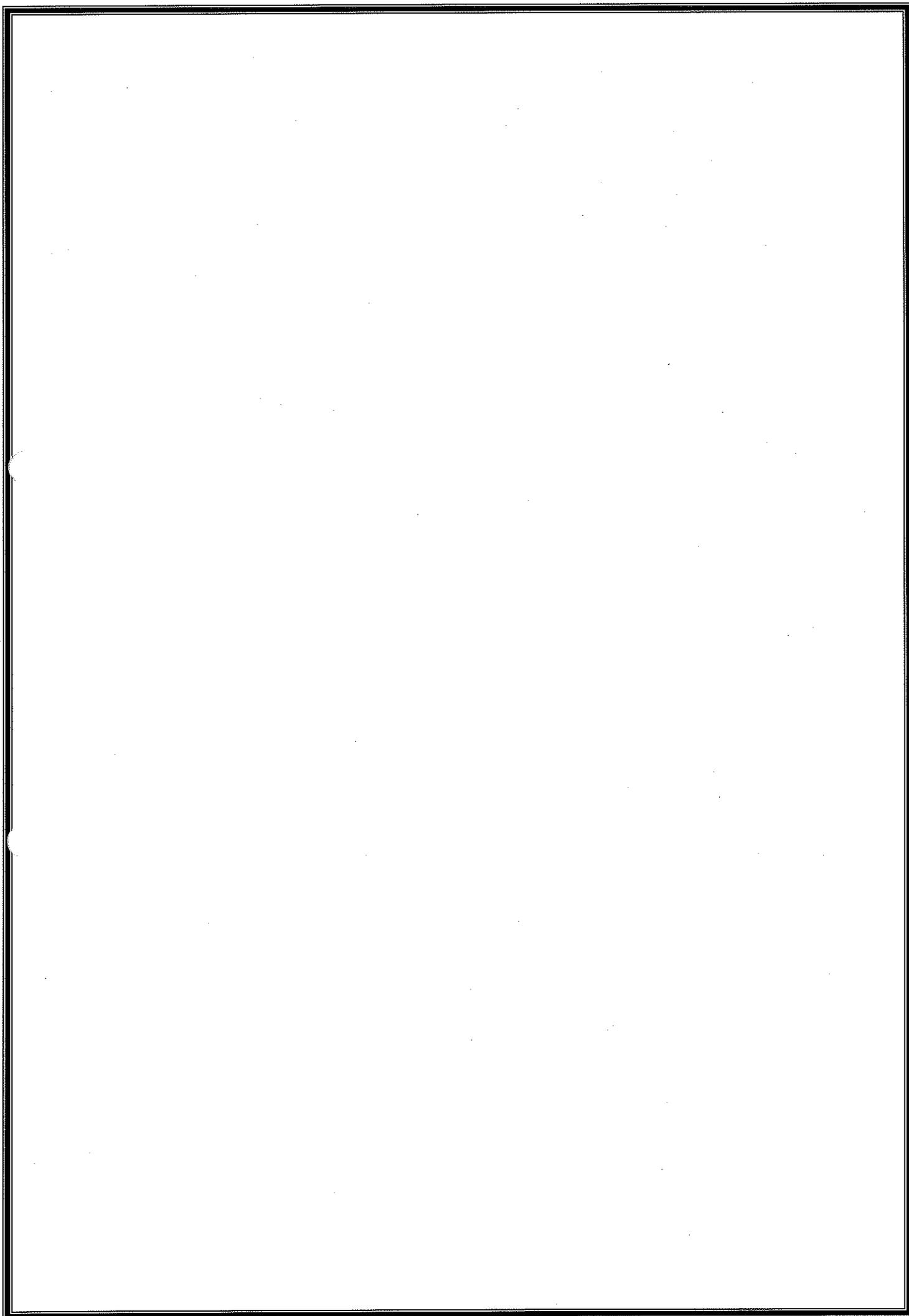
### **What is a Case Plan?**

The case plan is a written document that identifies the goal of the ongoing intervention and the outcomes and actions required to achieve the goal. Case planning is a process of planning strategies to address a child's protection and care needs and promote a child's well-being. It is a cyclical and participative process. The family group meeting to develop the case plan will be held within 30 days of the decision being made that a child is in need of protection.

Case plans must be goal directed and clearly identify matters, such as outcomes, key actions and how the progress of the plan will be measured.

A parent for the purpose of case planning refers to 'the child's mother, father or someone else' (other than the chief executive) having or exercising parental responsibility for the child. For Aboriginal or Torres Strait Islanders the definition would include family members who may have been given cultural responsibility to care for the child (*Child Protection Act 1999*, section 11).

A recognised entity must be given the opportunity to participate in the decision-making process for an Aboriginal or Torres Strait Islander child.



I am listing this matter for a interim hearing to determine the issue of interim custody.

Your Honour, can you indicate whether the interim hearing will be run on the papers of if witness's will be required

I will determine the matter on written material provided by all parties.

**Hearing run on papers = No Crown Law Representation**

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I am listing this matter for a interim hearing to determine the issue of interim custody.

Your Honour, can you indicate whether the interim hearing will be run on the papers of if witness's will be required

Witness's who provide affidavit material will be required to be available to give evidence.

**Witness's Required = Crown Law Representation**

## **Long term guardianship order – S61 (f) (ii)**

### **Granting long term guardianship of the child to another suitable person**

#### **This order is appropriate when ...**

- The decision has been made that the child's protective needs are to be met by the child remaining in care long-term
- The child is already living in the care of an appropriate person (eg foster carer) who is willing to assume long-term guardianship of the child
- It is not possible, or not appropriate, to make the long-term guardianship order in favour of a relative
- There is no significant conflict between the parents and the child's carer such that this would make the order insecure
- The child's carer has an accepting and relaxed attitude towards the child's parents and will facilitate appropriate contact between the child and parents and between the child and other members of the child's family
- The child's carer will deal in a positive way with helping the child understand their identity and is able and willing to meet the child's cultural needs
- The carer is assessed as suitable and likely to remain so in the long-term
- If the child is old enough to decide – the child agrees with the carer assuming guardianship

#### **Guidelines for use:**

- If it is appropriate to limit the child's contact with a parent or significant family member, this must be a condition of the order – the carer with guardianship can not impose such a restriction themselves
- If family contact is likely to be the subject of ongoing dispute, it will be more appropriate to make a long-term guardianship order to the chief executive
- If the carer does not have an accepting and positive attitude towards the child's natural family (even where contact is restricted for safety reasons) it will be more appropriate to make a long-term guardianship order to the chief executive.

#### **Sections of the Act which outline obligations and rights in relation to this order:**

*Section 80*

## Long term guardianship order – S61 (f) (i)

### Granting long term guardianship of the child to a family member

#### This order is appropriate when ...

- The decision has been made that the child's protective needs are to be met by the child remaining in care long-term
- There is an appropriate relative able and willing to assume long-term guardianship of the child
- It is not appropriate for a Family Court order to be sought because there are ongoing protection concerns (eg the risk of the parent seeking return of the child)
- There is no significant conflict between the parents and the relatives such that this would make the order insecure
- The relatives will facilitate appropriate contact between the child and parents
- The relatives will deal appropriately with identity issues for the child and meet the child's cultural needs
- The relatives are assessed as suitable and likely to remain so in the long-term
- The relatives understand and are willing/able to meet their obligations the Act
- If the child is old enough to decide – the child agrees with the relatives assuming guardianship

#### Guidelines for use:

- Long-term orders (to 18 years) can only be made as guardianship orders. The rationale for this is that the person with whom the child is living permanently needs to be able to exercise guardianship if the child is to grow up in their care.
- It may be not so much inappropriate as not *possible* for a Family Court order to be sought (for financial reasons). While strictly speaking this is not a reason to seek/retain a long-term child protection order, it will sometimes be unavoidable
- If it is appropriate to limit the child's contact with a parent or significant family member, this must be a condition of the order – the relatives with guardianship can not impose such a restriction themselves
- If family contact is likely to be the subject of ongoing dispute, it will be more appropriate to make a long-term guardianship order to the chief executive.

#### Sections of the Act which outline obligations and rights in relation to this order:

## **Long term guardianship – S61 (f) (iii)**

### **Granting long term guardianship of the child to the chief executive**

#### **This order is appropriate when ...**

- The decision has been made that the child's protective needs are to be met by the child remaining in care long-term
- It is not possible, or not appropriate, to make the long-term guardianship order in favour of a relative
- It is not possible, or not appropriate, to make the long-term guardianship order in favour of another person (eg a foster carer)
- There are significant ongoing safety concerns which are best managed with the child in the chief executive's guardianship
- It has not yet been possible to establish a suitable long-term placement for the child
- There is significant conflict between the parents and any relative who could otherwise assume guardianship
- The child is in the care of a carer from whom it is not appropriate to move the child, but the carer is unable to meet the criteria for assuming long-term guardianship

#### **Guidelines for use:**

- This order can only be made if the other long-term guardianship options have been considered and there are reasons why they are not appropriate in the particular case
- If, with ongoing assessment, it becomes apparent that circumstances have changed and a long-term guardianship order could now be made in favour of a relative or other person, a new order should be obtained to achieve that
- When a child is to 'grow up in care' and does not yet have a stable placement, this order may be made pending the location of a suitable person to assume long-term guardianship of the child after an appropriate settling period

#### **Sections of the Act which outline obligations and rights in relation to this order:**

*Sections 74 and 75*

## **Short term guardianship order –S61 (e)**

### **Granting short term guardianship of the child to the chief executive**

#### **This order is appropriate when ...**

- The child cannot be safely left at home using a lesser order
- There is no available parent to exercise guardianship and be involved in planning; or the parents' availability is erratic
- It is necessary to actively remove guardianship from a parent, eg because of the very serious nature of the harm, or because of the parent's current incapacity to exercise guardianship
- It is assessed that the parent will fail to exercise appropriate guardianship on a significant issue (eg a needed medical procedure) and therefore it is in the child's interests for guardianship to be vested in the chief executive
- Planning/work with the family to resolve the child's protective needs is still occurring/has not been completed.

#### **Guidelines for use:**

- Given the principle that the order used should not exceed the level of intervention needed, this order may not be used frequently. It will be preferable for parents to retain guardianship where possible

#### **Sections of the Act which outline obligations and rights in relation to this order:**

*Sections 73, 74 and 75*

## **Custody order- S61 (d) (i)**

### **Granting short term custody of the child to a family member**

#### **This order is appropriate when ...**

- The child cannot be safely left at home using a lesser order
- There is an appropriate relative able and willing to assume short-term custody for the purpose of protecting the child
- It is not necessary to impose a 'no contact' condition on a parent
- There is no significant conflict between the parents and the relatives
- The relatives will facilitate appropriate contact between the child and parents
- The relatives are able and willing to work with the DChS in planning for the child
- It is appropriate for the parents to retain guardianship, ie at least one parent is available and involved in planning
- The relatives understand and are willing/able to meet their obligations under the Act
- The relatives are assessed as suitable

#### **Guidelines for use:**

- If it is necessary to actively remove guardianship from a parent, eg because of the very serious nature of the harm, then a guardianship to the chief executive order should be sought (if the order is short-term). Guardianship cannot be removed from just one parent and not the other.
- If there is uncertainty about one of the above factors (eg the relatives ability to ensure positive contact between the child and parents), it may be appropriate to seek a custody to the chief executive order, but still place the child with the relatives
- If it is necessary to restrict a parent from all contact with the child, then a guardianship order should be sought. It is not appropriate for a parent retaining guardianship to be prevented from all contact with the child

#### **Sections of the Act which outline obligations and rights in relation to this order:**

*Sections 73, 79 and 80*

## **Custody order – S61 (d) (ii)**

### **Granting custody of the child to the chief executive**

#### **This order is appropriate when ...**

- The child cannot be safely left at home using a lesser order
- It is appropriate for the parents to retain guardianship, ie at least one parent is available and involved in planning
- It is not necessary to impose a 'no contact' condition on a parent
- It is not possible or appropriate to make the short-term custody order in favour of a relative

#### **Guidelines for use:**

- If it is necessary to actively remove guardianship from a parent, eg because of the very serious nature of the harm, then a guardianship to the chief executive order should be sought (if the order is short-term). Guardianship cannot be removed from just one parent and not the other.
- If it is necessary to restrict a parent from all contact with the child, then a guardianship order should be sought. It is not appropriate for a parent retaining guardianship to be prevented from all contact with the child

#### **Sections of the Act which outline obligations and rights in relation to this order:**

*Sections 73, 74 and 75*

## **Protective supervision order – S61 (c)**

### **Requiring the chief executive to supervise the child's protection in relation to particular matters**

#### **This order is appropriate when ...**

- The child could remain safely at home with supervision and direction by the DChS being enough to prevent harm to the child
- It is possible to specify the areas relating to the child's care which are to be supervised by the DChS
- Failure on the parents' part to keep to any directives by the DChS will not have immediate safety consequences for the child
- The intervention needed (with the child at home) will not be accepted by the parents on a voluntary basis

#### **Guidelines for use:**

- This order can be used when general conditions in relation to the care and welfare of the child need to be supervised.

#### **Sections of the Act which outline obligations and rights in relation to this order:**

*Sections 73, 77 and 78*

**Directive order – S61 (b) (i) and (ii)**

**Directing a parent not to have contact with a child or to have only supervised contact**

**Sections of the Act which outline obligations and rights in relation to this order:**

*Section 73*

## Directive order – S61 (b) (i) and (ii)

### Directing a parent not to have contact with a child or to have only supervised contact

#### This order is appropriate when ...

- The child could remain at home with a protective parent if the offending parent was prevented, or restricted, from contact
- The child could be placed in a voluntary placement, eg with relatives, if the offending parent was prevented, or restricted, from contact (if there is a protective parent to consent to the placement)
- There is a Family Court contact order which needs to be overridden for child protection reasons (allowing the protective parent to apply for variation of the Family Court order)
- There is a need to prevent a parent from harassing the child in a significantly harmful way (eg telephone threats). In this case, the order may be made in conjunction with any other child protection order
- The child could be safe if the contact with the offending parent was supervised, and there is a person willing to provide the supervision

#### Guidelines for use:

- Directive orders can not be used to effectively deny *both* parents contact – when that is required, a custody order is more appropriate, as someone still has to exercise custody/guardianship over the child
- Similarly, directive orders about contact are not appropriate when the child is living with their only parent – the order should not be used in a way which would leave the child “at home alone”
- Supervision by someone could range from contact visits to someone moving into the home temporarily to ensure the child was not left alone with the offending parent. The supervising person must be aware of the proposed order and voluntarily agree to their role – they are not ordered
- It is not appropriate to use the order in a way which would effectively deny someone entry to their own home, except on a very temporary basis
- A directive order concerning contact may be made conjointly with another type of child protection order, eg a directive order relating to contact and a protective supervision order

## **Directive order - S61 (a)**

### **Directing a parent to do or refrain from doing something related to the child's protection**

#### **This order is appropriate when ...**

- The child can remain at home, so long as the parents take certain action (or cease certain activity)
- The parents will not take the action (or cease) on a voluntary basis
- The action is able to be clearly defined and what is required of them is easily understood by the parents
- A specific order is able to be made by the court and no court-ordered supervision of the directive is required
- Failure on the parents' part to keep to the order will not have immediate safety consequences for the child
- The parents are likely to adhere to the recommended order.

#### **Guidelines for use:**

- The order must be specific, not general (eg "take the child to the hospital clinic for treatment every Thursday", rather than "provide adequate medical care"). If the order needs to be general, a protective supervision order would be more appropriate.

#### **Sections of the Act which outline obligations and rights in relation to this order:**

*Section 73*

## Child Protection Orders – Summary

<b>Child Protection Orders (CPO)</b>	
<b>Purpose</b>	<p>CPOs are used during the ongoing intervention phase of child protection.</p> <ul style="list-style-type: none"> <li>▪ CPOs are therefore made to authorise ongoing intervention to achieve the child's protection, when parental consent for the intervention cannot be obtained and</li> <li>▪ To secure ongoing custody or guardianship where this is required to achieve the child's protection.</li> </ul>
<b>Duration</b>	<p>Non-custodial short term orders – Any duration to a maximum of one (1) year</p> <p>Short term custody or guardianship orders – Any duration to a maximum of two (2) years</p> <p>Long term guardianship orders – To eighteen (18) years of age</p>
<b>Types of CPO's</b>	<p>Non-custodial short term orders</p> <ul style="list-style-type: none"> <li>▪ Directive orders re contact by parents</li> <li>▪ Directive orders re actions by parents</li> <li>▪ Supervision orders</li> </ul> <p>Custody or guardianship orders</p> <ul style="list-style-type: none"> <li>▪ custody orders – to CE</li> <li>▪ custody orders – to relative</li> <li>▪ Short term guardianship orders – to CE</li> </ul> <p>Long term guardianship orders</p> <ul style="list-style-type: none"> <li>▪ Long term guardianship orders – to CE</li> <li>▪ Long term guardianship orders – to relative</li> <li>▪ Long term guardianship orders – to other suitable person</li> </ul>
<b>Application process</b>	<p>Application can only be made by authorised officers of the Department of Child Safety.</p> <p>Application is made to a Court.</p>
<b>Obtaining an order</b>	<p>To make a CPO, the magistrate needs to be satisfied that:</p> <ul style="list-style-type: none"> <li>▪ The child is a child in need of protection and the order is appropriate and desirable for the child's protection.</li> <li>▪ A family group meeting has been held or attempts to hold a family meeting have been made.</li> <li>▪ If the making of the order has been contested, a conference between the parties has been held or reasonable attempts to hold a conference have been made</li> <li>▪ The child's wishes or views, if able to be ascertained, have been made known to the court and</li> <li>▪ The protection sought to be achieved by the order is unlikely to be achieved by an order under this part on less intrusive terms.</li> </ul> <p>Also before making a CPO regarding custody/guardianship of a child to a person other than the CE, the Court must have regard to any report given, or recommendation made, to the court by the CE about the person, including a report about the person's criminal history, domestic violence history and traffic history.</p>
<b>Extension, variation &amp; revocation</b>	<ul style="list-style-type: none"> <li>▪ A CPO can be extended.</li> <li>▪ A CPO can be varied.</li> <li>▪ A CPO can be revoked.</li> <li>▪ A CPO can be revoked and a new order made in its place</li> </ul>

**Guidelines for  
Decision-making  
Regarding types of  
Child Protection Orders**

5. My understanding is that Peter sustained serious head injuries resulting in physical and developmental impairment. Dr Lewis has told us that it is likely Peter may have trouble walking, have learning difficulties and other physical delays, however a lot of his prognosis is unknown at this stage.
6. In order to provide the best opportunity for recovery, I understand that Peter will require ongoing medical and therapeutic appointments.
7. My husband and I appreciate the importance of these appointments and will continue to meet these needs while he is in our care.
8. We are happy to continue to provide care for Peter for as long as is necessary and will do our best to meet his needs and protect him from harm.

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

Sworn by Kate Bond on 19 February 2009 at Brisbane in the presence of:

(signed by deponent)

(signed by Justice of the Peace/Commissioner)

Deponent

Justice of the Peace/Commissioner for declarations

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Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Filed on behalf of the Applicant

Amanda Hall  
30-40 Quay Street, Brisbane

**Form 25**  
*Childrens Court Act 1992*  
*Child Protection Act 1999*

**AFFIDAVIT**

**CHILDRENS COURT OF QUEENSLAND**

**REGISTRY: Brisbane**

**NUMBER:**

**Child/ren:** Peter Jones – (DOB: 16/12/06)

**Applicant:** Amanda Hall

**AND**

**[First] Respondent:** Barry Jones

**AND**

**[Second] Respondent:** Mary Bell

I, Kate Bond, in the State of Queensland, make oath and say as follows:-

1. I am a registered foster carer for the Department of Child Safety.
2. My husband, Gary and I have been foster carers for 12 years and have previously cared for children with physical disabilities and learning needs.
3. We currently care for Peter Jones and have done so since his release from Hospital.
4. We have had a number of conversations and meetings with officers from the department and medical professionals about Peter's current condition and possible future needs.

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Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Filed on behalf of the Applicant

Amanda Hall  
30-40 Quay Street, Brisbane

# Checklist for Preparation for INTERIM Contested CP Hearing ON THE PAPERS

Task	Who is responsible?			Approximate timeframe	Date completed
	CC	CS	CL		
Seek clarification from Magistrate whether the matter will be heard on the papers or if witness's will be required to give evidence	X			At the time the matter is listed for an interim hearing	
CC to advise Court Services that an interim hearing has been listed and that the Magistrate has indicated the hearing will be <b><u>run on the papers</u></b> .	X			As soon as possible after matter is listed for interim hearing	
Review of material undertaken which includes suggestions for further evidence to be obtained and possible witness list	X	X			
CC and CSA to arrange Case Discussion	X	X			
Case Discussion record to be sent to CSSC		X			
Ensure tasks undertaken / affidavits obtained as per Case Discussion	X			Ongoing process (CS to support CSSC in this)	
Service of all material on all parties	X			At least 5 working days prior to hearing (or as directed by Court)	

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CC = Court Coordinator  
CS = Court Services  
AIC = Advice In Conference

CL = Crown Law  
CSSC = Child Safety Service Centre

Witness list completed including contact numbers, place of employment, qualifications and order of witnesses organised to be provided to CS	X			As soon as possible	
Complete list of all material with sworn and filed dates to be provided to CS	X			After all material obtained	
Ensure copies of all material filed is provided to Court Services	X			As soon as possible after material is filed	
Ensure copies of all material filed is provided to Crown Law		X		As soon as possible after material is provided to CS	
Discussion with parties about which Witnesses are required for Cross Examination	X	X	X	(responsibility is dependent on situation)  At least 2 days prior to hearing (if possible)	
Organisation of witness order			X	After availability known and evidence obtained	
Organisation of who will instruct CL at hearing and who will organise witnesses	X	X	X	Prior to hearing	

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CC = Court Coordinator  
CS = Court Services  
AIC = Advice In Conference

CL = Crown Law  
CSSC = Child Safety Service Centre

# Checklist for Preparation for INTERIM Contested CP Hearing

## WITNESSES REQUIRED

Task	Who is responsible?			Approximate timeframe	Date completed
	CC	CS	CL		
Seek clarification from Magistrate whether the matter will be heard on the papers or if witness's will be required to give evidence – consider other directions that may be required.	X			At the time the matter is listed for an interim hearing	
CC to advise Court Services that an Interim Hearing has been listed and that witness's will be required	X			As soon as possible after matter is listed for interim hearing	
CC to send completed Contested CP summary, with two copies of all material filed, to CS	X			As soon as possible after matter is listed for interim hearing	
Review of material undertaken which includes suggestions for further evidence to be obtained and possible witness list		X			
Brief to Crown Law (includes all material filed in this proceedings)		X			
Inform CSSC of which CL officer has been allocated and arrange time for AIC		X		When CL have advised CS	
Participation in AIC by all relevant officers	X	X	X		
Preparation of memo detailing outcome of AIC in relation to legal advice / case specific matters		X			
Ensure tasks undertaken / affidavits obtained as per AIC and Review document	X			Ongoing process (CS to support CSSC in this)	
Subpoena all witnesses, documents, etc (if witnesses are being called)	X			As soon as possible	
Service of all material on all parties. Affidavits of Service to be required.	X			At least 5 working days prior to hearing (or as directed by Court)	
Letter to other parties completed re which witnesses required for Cross-examination (CS has a draft of this letter)	X			When material served on parties	

### **Court Coordinator role**

Court Coordinators (CC) will be involved in taking applications for CPOs through Court. The role of the CC will be to:

- provide quality assurance;
- provide advice;
- proofing applications and affidavits;
- have a role in co-ordinating the referral of contested applications to the Court Services Unit (CSU);
- have a role in conjunction with CSU and Crown Law in overseeing the preparation of material for a hearing.

- what level of intervention is needed to meet the child's protection and care needs (consider the child's need for stability and long-term care arrangements, as appropriate).

### **Deciding which order is appropriate to recommend**

The types of CPOs reflect the processes of case management. A range of short-term orders are available for use during the period when work is focussed on resolving the child's protective needs whilst either at home with the parent/s or plans to reunify to the parent/s. Long-term guardianship orders are designed for use when it has been resolved that the child's protective needs are to be met through the child remaining in long-term out of home care.

In deciding which order is appropriate to recommend, consider the following broad issues:

- Does the child need to be removed from the home (or continue to be removed) under an order?
- Could the work towards meeting the child's needs be done (or now done) with the child at home?
- What length of time, at this stage, is needed to work towards meeting the child's protective needs?
- What is the purpose of the order? Is work still continuing to resolve the child's protective needs or has it been decided that an on-going order will be used as a means of resolving the protective issues.

More specifically the following issues related to the child's family circumstances:

- Does the child need protection from (or to be removed from the care of) both parents?
- If the risk of harm relates to one parent only, is the other parent able to protect with supports?
- Are their relatives able to assume a protective role?
- Is contact with one or both parents to be restricted for safety reasons?
- Is there conflict or harmony between the prospective relative carers and the parents?
- Are both parents involved and contactable?
- Are the parents able and willing to be involved in planning?
- If one parent is not contactable / involved, is that parent likely to oppose planning decisions?

These general considerations should be taken into account alongside the specific information outlined in the Child Safety Practice Manual.

## **CHILD PROTECTION ORDERS**

### **Part 4      Sections 52-65 of the *Child Protection Act 1999***

#### **When to apply for a CPO**

An application for a CPO can only be made when the protection and care needs of the child are unlikely to be met by a less intrusive intervention, such as, intervention with parental agreement or care agreement.

If the question of whether a child is in need of protection is still to be determined, then an application for a CPO is premature, and either an assessment order should be sought, or the assessment is to proceed with parental agreement.

Whilst the decision is being made about the type of ongoing intervention or the type of order required, the child's safety needs must be met, and a placement with the parent/s agreement (under a care agreement), an assessment order or an interim child protection order may be required.

#### **Deciding which CPO is appropriate**

When deciding which is the most appropriate CPO for a child, the applicant is to:

- ensure that, having regard to the principals of the *Child Protection Act 1999*:
  - the child and the child's family have an opportunity to participate in the decision; and
  - the proposed order to be sought does not exceed the level of intervention needed to secure the child's safety;
- ensure the recognised entity is given the opportunity to participate in the decision-making about the most appropriate order for an Aboriginal or Torres Strait Islander child;
- determine the most appropriate order based on an assessment of the individual circumstances relating to each case, including:
  - what the child needs to be safe (where applicable, this consideration will be informed by the most recent safety assessment);
  - the strengths and needs of the child and family (this decision will be informed by the most recent child and parental strengths and needs assessments); and

in the rehabilitation process.

- Dependent upon his rate of recovery, Peter is likely to remain in hospital until mid-April, 2009.

Dr Lewis advised that he would be unable to attend the FGM due to hospital commitments.

On the 9<sup>th</sup> February, 2009 Amanda Hall was advised by Police that Mr Jones had been arrested and charged with one count of Grievous Bodily Harm, as a result of the injuries that Peter had sustained. Mr Jones was granted watchhouse bail and the matter was listed for mention in the Caboolture Magistrate Court on the 22<sup>nd</sup> February, 2009.

On the 10<sup>th</sup> February, 2009 Mater SCAN recommended that the Department make application for a child protection order granting custody of Peter to the Chief Executive for a period of two years. This recommendation was based on the following:

- Peter suffered life-threatening injuries, to the extent that if medical assistance had not been sought it is likely that the child would have died.
- Inconsistencies between the extent of the injuries and the explanation for how these injuries occurred by Mr Jones and Ms Sutton, remain unresolved.
- Peter is likely to suffer some motor dysfunction and long term learning difficulties. A high level of support will be required from his caregivers to assist in his rehabilitation. This support will be intensive over the next twelve to twenty-four months.

On the 10<sup>th</sup> February, 2009 the Family Group Meeting was held. The following people attended:

- Barry Jones - Father
- Denise Sutton – Father's partner
- Ms Gloria Cobbo - Karbul Indigenous Placement Agency
- Amanda Hall – CSO
- Sharon Upton – Team Leader

During this meeting the current child protection concerns were discussed with Barry Jones and Denise Sutton. Mr Jones was advised that the Department would be applying for a child protection order granting custody of Peter to the Chief Executive for a period of two years. It was explained to Mr Jones that given the inconsistencies between the extent of the injuries and explanation for how these injuries occurred, the Department was of the opinion that Peter would be at risk if he was return home at this time. It was also explained that the Department held concerns in relation to the parents' ability to meet Peter's rehabilitation requirements, which would be intensive over the next twelve to twenty-four months. Mr Jones and Ms Sutton were also advised that given that Peter is Aboriginal it is the Department's intention to place Peter with Indigenous carers following his release from the Mater Children's Hospital.

Ms Cobbo (Karbul Indigenous Placement Agency) advised Mr Jones and Ms Sutton that they (as the RE) were supportive of this application and of the Department's intention to place Peter with Indigenous carers, following his release from Hospital.

For the duration of the court assessment order contact was supervised by a Child Safety Support Officer, Pam Cassidy. Barry Jones and Denise Sutton attended all visits and acted appropriately.

**The Jones Family: Assessments and case developments whilst subject to the Court Assessment Order.**

On the 15<sup>th</sup> January, 2009 a court assessment order was made in relation to the child, Peter Jones. This order was for a period of four weeks.

On the 17<sup>th</sup> January, 2009 a family meeting was held with Barry Jones and Denise Sutton. During this meeting the details of the court assessment order were explained and arrangements were made for Mr Jones and Ms Sutton to have supervised visits with Peter, twice per week, for the duration of the court assessment order. Amanda Hall sought permission from Denise Sutton to interview Gary Sutton. She refused stating that it would be too upsetting and confusing for Gary to be interviewed by departmental staff.

On the 17<sup>th</sup> January, 2009 the recognised entity, the Karbul Indigenous Placement Agency, was advised that Peter was subject to a court assessment order granting custody to the Chief Executive for a period of four weeks.

In an attempt to locate Peter's mother contact was made, on the 18<sup>th</sup> January, 2009, with the Royal Brisbane Hospital, which was where Peter was born. The Department was provided with an address in New South Wales. A letter was sent to this address by registered mail but this was returned by Australia Post. The explanation provided by Australia Post as to why the letter could not be delivered was that Mary Bell was no longer residing at this address.

Attempts to locate Mary Bell through Centrelink were commenced. To date there has been no response.

On the 19<sup>th</sup> January, 2009 further attempts were made by police officers Jack Campbell, Susan Wall and CSO, Amanda Hall to interview both Barry Jones and Denise Sutton. Both refused to be interviewed.

On the 2<sup>nd</sup> February, 2009 the Queensland Police Service advised that neither Barry Jones nor Denise Sutton have any previous criminal history.

On the 6<sup>th</sup> February, 2009 staff from the Karbul Indigenous Placement Agency were invited to attend a Family Group Meeting (FGM) in relation to Peter to be held on the 10<sup>th</sup> February, 2009. A representative from the Karbul Indigenous Placement Agency stated that they would attend the Family Group Meeting and requested that a copy of the CAO application, the CAO and an agenda for the meeting being forwarded to them prior to the FGM.

On 7<sup>th</sup> February, 2009 Dr Anthony Lewis advised the Department of Peter's current situation and possible rehabilitation requirements. The following information was provided:

- It is difficult to say with any certainty the long-term prognosis for Peter.
- It is highly likely that Peter will have some motor dysfunction on the left side of his body.
- Peter may have difficulty walking.
- Peter may have some long term learning problems.
- Whilst Peter's rehabilitation needs are likely to be on-going throughout his childhood, they will be intensive over the next twelve to twenty-four months.
- A more definitive prognosis could be given after one to two months of rehabilitation.
- Peter will require a high level of support from his caregivers in order to assist him

Task	Who is responsible?			Approximate timeframe	Date completed
	AO	CS	CL		
Minutes from AIC to be taken and sent to all participants		X		As soon as possible after AIC	
Ensure tasks undertaken / affidavits obtained as per AIC and Review document	X			Ongoing process (CS to support SC in this)	
Subpoena all witnesses, documents, etc	X			As soon as possible	
Service of all material on all parties	X			At least 5 working days prior to hearing (or as directed by Court)	
Letter to other parties completed re which witnesses required for Cross-examination (CS has a draft of this letter)	X			When material served on parties	
Witness list completed including contact numbers, place of employment, qualifications and availability of witnesses to be provided to CS	X			As soon as possible	
Complete list of all material with sworn and filed dates to be provided to CS	X			After all material obtained	
Ensure copies of all material filed is provided to Court Services	X			As soon as possible	
Ensure copies of all material filed is provided to Crown Law		X		As soon as possible	
Organisation and chairing of another Advice In Conference to finalise arrangements		X		Approx. 3 days prior to hearing and after all material filed	
Discussion with parties about which Witnesses are required for Cross Examination	X		X	(responsibility is dependent on situation)  At least 2 days prior to hearing (if possible)	
Organisation of witness order			X	After availability known and evidence obtained	
Discussion of Witness expenses with relevant witnesses and approval memo to Manager, Court Services		X		Prior to hearing	
Arrangements made in relation to who will organise witnesses for the hearing	X			Prior to hearing	

# Checklist for Preparation for Contested CP matter

SC= Child Safety Service Centre  
 CS = Court Services  
 COC = Court Ordered Conference  
 AIC = Advice In Conference

CL = Crown Law

Task	Who is responsible?			Approximate timeframe	Date completed
	SC	CS	CL		
Contact CS to have a Case Discussion (if required)	X			At any point prior to or during the court process	
Contact CP Team Leader, CS to inform that a COC has been ordered	X			Straight after COC order made by court	
CS to send Contested CP summary to SC for completion		X		After CS informed of COC	
All Material filed in current proceedings to be sent to Court Services (including Affidavits of Service, Adjournment Orders, etc) along with completed Contested CP summary	X			Immediately after COC order made by court and prior to COC	
Review of material undertaken which includes suggestions for further evidence to be obtained and possible witness list		X		Approx 2 weeks after material sent to CS and prior to COC where possible	
Inform CS of the outcome of COC and provide information about next mention / further COC / hearing dates / etc.	X			As soon as possible after completion of COC	
Brief to Crown Law (includes all material filed in this proceedings)		X		After no resolution at COC or if hearing close in timeframe (eg less than 4 weeks)	
Inform SC of which CL officer has been allocated and arrange time for AIC		X		When CL have advised CS	
Organisation of AIC with CL and SC		X		When hearing definitely going ahead	
Preparation of memo for AIC in relation to legal advice / case specific matters			X	Prior to AIC	
First Advice in Conference with CL		X		As early as possible at least 4 weeks prior to hearing	

- The child is likely to suffer some motor dysfunction and long term learning difficulties. A high level of support will be required from his caregivers over the next twelve to twenty-four months. The Department has concerns regarding Barry Jones' ability to provide this level of care.

Mr Jones has reported that the child's mother, Ms Mary Bell, suffered complications whilst giving birth to Peter and as a result she was left with an intellectual disability and requires twenty-four hour care. The mother's current whereabouts are unknown. Attempts have been made to locate the child's mother but to date these have been unsuccessful.

**This application seeks an order:**

Granting custody of Peter Jones to the Chief Executive.

**The order is sought for a period of two years**

**Signature of Applicant:**

Date: 19<sup>th</sup> January, 2009

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**RESPONDENTS' NAME/S**

Mother's name: Mary Bell  
Address: Unknown

Father's Name: Barry Jones  
Address: 24 Lynfield Drive, Caboolture

**TO THE ABOVE-NAMED RESPONDENT(S):** This application will be heard in the Childrens Court at

Place: Brisbane Children's Court at 30-40 Quay Street, Brisbane  
Date: 22/01/09  
Time: 2pm

**NOTE: IF YOU DO NOT ATTEND THE COURT MAY PROCEED TO MAKE AN ORDER IN YOUR ABSENCE.**

Registrar:  
Date:

**Form 10**

*Childrens Court Act 1992*  
*Child Protection Act 1999*  
(Section 52)

**APPLICATION FOR A CHILD PROTECTION ORDER**

**CHILD: PETER JONES**

Date of Birth: 16<sup>th</sup> December 2006

Aboriginal: Yes

Sex: Male

Torres Strait Islander: No

**APPLICANT DETAILS:**

Name: Amanda Hall, an authorised officer under the *Child Protection Act 1999*

Address: 30 - 40 Quay Street, Brisbane

**APPLICATION DETAILS:**

This is an application for a child protection order.

**The grounds on which this application is made are:**

Peter Jones is currently subject to a court assessment order. This order will expire on the 15<sup>th</sup> February, 2009. The child came to the attention of the Department on the 9<sup>th</sup> January, 2009 when the child was presented to the Emergency Department of Redcliffe Hospital with head injuries and significant bruising to his body. Given the serious nature of the injuries the child was transferred to the Mater Children's Hospital.

The child's injuries on admission included:

- A subdural haemorrhage (bleeding between the skull and brain).
- Retinal haemorrhaging in both eyes.
- Bruising to the left side of the face, which was estimated to be approximately two days old.
- Bruising to left side of the body, which was estimated to be approximately two days old.

These injuries are considered to be non-accidental by medical professionals. The child's father, Barry Jones, has been charged with Grievous Bodily Harm in relation to the child's injuries.

The child is considered to be at risk if returned to his father's care due to the following:

- The child has suffered life-threatening injuries, to the extent that if medical assistance had not been sought it is likely that the child would have died.
- Inconsistencies between the extent of the injuries and the explanation for how these injuries occurred by Barry Jones and his partner remain unresolved.
- Inconsistencies exist between the timing of the child's injuries with medical opinion suggesting that the injuries occurred approximately twenty-four to forty-eight hours before the child was presented to the Redcliffe Hospital. Barry Jones and his partner maintain that following the incident the child was immediately taken by ambulance to the Redcliffe Hospital.

In view of his CT scan results and his clinical course in the Intensive Care Unit, it is most likely that Peter suffered a severe blow or blows to his head at some time in the 24-48 hours before his presentation to the Redcliffe Hospital. It could be that the severe swelling on the right cerebrum could have been caused by a severe blow or blows up to approximately 72 hours before presentation but this would be less likely.

Dr Anthony LEWIS FRACP  
Paediatric Intensivist  
Mater Children's Hospital

11 January, 2009

Training document

**RE: Peter JONES**  
**Date of Birth: 16<sup>th</sup> December 2002**  
**MCH Ur No 93456003**

To Whom It May Concern:

I, Dr Anthony Mark Lewis, am a qualified medical practitioner registered in the state of Queensland, and employed full time as a medical officer at the Mater Children's Hospital.

I attended the above patient at the Mater Children's Hospital, on the 9<sup>th</sup> of January to the 15<sup>th</sup> of January 2009. The following injuries were documented by clinical examination and further investigation as required.

- 1) Severe cerebral oedema, particularly of the right cerebral hemisphere with some subdural collection of blood.
- 2) Bruising to Left facial cheek with 2 distinct marks of about 1 x 2 cms in size.
- 3) Bruising to Left leg with near circumferential nature at the level of the upper thigh.

Peter was retrieved from the Redcliffe Hospital Emergency Department on the morning of the 9<sup>th</sup> of January, 2009. He was intubated and ventilated at this time. He had presented with significant Right sided focal seizures. He had been investigated with a CT scan which demonstrated significant underlying cerebral oedema. He was retrieved by a specialised paediatric retrieval team. Upon arrival to the Mater Childrens Hospital he was reviewed by the Neurosurgeon Dr Robert Thompson. A decision was made to insert an intracranial pressure monitor to assist in the management of Peter's cerebral oedema.

Peter remained in the Intensive Care Unit for 7 days. Over the first 4 days he was managed with inotropic support of his blood pressure, therapeutic cooling, sedation and ventilation as well as anti-convulsant medication. On day 5 he was rewarmed and his pressure monitoring ceased. On day 6 he was extubated without problem. On day 7 Peter was transferred to the ward for further care. At the time of discharge from the Intensive Care Unit Peter was not moving the Left side of his body very well at all. He was not able to feed himself and he was still very drowsy. During his admission Peter had a repeat CT scan. This demonstrated that the severe cerebral oedema that was present on the original CT scan had reduced but not resolved completely. There was evidence of a collection of blood on this CT scan that could not be seen on his previous scan.

In view of the acute nature of Peter's injuries it is difficult to say with certainty the long term prognosis in his case. It is very likely that he will have some motor dysfunction on the Left side of his body. He may have difficulty in walking. He may have some long term learning problems and he may have some difficulty with fine motor problems with his Left hand in the long term. His prognosis will become more apparent after 1-2 months of rehabilitation. If he had not received medical attention when he did Peter would have died.

5. I have told the workers many times that my mother can look after Peter but they just won't listen. If they won't return him home to me, then they should place him with my mother today.

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

Sworn by Barry Jones on the 4<sup>th</sup> February 2009 at Brisbane in the presence of:

(signed by deponent)

(signed by Justice of the Peace/Commissioner)

Deponent

Justice of the Peace/Commissioner for declarations

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Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Filed on behalf of the Respondent

Amanda Hall  
30-40 Quay Street, Brisbane

**Form 25**  
*Childrens Court Act 1992*  
*Child Protection Act 1999*

**AFFIDAVIT**

**CHILDRENS COURT OF QUEENSLAND**

**REGISTRY: Brisbane**

**NUMBER:**

**Child/ren: Peter Jones – (DOB: 16/12/06)**

**Applicant: Amanda Hall**

**AND**

**[First] Respondent: Barry Jones**

**AND**

**[Second] Respondent: Mary Bell**

I, Barry Jones, in the State of Queensland, make oath and say as follows:-

1. I am the father of Peter Jones.
2. I have not abused my son and deny any of the allegations saying that I was responsible for Peter's injuries. I have told officers of the department and will say again, that I wasn't even in the room at the time Peter got hurt.
3. I am going to fight this all the way.
4. The department officers took Peter unjustly and I just want them to return my child.

---

Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Filed on behalf of the Respondent

Amanda Hall  
30-40 Quay Street, Brisbane

5. I understand that Peter will require a lot of medical appointments and probably ongoing therapy and would struggle to transport him to these appointments without some financial and practical assistance.
6. I want what is best for Peter and would like to see him regularly if he is placed in foster care.

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

Sworn by Patricia Jones on 19 February 2009 at Brisbane in the presence of:

(signed by deponent)

(signed by Justice of the Peace/Commissioner)

Deponent

Justice of the Peace/Commissioner for declarations

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Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Filed on behalf of the Respondent

Amanda Hall  
30-40 Quay Street, Brisbane

Form 25  
Childrens Court Act 1992  
Child Protection Act 1999

**AFFIDAVIT**

**CHILDRENS COURT OF QUEENSLAND**

**REGISTRY: Brisbane**

**NUMBER:**

**Child/ren: Peter Jones – (DOB: 16/12/06)**

**Applicant: Amanda Hall**

**AND**

**[First] Respondent: Barry Jones**

**AND**

**[Second] Respondent: Mary Bell**

I, Patricia Jones, in the State of Queensland, make oath and say as follows:-

1. I am the paternal grandmother of Peter Jones, and mother of Barry Jones.
2. I love my grandson and am very worried about his care and health.
3. My son Barry has asked me to care for Peter and I am interested in offering some care to Peter.
4. I am a little worried of how I would be able to care all day, every day for Peter and meet his health needs given I am not a young woman and financially rely on the pension.

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Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Filed on behalf of the Respondent

Amanda Hall  
30-40 Quay Street, Brisbane

1987. I have held a fellowship from the Australian College of Rehabilitation Medicine since 2000.

3. I am currently employed as a Paediatric Intensivist at the Mater Children's Hospital, South Brisbane.
4. This affidavit is sworn in support of the application by Amanda Hall for a child protection order granting custody of Peter Jones to the Chief Executive of the Department of Child Safety for a period of two years.

**Report**

5. On the 11<sup>th</sup> January, 2009 I prepared a medical report in relation to Peter Jones (born 16 December, 2006). Exhibit A to this affidavit is a true copy of the medical report.

ALL the facts and circumstances herein deposed to are within my own knowledge and belief save such are deposed to from information only and my means of knowledge and source of information appear on the face of this my affidavit.

Sworn by Anthony Mark Lewis on the 19<sup>th</sup> January, 2009 at Brisbane in the presence of:

(signed by deponent)

(signed by Justice of the Peace/Commissioner)

Deponent

Justice of the Peace/Commissioner for declarations

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Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Filed on behalf of the Applicant

Amanda Hall  
30-40 Quay Street, Brisbane

**Form 25**  
*Childrens Court Act 1992*  
*Child Protection Act 1999*

**AFFIDAVIT**

**CHILDRENS COURT OF QUEENSLAND**

**REGISTRY: Brisbane**

**NUMBER:**

**Child/ren:** Peter Jones – (DOB:16/12/06)

**Applicant:** Amanda Hall

**AND**

**[First] Respondent:** Barry Jones

**AND**

**[Second] Respondent:** Mary Bell

I, Anthony Mark Lewis, Paediatric Intensivist, of the Mater Children's Hospital, Annerley Road, South Brisbane, in the State of Queensland, make oath and say as follows:-

**Qualifications**

1. I hold a Bachelor of Medicine degree with First Class Honours from the University of New South Wales. I graduated with this degree in 1980.
2. I have held a Fellowship from the Royal College of Physicians, United Kingdom since 1984. I was registered as a Consultant Paediatrician in Queensland in

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Sheet 1

Deponent

A Justice of the Peace/Commissioner for declarations

Affidavit

Filed on behalf of the Applicant

Amanda Hall  
30-40 Quay Street, Brisbane

- \* authorising a medical examination or treatment of the child, Peter Jones.
- \* granting temporary custody of the child to the chief executive and authorising an authorised officer or police officer to keep the child in the chief executive's custody while the order is in force.
- \* Directing Barry Jones not to have contact (direct or indirect) with the child other than when an departmentally approved person is present.

Proposed arrangements for the child's care are as follows:

The child is currently in intensive care unit of the Mater Children's Hospital. Dr. Lewis has advised that the child is likely to remain in this unit for the next three to four days. If appropriate the child will then be moved to a general ward for further follow-up.

Contact between the child and the father will be facilitated by the Department.

The order is sought for a period of 4 weeks.

**Signature of Applicant:**

**SWORN / AFFIRMED** before:

Justice of the Peace / Commissioner  
for Declarations

Place: Brisbane

Date: 15<sup>th</sup> January, 2009

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**RESPONDENT(S) NAME(S)**

Mother's name: Mary Bell

Address: Unknown

Father's name: Barry Jones

Address: 24 Lynfield Drive, Caboolture

**TO THE ABOVE-NAMED RESPONDENT(S):** This application will be heard in the Childrens Court at

Place: Brisbane

Date: 16<sup>th</sup> January, 2009

Time: 2.00pm

**NOTE: IF YOU DO NOT ATTEND, THE COURT MAY PROCEED TO MAKE AN ORDER IN YOUR ABSENCE.**

Registrar:

Date:

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Signature of Applicant

Justice of the Peace / Commissioner  
for Declarations

stated that at the time of Peter's birth, Mary's parents, Gordon and Sandra Bell, came to Brisbane from New South Wales and assumed responsibility for their daughter. Barry Jones advised that he has not had any contact with Mary Bell or her parents over the past two years. Ms Bells current whereabouts is unknown.

- Previous Departmental Child Protection History:

Checks of the Department's Child Protection System have revealed two previous notifications in relation to Denise Sutton's son, Gary Sutton and one previous intake in relation to the child, Peter Jones. Details of these are as follows:

- On the 15<sup>th</sup> March, 2004 a notification was received in relation to Gary Sutton (D.O.B – 22/11/2000). The allegations related to neglect and involved the child crossing roads and playing in the street for hours without supervision. Denise Sutton was interviewed in relation to these allegations and the outcome of the assessment was recorded as "substantiated at risk".
- On the 11<sup>th</sup> November, 2007 information was received by the Department regarding Barry Jones' ability to care for his son. The information was of a general nature and on the basis that the notifier was unable to provide any information relating to specific child protection concerns the matter was recorded as an intake.
- On the 3<sup>rd</sup> March, 2008 a further notification was received in relation to Gary Sutton. Barry Jones was alleged to have physically assaulted Gary with a leather strap. This notification was unable to be assessed as the family moved prior to the initial assessment being completed.

The purpose of this order is to undertake the following:

- Obtain further medical information in relation to the possible cause of the injuries and future care needs.
- Attempt to locate the children's mother, Mary Bell.
- Continue to assess the father's capacity to care and protect the child given the nature of the injuries sustained by the child whilst in the care of the father.
- Continue to explore further the father's explanation for the child's injuries given the inconsistencies between the father's version of events and medical facts.
- Consult further with the Mater Children's Hospital Suspected Child Abuse and Neglect Team.
- Obtain the parents criminal history
- Consult further with the recognised entity in relation to the current child protection concerns and possible placements options for the child.

Custody is considered necessary to secure the child's protection during the duration of the order given the serious nature of the injuries to the child and the father's reluctance to continue working with the Department. It is requested that the order be for a period of four weeks to allow the Department to conduct further assessments in relation to the child's protective needs.

This application seeks an order –

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Signature of Applicant

Justice of the Peace / Commissioner  
for Declarations

- Bruising to left side of the body, this was estimated to be approximately two days old.

He also informed me that the injuries to the child are considered to be non-accidental. This preliminary finding is based on a CT scan and professional opinion that the child suffered a severe blow to the head, 24 to 48 hours prior to his presentation at the Redcliffe Hospital. Dr. Lewis also indicated to me that the retinal haemorrhaging is consistent with the child being severely shaken.

At this time, Dr. Lewis is unable to clarify what the long-term implications for the child will be but have suggested that it is likely that he may suffer some motor dysfunction and long term learning difficulties. He also indicated that if medical assistance had not been sought for the child it is likely that the he would have died.

- Interviews undertaken with the Father, Barry Jones and his partner, Denise Sutton:

I conducted Interviews, separately, with Barry Jones and Denise Sutton on the 11<sup>th</sup> January, 2009 and the 12<sup>th</sup> January, 2009. These interviews were conducted in conjunction with the police. During these interviews Barry Jones and Denise Sutton maintained that the child appears to have fallen whilst attempting to climb up on his high chair. The explanation offered by Barry Jones and Denise Sutton is not considered to be consistent with the medical facts.

When questioned in relation to the timing of the injuries Barry Jones and Denise Sutton maintained that an ambulance was called immediately following the incident. Dr. Lewis however has indicated that it is likely that the injuries occurred 24 to 48 hours prior to the child's admission to the Redcliffe Hospital.

During the interview on the 12<sup>th</sup> January, 2009, Barry Jones became increasingly agitated and indicated that he was no longer willing to participate in any further interviews regarding the matter with either the Department or the Police.

- Suspected Child Abuse and Neglect Team Recommendations:

On the 12<sup>th</sup> January, 2009 I participated in discussions with the Mater Children's Hospital Suspected Child Abuse and Neglect Team. Based on the inconsistencies between the presenting injuries and the explanations offered by Barry Jones and Denise Sutton the Mater Children's Hospital Suspected Child Abuse and Neglect Team were of the opinion that the child is at risk of further harm. Given that Barry Jones is no longer willing to cooperate with the Department's inquiries it was recommended that an application for a court assessment order be made, whilst further assessments are undertaken.

- Details of the mother, Mary Bell:

Barry Jones advised me that Peter's mother is Mary Bell and she is of Aboriginal decent. He further advised that Mary Bell experienced difficulties when giving birth to Peter and these complications left her intellectually impaired and requiring 24-hour care. He further

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Signature of Applicant

Justice of the Peace / Commissioner  
for Declarations

**Form 5**  
*Children's Court Act 1992*  
*Child Protection Act 1999*  
(Section 38)

**APPLICATION FOR A COURT ASSESSMENT ORDER**

**CHILD: PETER JONES**

Date of Birth 16<sup>th</sup> December, 2006

Aboriginal: Yes

Sex: Male

Torres Strait Islander: No

**APPLICANT DETAILS:**

Name: Amanda Hall, an authorised officer under the *Child Protection Act, 1999*  
Address: 30-40 Quay Street, Brisbane

**APPLICATION DETAILS:**

This is an application for a court assessment order.

**The grounds on which this application is made are:**

- Current Child Protection Concerns:

The Caboolture Child Safety Service Centre received a notification on the 9<sup>th</sup> January, 2009 in relation to Peter Jones. The child was presented to the emergency department of the Redcliffe Hospital with head injuries and significant bruising to his body. The injuries were of a serious nature and the child was immediately transferred to the Mater Children's Hospital, where he was admitted to the intensive care unit for treatment.

The child's father, Barry Jones and his partner, Denise Sutton advised me that at the time the injuries occurred they were in the living room of their home. They heard a crash from the kitchen and when they went to investigate the noise they found the child lying on the ground amongst a number of grocery items. The child appeared to be having a seizure. The father and his partner explained that it appeared that the child had fallen whilst trying to climb up on his high chair to get some food. The father advised that he called an ambulance immediately given that the child was "fitting".

On the 11<sup>th</sup> January, 2009 Dr. Lewis from the Mater Children's Hospital advised me that the child's injuries on admission included:

- A subdural haemorrhage (bleeding between the skull and brain).
- Retinal haemorrhaging in both eyes.
- Bruising to the left side of the face, this was estimated to be approximately two days old.

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Signature of Applicant

Justice of the Peace / Commissioner  
for Declarations

FILE NO:

*Childrens Court Act 1992*  
*Child Protection Act 1999*  
(Sections 44, 45, 47)

**COURT ASSESSMENT ORDER**

**CHILD:**

Date of Birth:

Sex:

An application for a court assessment order was made by \_\_\_\_\_, an authorised officer, in the Childrens Court at \_\_\_\_\_ on DATE in relation to the above-named child.

Having considered the grounds of the application I am satisfied that an investigation is necessary to assess whether the child is a child in need of protection, and that such investigation cannot be properly carried out unless the order is made.

I MAKE a court assessment order in relation to the child –

- \* authorising an authorised officer or police officer to have contact with the child.
- \* authorising a medical examination or treatment of the child.
- \* authorising an authorised officer or police officer to enter and search any place the officer reasonably believes the child to be, to find him / her.
- \* granting temporary custody of the child to the chief executive and authorising an authorised officer or police officer to \*keep / take and keep the child in the chief executive's custody while the order is in force.
- \* directing (name of parent) not to have contact (direct or indirect) with the child.
- \* directing (name of parent) not to have contact (direct or indirect) with the child other than when #(person's details) is present.
- \* making the following provisions as to the child's contact with his/her family during the period of time he/she is in the chief executive's custody.

This court assessment order will continue in force until \_\_\_\_\_.

**Magistrate**

Place:

Date:

\*delete whichever is not applicable

#person's details refers to either name of person, or general category of person or position

Form 7 – Version 2, November 2003

- For the duration of the court assessment order contact was supervised by a Child Safety Support Officer, Pam Cassidy. Barry Jones and Denise Sutton attended all visits and acted appropriately.

- Peter may have some long term learning problems.
  - Whilst Peter's rehabilitation needs are likely to be on-going throughout his childhood, they will be intensive over the next twelve to twenty-four months.
  - A more definitive prognosis could be given after one to two months of rehabilitation.
  - Peter will require a high level of support from his caregivers in order to assist him in the rehabilitation process.
  - Dependent upon his rate of recovery, Peter is likely to remain in hospital until mid-January, 2005.
- On the 9<sup>th</sup> December, 2004 the Department was advised by Police that Mr Jones had been arrested and charged with one count of Grievous Bodily Harm, as a result of the injuries that Peter had sustained. Mr Jones was granted watchhouse bail and the matter was listed for mention in the Caboolture Magistrate Court on the 22<sup>nd</sup> December, 2004.
- On the 10<sup>th</sup> December, 2004 Mater SCAN recommended that the Department make application for a child protection order granting custody of Peter to the Chief Executive for a period of two years. This recommendation was based on the following:
- Peter suffered life-threatening injuries, to the extent that if medical assistance had not been sought it is likely that the child would have died.
  - Inconsistencies between the extent of the injuries and the explanation for how these injuries occurred by Mr Jones and Ms Sutton, remain unresolved.
  - Peter is likely to suffer some motor dysfunction and long term learning difficulties. A high level of support will be required from his caregivers to assist in his rehabilitation. This support will be intensive over the next twelve to twenty-four months.
- On the 10<sup>th</sup> December, 2004 another family meeting was held with Barry Jones and Denise Sutton. During this meeting the current child protection concerns were discussed and Barry Jones and Denise Sutton were advised that the Department would be applying for a child protection order granting custody of Peter to the Chief Executive for a period of two years. It was explained to Barry Jones and Denise Sutton that given the inconsistencies between the extent of the injuries and explanation for how these injuries occurred the Department was of the opinion that Peter would be at risk if he was return home at this time. It was also explained that the Department held concerns in relation to Barry Jones and Denise Sutton's ability to meet Peter's rehabilitation requirements, which would be intensive over the next twelve to twenty-four months. Mr Jones and Ms Sutton were also advised that given that Peter is Aboriginal it is the Department's intention to place Peter with Indigenous carers following his release from the Mater Children's Hospital.
- On the 10<sup>th</sup> December, 2004 the Karbul Indigenous Placement Agency was consulted in relation to the Department's intention to make application for a child protection order, in relation to Peter, granting custody to the Chief Executive for a period of two years. The Karbul Indigenous Placement Agency advised the Department that they were supportive of this application and of the Department's intention to place Peter with Indigenous carers, following his release from Hospital.

## **The Jones Family: Assessments and case developments whilst subject to the Court Assessment Order.**

- On the 16<sup>th</sup> November, 2004 a court assessment order was made in relation to the child, Peter Jones. This order was for a period of four weeks.
- On the 17<sup>th</sup> November, 2004 a family meeting was held with Barry Jones and Denise Sutton. During this meeting the details of the court assessment order were explained and arrangements were made for Mr Jones and Ms Sutton to have supervised visits with Peter, twice per week, for the duration of the court assessment order.
- On the 17<sup>th</sup> November, 2004 the recognised agency, the Karbul Indigenous Placement Agency, was advised that Peter was subject to a court assessment order granting custody to the Chief Executive for a period of four weeks.
- In an attempt to locate Peter's mother contact was made, on the 18<sup>th</sup> November, 2004, with the Royal Brisbane Hospital, which was where Peter was born. The Department was provided with an address in New South Wales. A letter was sent to this address by registered mail but this was returned by Australia Post. The explanation provided by Australia Post as to why the letter could not be delivered was that Mary Bell was no longer residing at this address.
- Attempts to locate Mary Bell through Centrelink were commenced. To date there has been no response.
- On the 19<sup>th</sup> November, 2004 Gary Sutton was interviewed at the Caboolture State School in relation to the incident on the 9<sup>th</sup> November, 2004. This interview was conducted in the presence of Jack Campbell and Susan Wall, Police Officers attached to the Brisbane Child Abuse Unit, and the Child Safety Officer, Amanda Hall. Gary had difficulty pronouncing words and was limited in his ability to form sentences. Gary did indicate that he was afraid to talk about what happened on the morning that Peter was taken to hospital by ambulance. Gary presented as fearful and difficult to engage.
- On the 19<sup>th</sup> November, 2004 further attempts were made by Jack Campbell, Susan Wall and Amanda Hall to interview both Barry Jones and Denise Sutton. Both refused to be interviewed.
- On the 2<sup>nd</sup> December, 2004 the Queensland Police Service advised that neither Barry Jones nor Denise Sutton have any previous criminal history.
- On the 6<sup>th</sup> December, 2004 staff from the Karbul Indigenous Placement Agency were invited to attend a Family Meeting in relation to Peter to be held on the 10<sup>th</sup> December, 2004. Due to prior commitments the Department was advised that no one would be available to attend this meeting in person.
- On 7<sup>th</sup> December, 2004 Dr Anthony Lewis advised the Department of Peter's current situation and possible rehabilitation requirements. The following information was provided:
  - It is difficult to say with any certainty the long-term prognosis for Peter.
  - It is highly likely that Peter will have some motor dysfunction on the left side of his body.
  - Peter may have difficulty walking.

**Form 17**  
*Childrens Court Act 1992*  
*Child Protection Act 1999*  
(Section 6)

**ABORIGINAL AND TORRES STRAIT ISLANDER RECOGNISED AGENCY**

**CHILD: PETER JONES**

Date of Birth: 16 December 2006  
X Aboriginal but not Torres Strait  
Islander origin

- Both Aboriginal and Torres Strait  
Islander origin  
 Not stated/inadequately described

Sex: Male

- Torres Strait Islander but not  
Aboriginal origin  
 Neither Aboriginal nor Torres Strait  
Islander origin

**APPLICANT DETAILS:**

Name: Amanda Hall  
an authorised officer under the *Child Protection Act 1999*.

Address: 30-40 Quay Street

**APPLICATION DETAILS:**

This information relates to an application for a court assessment order made  
in the Childrens Court at Brisbane on 15<sup>th</sup> January, 2009 in relation to the  
above-named child.

**RECOGNISED AGENCY:**

The recognised Aboriginal or Torres Strait Islander agency for the child under  
section 6(3) of the *Child Protection Act 1999* is:

Karbul Indigenous Placement Agency

The representative of the recognised Aboriginal or Torres Strait Islander  
agency for the child is: to be advised.

Finally, professionals should remember that although their role in the litigation is important, they are not responsible for the outcome of the case. They are responsible only for their testimony. The judge is the decision-maker.

### **3. The Courtroom as a Stage:**

Witnesses must appreciate the importance of their performance in court.

Testimony is an opportunity to infuse the written word with the professional's competence, conviction, and integrity. Preparation, dress and demeanour are very important.

#### **Strategy:**

Don't be put off by theatrical performances by Solicitors/Barristers.

Be prepared to be speak with the solicitor that has subpoenaed you to discuss what kind of questions they are likely to ask you and what you may expect from the other side. Also ask them about the Judge/Magistrate's style of decision making. Every bit of information helps.

### **4. Organise an opportunity for debriefing and reflective learning's after each cross-examination experience.**

Remember that cross-examination will be one of the most stressful parts of your job. As such the stress that may be induced by the experience needs to be taken seriously with opportunity to debrief and de-stress with colleagues and clinical supervisors. Every experience is a wealth of knowledge that you can draw from for you next cross-examination.

### **QUICK TIPS - Being a witness in the children's court**

Upon entering the court always acknowledge the bench by bowing when entering and leaving the court room. Stand while the Magistrate or Judge is entering or leaving the court room. When crossing the court room never walk between the bench and the bar-table. Walk behind the bar-table.

A Magistrate and a Judge is to be addressed as "Your Honour".

Once you have entered the witness box you will be asked to take an oath or affirmation.

- **The Oath** - Take the bible in the right hand and look directly at the Magistrate or Judge and repeat the words of the oath, slowly and clearly. An affirmation may be taken by a non-Christian in lieu of an oath.
- **Witness box chair** - Never sit down until you are given permission from the bench to do so.

Once you have given an oath/affirmation there are three stages of questioning:

1. Evidence in chief – providing information to the Magistrate
2. Cross examination – to destroy, diminish, limit or explain away information
3. Re-examination – to re-establish credibility and clarify important points

## **DO**

- (a) know your case and facts – be sure
- (b) think before you answer
- (c) answer the questions – only as much as you have to
- (d) maintain objectivity and balance – positives and negatives
- (e) be friendly and obliging and assist the court
- (f) concede points and make concessions
- (g) do state your ignorance if you don't know something – It's ok to say I don't know!
- (h) do qualify your answers first
- (i) do use simple language – no jargon
- (j) do dress sensibly – create a credible impression
- (k) do control your hands, voice, eyes and facial expression
- (l) do project your voice
- (m) do correct any misunderstanding or mistakes
- (n) do ask them to repeat the question if it is too long

## **DO NOT**

- (a) get angry
- (b) ask questions back
- (c) be arrogant or defensive
- (d) be officious or have a closed mind
- (e) volunteer information
- (f) answer hastily or guess but answer when you're sure what the question is
- (g) try to outsmart the lawyer
- (h) be evasive

**Please see examples of:**

- Request for addition information re contested child protection application forms
- Review of Court Material
- Brief to Crown Law
- AIC
- Request for Subpoena – Form 23
- Subpoena – Form 24

## COURT ORDERED CONFERENCES Childrens Court

### **Section 59 (1)(c) *Child Protection Act 1999***

#### **What is a court ordered conference?**

A Court Ordered Conference is ordered by the court on adjournment of proceedings under section 68(1)(e) *Child Protection Act 1999 (CPA 1999)* and is a meeting held between the parties that is convened by a chairperson (refer to sections 69-72 of the *CPA 1999*). It is an attempt to decide the matters in dispute or to try to resolve the matters.

Section 59(1)(c) *CPA 1999* specifies that The Childrens Court may make a child protection order only if it is satisfied – if the making of the order has been contested, a conference between the parties has been held or reasonable attempts to hold a conference have been made.

#### **Objectives of a court ordered conference?**

To:

- express the views of parties
- improve parties understanding of the core issues
- clarify positions
- determine areas of agreement and / or disagreement
- facilitate identification of options which may protect the child and be agreeable
- reach agreement to avoid a hearing
- minimise the inherent conflict

#### **Who may attend the conference?**

- section 70 *CPA 1999* specifies who can attend the conference
- the parties - the Department and the parents
- legal representatives
- Child Separate Representatives
- a representative of a Recognised Entity (if appropriate)
- others (support people etc)

#### **Confidentiality**

- section 71 *CPA 1999* – *Communications inadmissible in evidence without consent*
- Anything said at the conference is inadmissible in a proceeding before any court other than with the consent of all the parties.

#### **When do you contact the conference coordinators?**

- when an application seems likely to be contested
- contact the coordinators for a conference date
- advise whether a separate representative is going to be requested.

### **Other information to be provided to the coordinators**

- other matters that may impact the conference such as
  - security issues
  - domestic violence issues
  - whether either parent is incarcerated
  - whether participation is required by teleconference
  - whether an interpreter is required

### **After the Court orders the conference**

- recontact the coordinator to confirm the date and time
- the conference coordinator will book a room at the Court or other suitable location
- the Court will send form 19 notices to all parties

### **Child Separate Representatives**

- Section 110(1) CPA 1999 allows Separate legal representation of the child
- acts in the child's best interests regardless of any instructions from the child
- as far as possible presents the child's views and wishes to the Court
- Dept to provide access to the file
- to be invited to family meetings

### **How to prepare for a conference?**

- plan who will be the primary talker
- ensure a family meeting has been held and all parties are aware of the details
- have knowledge of the case
- have a copy of and ensure all parties are aware of the caseplan
- decide what, if anything is negotiable – have discussions prior to the conference about this
- what is the least intrusive intervention

### **The conference stages**

- introduction
- explanation of the process
  - confidentiality
  - objectives
  
- parties statements
- discussion of issues
- identify options – reality test options
- Caucus

### **Result of conference**

- when agreement is reached
- when there is no agreement
- is a further conference necessary?
- the coordinators report

## **CONTACTS**

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## REVIEW OF COURT MATERIAL

**Matter:**

**Applicant:**

**Caseworker:**

**Team Leader:**

**Court Coordinator:**

**Court Services:**

**Date:**

**Order Sought:**

**Material provided to date:**

On behalf of the department:

- ✓ **Form 10** – Application for a Child Protection Order, made by \_\_\_\_\_, dated \_\_\_\_\_.
- ✓ **Form 25** – Affidavit of \_\_\_\_\_, dated \_\_\_\_\_, including Exhibit 'A' - \_\_\_\_\_.

**Child protection concerns:**

The department has assessed that the subject child/ren would be at risk of harm should he/she/they be placed back into the care of the respondent parents due to the following:

- Physical Harm/Excessive Discipline;
- Domestic Violence;
- Failure to Engage;
- Ability to Parent;
- Minimisation of Harm;
- Drug/Alcohol Abuse;
- Age/Vulnerability.

**Suggestions for further material to be obtained:**

- Further material required to support the department's case, ensuring the rules of direct and relevant evidence are adhered to.
- Affidavit of \_\_\_\_\_;

**For future reference:**

- Include here what the CSSC should do next time to ensure model litigant/best practice procedures are adhered to.
- Affidavits are written in the "first person". Ensure that you use the statement "...".

**Potential witnesses if matter proceeds to hearing:**

- 1) Departmental officers;
- 2) Anyone else who provides written material on our behalf.

## Checklist – procedures & timeframes for cp/family law matters

*\*Please note that these are best practice guidelines only. Timeframes may vary depending upon the urgency of the matter.*

CSSC = Child Safety Service Centre  
 CS = Court Services  
 AIC = Advice In Conference  
 TL = Team Leader

CL = Crown Law  
 CSA = Court Services Adviser  
 CC = Court Coordinator  
 \* = Timeframe unless urgent

Task	Who is responsible?			Approximate timeframe
	CSSC	CS	CL	
CSSC or CS advise that a family law application has been filed and received.	X	X		As soon as application received.
CS to forward CSSC CP/family law summary sheet and request that family law material be forwarded to CS as soon as possible.  If child protection application pending and material not currently held by CS, CSA to request any relevant child protection material.		X		Within 2 working days from receipt of application.
CSSC to forward TL CS completed summary sheet and family law material (and cp material if relevant). <i>If material not available, CS to assist CSSC with accessing a copy if necessary. Otherwise CC/CSSC should request material from parent/legal rep.</i>	X			Within 5 working days. *
TL, CS to search Family Law portal re status of application – this can only occur where DOCs listed as a respondent/party to proceedings.  TL, CS to also search Intake register for any previous and place on cp/family interface file.		X  X		Within 2 working days.*
TL, CS to have file prepared with Admin and allocate file to a CSA. Where DOCs not listed as a party to proceedings, appropriateness of briefing matter to CL will be discussed at this point or at a later time following case discussion with CSSC.  TL, CS to record matter on allocations spreadsheet.		X		Within 3 working days.*
CSA to contact (via email) CSSC to advise that they have carriage of the matter; the timeframe for a Case Discussion; and (where appropriate) when brief to Crown Law to be completed/received.		X		Within 2 working days.*

Task	Who is responsible?			Approximate timeframe
	CSSC	CS	CL	
CSA to organise and facilitate a Case Discussion with CSSC.		X		Within 5 working days from allocation.*
Where DOCs listed as a respondent to proceedings CSA to complete a brief to CL. Copy of brief to CSSC.  Brief to include requirement for CL to file a <i>Notice of Address for Service</i> . (This can only occur when DOCs listed as a respondent/party or responding to a request to intervene under s91B).  Requirement to file a <i>Response to an application in a Case</i> will be determined at this point.		X		Within 5 working days of Case Discussion.*
Upon receipt of brief, CL to advise which CL officer the matter has been allocated to.			X	Within 3 working days from receipt of brief.*
CSA to advise CSSC of which CL officer the matter has been allocated to.		X		Within 1 working day from receipt of this information from CL.
CSA to organise and facilitate an AIC with CL and CSSC.  <i>Expectation that all participants have read the material prior to the AIC.</i>  <i>If there are difficulties with arranging an AIC in a timely manner, CSA will make a request to CL for feedback to be provided in writing re additional evidence which may support department's position.</i>		X		Within 5 – 8 working days from being advised of CL officer.
CSA to prepare and provide minutes from the AIC to CL and CSSC.		X		Within 2 working days from AIC.
CL to file a <i>Notice of Address for Service</i> with family law court.			X	Within 2 working days of CL officer being allocated.
CSSC to ensure tasks undertaken/affidavits obtained as per AIC and/or case discussion/s.	X			As per timeframes nominated during AIC.
Subsequent AIC to be arranged and facilitated if required.  Minutes to be prepared/provided to CL and CSSC.		X		As required.  Within 2 working days from AIC.
CSA and/or CL to assist CSSC with QA-ing/settling any court material.		X	X	As per timeframes nominated by AIC, or in accordance with filing directions.

Task	Who is responsible?			Approximate timeframe
	CSSC	CS	CL	
CSA/CSSC/CL to liaise with legal reps for parties.	X	X	X	As required.
CSA to facilitate filing of any court material on behalf of CSSC if required. TL, CS can also assist with filing documents on line through the Family Law portal.  CSA to forward filed/sealed material to CL & CSSC. Where private counsel briefed a copy is forwarded to them, with an electronic copy to CL..		X		Prior to filing date.
Preparation of written submissions.			X	Within 5 working days prior to matter being heard.
Attendance at court and instructing CL. <i>May require CSSC to instruct in regional centres if necessary.</i>  On instructions CL to see leave to be excused from proceedings (where appropriate).		X	X	To occur on court date.
CL to provide written advice of court outcome/s to CSA.. <i>See template letter.</i>			X	Within 2 working days of court date.
CSA to forward CL advice to CSSC.		X		Within 2 working day of receipt of written advice/email.
CSA to instruct CL to close file and bill.		X		Within 2 working days of receipt of written advice/email.
CSA to forward copies to CL and CSSC any orders issued.  CSA to close file – ensuring all relevant documents retained on file and coversheet completed. Return file to TL, CS.		X		Within 5 working days of receipt of written advice/email.

**Example of Court Submission**

**Date:**

**Appearances:**

Good afternoon Your Honour, my name is SURNAME, initials AB . I appear on behalf of the CE for the Department of Child Safety. If Your Honour would like to take the matter of \_\_\_\_\_ [name of the matter]. The applicant \_\_\_\_\_ [applicant's name] appears to my left.

**For a new application:**

The application/s is for a child protection order granting protective supervision or custody or short-term/ long-term guardianship of [name/s of child/ren] to the Chief Executive [or family member, or other suitable person, namely \_\_\_\_\_] for a period of \_\_\_\_\_.

**OR**

**For an extension:**

The application/s is to extend the current child protection order/s granting custody/guardianship of [name/s of child/ren] to the Chief Executive for a further period of \_\_\_\_\_. The child protection order/s expires on \_\_\_\_\_. [OR the child protection order/s expired on \_\_\_\_\_ and the application/s is subsequently for the making of a new child protection order].

**OR**

**For an application where section 99 is being relied upon:**

The application is for a child protection order granting \_\_\_\_\_. Your Honour, \_\_\_\_\_ [name/s of child/ren] was subject to an order granting temporary custody to the Chief Executive under the provision of a TAO/CAO/previous CPO. This order expired on \_\_\_\_\_ however the application for the child protection order was filed on \_\_\_ prior to the TAO/CAO/previous CPO expiring and custody has extended under the provision of section 99.

**OR**

**For a change in order during proceedings:**

The application is for a child protection order granting \_\_\_\_\_ which was filed on \_\_\_ by \_\_\_\_\_. During the process of further assessment, the most appropriate order for the child is now considered to be a \_\_\_\_\_ [eg long term guardianship order in favour of the CE]. An affidavit filed by \_\_\_\_\_ dated \_\_\_\_\_ outlines in paragraph \_\_\_ the reasons for the change of order.



**Your Honour, today we are seeking:**

- An adjournment to \_\_\_\_ [date] with orders pursuant to section 67 or 68 of the CP Act for the purpose of \_\_\_\_ [eg holding a FGM, filing additional material with the court, awaiting assessments on the relative carers, to allow the parents to seek legal advice, to serve the parents etc.....];
- Proceedings be transferred to \_\_\_\_ court;
- Final order made;
- COC;
- Sep Rep;
- Withdrawal of the application.

## **CHILDREN SERVICES TRIBUNAL**

The Children Services Tribunal (the Tribunal) was established under the *Children Services Tribunal Act 2000* and seeks to provide merit reviews of specific reviewable decisions under a number of Acts including the *Child Protection Act 1999*. It is an independent body, with an appointed President, located within the Department of the Premier and Cabinet.

### **Reviewable decisions**

One of the main roles of the Tribunal is to review certain decisions made by the Department of Child Safety. Reviewable decisions may relate to:

- the placement of children (*Child Protection Act 1999*, section 86(2));
- not telling parents where a child is living (*Child Protection Act 1999*, section 86(4)); or
- refusing to allow, restricting, or placing conditions on contact between a child and their parents, siblings or another member of the child's family (*Child Protection Act 1999*, section 87(2)).

The Tribunal is usually made up of three people who have experience in many areas including children's issues, law and health. The Tribunal, while similar to a court, operates in a less formal manner and seeks to avoid an overly legalistic approach to cases, for example, legal representation is at the discretion of the Tribunal, based on the issues of each case.

In reviewing a decision the Tribunal may:

- agree with a decision (the decision stays the same);
- disagree with a decision (as if the decision had never been made);
- change some aspects of a decision; or
- make a new decision.

### **Who may apply for a review?**

Those who may apply for a review of decisions under the *Child Protection Act 1999*, include:

- children or, if the child is too young, another person may do this on their behalf;
- parents;
- the Child Guardian, Commission for Children and Young People and Child Guardian; and
- in specified circumstances, the child's carer.

An application for the review of a decision needs to be made to the required person/s within 28 days of the decision being communicated in writing by the department. The Tribunal's role is finalised once a decision has been handed down. The Tribunal is not able to follow up on a case or manage or oversee cases.

Decisions able to be reviewed by the Tribunal, and persons able to apply to have a decision reviewed, are specified in the *Child Protection Act 1999*, schedule 2.



## **Role of Court Services Unit as departmental liaison with the Children's Services Tribunal**

The role of the Court Services Unit (CSU) as departmental liaison can be divided into three major components:

- Role as Liaison with Tribunal registry
- Role in proceedings
- Role internal to the department.

### **Liaison**

The role of CSU as departmental liaison includes:

- To act as point of liaison between the Tribunal and the department – act as point of reference for registry staff for example serving of Notices, clarification of date's etc.
- Negotiate with tribunal staff as required.

### **Role in proceedings**

The role of CSU during proceedings is:

- To provide support to the departmental decision maker and witnesses.
- To address the tribunal directly at the initiation of the departmental liaison officer on issues of concern that requires a formal statement for the purposes of the record.

It is not the role of CSU to address the Tribunal concerning case management or case plans of the matter before the Tribunal.

### **Internal role**

- Provide advice to departmental staff concerning all aspects of review applications.
- Where necessary seek legal advice or instruct Crown Law to represent the Director General in Tribunal matters.
- Assist in the preparation of departmental material for Tribunal proceedings.
- Attend preliminary conferences and hearing with departmental staff, unless specifically negotiated with the decision maker.
- Brief and prepare departmental witnesses.
- Debrief and provide feedback to departmental staff – focussing on the learning from the experience.
- Provide advice to senior management regarding any practice or policy issues of concern.
- Collate and analyse data and provide advice as to emerging issues.
- Prepare written correspondence where necessary.

## **Information for Departmental Officers appearing in the Children Services Tribunal**

- Remember the CST is equivalent to a court.
- Departmental officers must present before the CST in a manner consistent with other courts.
- Departmental officers need to display a high level of professionalism in the CST:
  - Your presentation and dress are important in conveying a professional identity.
  - You should speak clearly, respectfully to all, professionally and without personal judgement.
  - You should not express negative views in an emotive manner.
  - Your non verbal behaviour should remain appropriate and professional.
  - Workers should not eat lollies/gum etc and should drink out of a cup rather than a bottle.
  - Side conversations should be kept to an absolute minimum and should be at a whisper level if necessary. Otherwise, communication via written information is appropriate.
- You are not able to enter and leave CST proceedings without permission, the of the panel.
- Do not interject.
- Remember the CST adopts an inquisitorial process, and unlike a court questioning is about exploring information rather than being adversarial.
- Be objective, and obliging to the CST.
- Remember the applicant has a right to review our decisions and this should be respected. Our decision making needs to be open and accountable.

## Order of proceedings – Children’s Services Tribunal – Hearing

Introduction of Panel Members:

- All parties introduce themselves

Preamble by Presiding Member:

- May include clarification of reviewable decisions; procedural information, ensuring all parties have copies of material.

Opening Statements (in the following order):

- Applicant
- Department
- Any other joined parties
- Child Representative

This order is then used in the presentation of all material and questioning of witnesses, so:

- Applicant is first in presenting all of their material / witnesses to the CST
- Department is next in presenting all material / witnesses
- Any other joined parties
- Child Representative is last.

Order for Questioning of Witnesses:

Applicants witness/s

1. applicant asks all their questions of the witness. *Then over to*
2. department to ask questions of the applicant's witness. *The over to*
3. child rep to ask questions of the applicant's witness.
4. CST may ask questions at any time.

The above process is to be repeated for each of the applicant's witnesses.

Departmental witness/s

1. department asks all their questions of the witness. *Then over to*
2. applicant. *Then over to*
3. child rep.
4. CST may ask questions at any time.

The above process is to be repeated for each of the applicant's witnesses.

Child Rep's witness/s

1. child rep asks questions of their witness/s. *The over to*
2. applicant. *Then over to*
3. department.
4. CST may ask questions at any time.

Closing statements:

1. applicant
2. Department
3. any other parties
4. Child Rep

After the Department has finished asking questions of each witness, the spokesperson can say something like, "I have no further questions". If other questions then arise, the spokesperson can request CST's permission to ask them, but ensure any additional questions are relevant and to the point.

DRAFT

## Criteria for Court Services attendance and participation in Children Services Tribunal matters

### Points of Consideration

The following criteria have been agreed as warranting the involvement of court services up to and including the Hearing of an application for review of a decision:

- the application has been brought by a carer/s
- the application has been brought under s59 on behalf of a child
- the application is made by the Child Guardian
- the application is a reviewable decision under the *Adoption of Children Act 1964*
- legal representation has been granted by the applicants by not the respondents
- the reviewable decision has a degree of complexity or contentious element (including any identified vulnerabilities) as assessed by the team leader and / or manager, CSU
- that key CSSC officers have no or very limited experience in managing an application before the Tribunal.

The following points are noted for consideration as to when Court Services **may or may not** remain involved in a matter beyond the Preliminary Conference stage, except to provide some level of quality assurance of material.

- the department has been granted leave for legal representation
- the application is straight forward, with no jurisdictional complexities
- the CSSC has a level of confidence in presenting the matter and speaking to the thoroughness of their assessments and decision-making
- the CSSC has previous experience in having a matter heard before the Tribunal
- the departmental practices and decision-making presents as sound.

Factors that are not be determinate in deciding Court Services level of involvement are:

- the location of the hearing and/or whether there is a requirement for an overnight stay outside of Brisbane
- the length of the hearing
- a difference of view between the CSU and the CSSC as to the CSSC's decision and/or processes of decision-making (this issue is to be managed internally).

The availability of CSU staff may at times impact on whether or not CSU can attend a hearing, however this would be a rare occurrence and the onus would remain with CSU to explore all other avenues of support to the CSSC.

Process for advising CSSC's

The above criteria or points of consideration still enable a level of discretion when applied to each case.

The decision to not participate beyond the Preliminary Conference is one made by the team leader (CSU) in consultation with the allocated CSA.

The team leader (CSU) must then advise (by email) the manager (CSU) of this decision along with the rationale and any differing views of staff. The team leader will communicate the decision to the CSSC and should there be a request for a review of the decision (which can be requested by the CSA and / or the CSSC), the manager (CSU) can then undertake a review.

The decision for CSU not to participate in the hearing of a matter will be made following the post preliminary conference case discussion with the CSSC and / or within 2 weeks of the Preliminary Conference, whichever is earlier.

# CPA1999 INFORMATION PAPER

## ADMINISTRATIVE REVIEWS TO THE CHILDREN SERVICES TRIBUNAL

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### 1. PURPOSE

To provide staff with information about, and guidelines for, the application of provisions in the *Child Protection Act 1999* enabling review of certain administrative decisions to the Children Services Tribunal.

### 2. REVIEW PROVISIONS IN THE *CHILD PROTECTION ACT 1999*

Section 247 of the *Child Protection Act 1999* provides that an aggrieved person for an reviewable decision may apply to a tribunal to have the decision reviewed.

Aggrieved persons and reviewable decisions are listed in Schedule 2 of the Act. **A decision not listed in the Schedule cannot be formally reviewed by the Tribunal.**

Reviewable decisions can be categorised into the following groups:

- Decisions relating to child protection case management
- Decisions relating to the placement of a child in care
- Licensing of care services and approval of foster carers.

### 3. RELEVANT TERMS

**Aggrieved person** is the person who has review rights for a particular decision. This term is used to describe all persons who must be notified of their review rights – it is not limited to persons who are, in reality, aggrieved by a particular decision. Even in instances where a decision has been made with the full involvement and approval of the person who has review rights, it is still necessary to provide written notice of the decision and advise the person (**aggrieved person**) of their right of review.

**Parent**, for the purpose of Schedule 2, is defined in section 11. This is a broader definition than the definition contained in section 52 relating to applications for, and the granting of, child protection orders. Section 11 defines a 'parent' as the child's mother, father or someone exercising parental responsibility for the child. A person exercising parental responsibility would include a stepmother or stepfather. A parent of an Aboriginal or Torres Strait Islander child includes a person who, under Aboriginal tradition or Torres Strait Islander custom, is regarded as the parent of the child.

It does not include a person standing in the place of a parent on a temporary basis. For example, it would not include a relative or friend who was caring for a child for a 2 week period while the parent was away.

However, the definition of 'parent' in section 11 does not apply to decisions to transfer custody or guardianship to an interstate welfare authority under section 245.

'Parent' for the purpose of Part 7 of Chapter 7 is defined specifically in section 242 to mean a person who would be the child's guardian if an order under the Act was not in force.

**Family member/relative** are not defined terms in the *Child Protection Act 1999*. Members of the child's family are only aggrieved persons for decisions under section 87(2) (refusal to allow, or placing restrictions or imposing conditions on, contact with the child) and section 89 (removal of child from carer's care) if the person was regarded by the child as a member of his or her family before the child was placed in the person's care. Relatives are only aggrieved persons for decisions under section 89 (removal of child from carer's care).

Relatives would generally include grandparents, siblings, aunts and uncles and cousins. Family members would also include these people as well as others who may not be blood related but are regarded as a member of the child's family such as step parents.

**Child** is defined in section 8 as an individual under 18 years. For the purpose of the reviewable decisions listed in Schedule 2, the term 'child' usually refers to a child in care or a child with a child protection order requiring the chief executive to supervise the child's protection. This does not include children under a section 67 interim order granting temporary custody to the chief executive.

**Foster carer** refers to approved foster carers, ie a person who holds a certificate of approval as an approved foster carer. Does not include limited approval carers. A relative carer has a separate review right against a decision to remove a child from their care (see section 91(a)).

#### 4. CASE MANAGEMENT DECISIONS

The *Child Protection Act 1999* provides for administrative review of certain case management decisions by the Children Services Tribunal. The following outlines the administrative review rights which exist in relation to these decisions.

Who	What can be reviewed	Notes
Parent	Directing a parent in relation to a supervision matter stated in a child protection order (section 78)	<ul style="list-style-type: none"> <li>• Only includes the parent given the direction</li> <li>• Review relates to directions issued in writing by the Department, not to the matters stated in the order by the Court</li> <li>• The only ground on which the parent can seek a review is that the direction does not specifically relate to the supervision matters stated in the order</li> <li>• The Tribunal cannot grant a stay of the decision (section 78(4))</li> </ul>
	Decision to refuse or restrict or impose conditions on contact between the child and the child's parents or a member of the child's family. (section 87(2))	<ul style="list-style-type: none"> <li>• Applies to all orders</li> <li>• In practice, refers to situations where a parent's specific request is refused</li> <li>• Notice must be given as soon as practicable after the decision is made.</li> </ul>
	Arranging for an interstate welfare authority to assume custody or guardianship of a child (section 245)	<ul style="list-style-type: none"> <li>• The arrangement cannot take effect until the 28 day review period is over or, if a review is made, until the review is decided. (section 245(5))</li> <li>• Notice must be given as soon as practicable after the decision is made.</li> </ul>
Member of child's family	Decision to refuse or restrict or impose conditions on contact between the child and the child's parents or a member of the child's family. (section 87(2))	<ul style="list-style-type: none"> <li>• Applies to all orders</li> <li>• In practice, refers to situations where a family member's specific request is refused</li> <li>• Notice must be given as soon as practicable after the decision is made.</li> </ul>

Child	Decision to refuse or restrict or impose conditions on contact between the child and the child's parents or a member of the child's family. (section 87(2))	<ul style="list-style-type: none"> <li>• Applies to all orders</li> <li>• In practice, refers to situations where a child's, parent's or family member's specific request is refused</li> <li>• Notice must be given as soon as practicable after the decision is made.</li> </ul>
	Arranging for an interstate welfare authority to assume custody or guardianship of a child (section 245)	<ul style="list-style-type: none"> <li>• The arrangement cannot take effect until the 28 day review period is over or, if a review is made, until the review is decided. (section 245(5))</li> <li>• Notice must be given as soon as practicable after the decision is made.</li> </ul>
Carer	Arranging for an interstate welfare authority to assume custody or guardianship of a child (section 245)	<ul style="list-style-type: none"> <li>• Includes all carers, not just approved foster carers</li> <li>• Applies only if the carer is moving interstate with the child (section 245(6) and (2))</li> <li>• The arrangement cannot take effect until the 28 day review period is over or, if an review is made, until the review is decided. (section 245(5))</li> <li>• Notice must be given as soon as practicable after the decision is made.</li> </ul>

## 5. PLACEMENT DECISIONS

The *Child Protection Act 1999* provides for administrative review to the Children Services Tribunal when decisions are made about placements and the removal of children from placements.

The following outlines the administrative review rights which exist in relation to the placement of children and the removal of children from placements under the *Child Protection Act 1999*.

Administrative review provisions about placement only relate to placement of children in the custody or guardianship of the chief executive.

Who	What can be reviewed	Notes
Parent	Decision about whom the child is placed with. (section 86(2))	<ul style="list-style-type: none"> <li>• Applies only when child is under a child protection order. (section 86(1))</li> <li>• Includes all placements, not just those with carers.</li> <li>• Notice of the decision need not be given if the placement is less than 7 days. (section 86(6))</li> <li>• Notice must be given as soon as practicable after the decision is made.</li> </ul>
	Decision not to inform a parent about whom the child is placed with and where the child is living. (section 86(4))	<ul style="list-style-type: none"> <li>• Applies only when child is under a child protection order. (section 86(1))</li> <li>• Notice of the decision need not be given if the placement is less than 7 days. (section 86(6))</li> <li>• No stated timeframe for giving notice but should be given as soon as practicable after the decision is made.</li> </ul>
Relative carer	Decision to remove the child from the placement. (section 89)	<ul style="list-style-type: none"> <li>• Includes 'relative carer –child's community' only if "carer was regarded by the child as a member of the child's family <i>before</i> the child was placed." (section 91(a))</li> <li>• Notice must be given as soon as practicable after the decision is made.</li> <li>• Notice must be given only when child is under a child protection order. (section 90(1))</li> <li>• Notice need not be given if the placement is less than 7 days. (section 90(2)(a))</li> </ul>
Approved foster carer	Decision to remove the child from the placement (section 89) (case planning reasons)	<ul style="list-style-type: none"> <li>• Applies only when child is under a long-term guardianship order (section 91(b)(i))</li> <li>• Notice must be given as soon as practicable after the decision is made.</li> <li>• Notice need not be given if the placement is less than 7 days (section 90(2)(a))</li> <li>• Notice need not be given if the removal is implementing a planned move recorded in a Placement Agreement (section 90(2)(b))</li> </ul>

	Decision to remove the child from the placement (section 89) (standard of care reasons)	<ul style="list-style-type: none"> <li>• Above restrictions do not apply (ie review available in all cases because the reason for the decision is that the carer is no longer suitable to care for the child or is no longer able to meet the standards of care (section 91(b)(ii))</li> <li>• Notice must be given as soon as practicable after the decision is made.</li> <li>• Notice must be given only when child is under a child protection order. (section 90(1))</li> <li>• Notice need not be given if the placement is less than 7 days. (section 90(2)(a))</li> </ul>
Child or young person	The child or young person can initiate a review in relation to all the above decisions	<ul style="list-style-type: none"> <li>• Decision under section 86(2) includes a decision to place the child or young person home</li> <li>• Includes all placements, not just those with carers</li> <li>• Notice of decision to remove child from carer's care must be given as soon as practicable after the decision is made</li> <li>• Notice of decision to remove child from placement must be given only when child is under a child protection order. (section 90(1))</li> <li>• Notice of decision to remove child from placement need not be given if the placement is less than 7 days (section 90(2)(a))</li> <li>• Notice of decision to remove child from placement need not be given if the removal is implementing a decision agreed in a Placement Agreement (section 90(2)(b))</li> </ul>
Limited approval placement	Carer does not have any review rights	

## 6. LICENSING AND APPROVAL DECISIONS

The *Child Protection Act 1999* provides for administrative review to the Children's Services Tribunal when decisions are made about the licensing of care services and the approval of foster carers. There are some changes from the administrative review rights that existed under the *Children's Services Act 1965*.

The following outlines the administrative review rights, which exist in relation to licensing and approval decisions.

“Authority” is defined in Schedule 4 to mean licence (care services) and certificate of approval (foster carers).

It should be noted that prior to making a decision under sections 138 or 140, a notice must be sent to the authority holder (ie the licensed care service or the approved foster carer) outlining the amendment, suspension or cancellation of the licence or approval proposed by the Department. (see sections 138(2) and (3) and 140 (1)). The purpose of the notice is to give licensed care services and approved foster carers an opportunity to make representations to the Department about the proposed amendment, suspension or cancellation prior to the actual decision about being made.

Who	What can be reviewed	Notice period	Notes
Applicant for licence	Refusing an application for, or renewal of, a licence to provide care services (section 129)	Notice must be given within 10 days after the decision is made	<ul style="list-style-type: none"> <li>• Notice should be given to the governing authority of the applicant corporation</li> </ul>
Care service	Refusing an application for an amendment of authority (section 137)	Notice must be given within 10 days after the decision is made	<ul style="list-style-type: none"> <li>• Notice should be given to the governing authority of the care service</li> </ul>
	Amending an authority (section 138)		
	Suspending or cancelling an authority (section 140)		
Applicant for approval as foster carer	Refusing an application for, or renewal of, a certificate of approval (section 136)	Notice must be given within 10 days after the decision is made	<ul style="list-style-type: none"> <li>• Notice must be given to the person/s whose application under s132 was refused</li> <li>• One notice for joint applicants will suffice</li> </ul>
Approved foster carer	Refusing an application for an amendment of authority (section 137)	Notice must be given within 10 days after the decision is made	<ul style="list-style-type: none"> <li>• Notice must be given to the person/s whose application under s137 was refused</li> <li>• One notice for joint applicants will suffice</li> </ul>
	Amending an authority (section 138)		
	Suspending or cancelling an authority (section 140)		
			<ul style="list-style-type: none"> <li>• Notice must be given to the approved foster carer/s</li> </ul>
			<ul style="list-style-type: none"> <li>• Notice must be given to the approved foster carer/s</li> </ul>

## **7. PROVIDING NOTICES (LETTERS OF ADVICE) FOR PLACEMENT AND CONTACT DECISIONS**

The various sections of the Act containing decision making powers and review rights against those decisions also set out requirements for the giving of notices about the decisions and the review rights of aggrieved persons. Generally the Act requires these notices to state-

- the decision
- the reasons for the decision
- that the person may apply to a tribunal for a review of the decision within 28 days after the person receives the notice; and
- how to initiate a review.

**Parents** – to assist with the provision of advice to parents about placement and contact decisions, ‘letter guides’ have been developed and are available in the Share directory. It is important that the content be made as case specific as possible and be personalised as much as possible.

**Child or young person** – letter guides have not been developed for the provision of advice to children and young people because of the overriding need to make these letters as personalised as possible. They will also need to cater for the range of age groups where it may be appropriate to provide the information in writing. (All children who can understand must be told of decisions about their placement, and this will be given in writing if they are mature enough to handle the concept of written advice).

**Foster carers and other carers** – draft guidelines and suggested wording for letters of advice to carers will be available for inclusion in the share directory.

Note that foster carers must be given notice (letter of advice) in *all* cases when a decision is made to remove a child from their care, unless the placement was for less than 7 days. The notice will include the reasons for the decision. However the notice will include information about their right of review *only when this applies*, as outlined above.

If the decision and reasons are recorded in documents which the carer is part of drafting and of which they are given a copy, eg the Placement Agreement, this can serve as the notice.

## **8. GIVING THE REASONS FOR PLACEMENT DECISIONS**

While it is always the aim to act in the child’s best interests when making a placement by matching the child to the most appropriate placement, the reality is that often the reason a placement is made is because it is the only placement available, or, sometimes because it is the only place the young person will agree to stay. This can make it difficult to articulate “the reasons for the decision” about where to place the child.

The letter guides to parents provide three broad options that can also be used when putting the reasons in writing to carers or the child/young person. They are:

**because of the Department's duty of care to (child's name) under the *Child Protection Act 1999* to ensure that (he/she) is cared for**

Use the above type of wording when there is no strong reason for the placement decision other than that it was an available placement which was suitable. This reason falls short of saying that the placement is in the child's best interests when another type of (unavailable) placement would have been better.

**because it is in (child's name)'s best interests at this point in time to be placed with/at (name)**

Use the above type of reason when the placement decision has been made to implement a considered decision as part of case planning. This will include when a child is placed in a new placement because of standard of care issues in a previous placement.

**because placement with/at (name/facility) is considered necessary to meet (child's name)'s particular needs**

Use the above option when the placement is in a particular facility (eg hospital) or is made as a special needs placement.

Obviously the way these types of reasons are expressed should be personalised where possible. Keep in mind however that the reasons given for a decision are the grounds upon which administrative appeal may occur. If a placement decision is appealed, you will need to be able to defend not just the decision but the reasons you gave for making the decision.

Letter guides for informing parents about placement decisions and decisions to withhold information about a placement are available in the Share directory.

## CASE EXAMPLE

Ms Mary Brown  
131 Violet Parade  
Evergreen QLD 4999

2 September 2006

Dear Mary,

As you are aware the following children have been placed in your care on the following child protection orders:

Jane Smith born 13 January 1994 – Long-term guardianship to the Chief Executive;  
John Smith born 8 May 1999 – Long-term guardianship to the Chief Executive;  
Jess Smith born 4 August 1996 – Long-term guardianship to the Chief Executive

When a child is subject to a Child Protection Order, under section 89 of the Child Protection Act 1999, the chief executive may decide to remove the child from the care of the child's carer if the chief executive is satisfied it is in the child's best interest.

It is under this authority that I have made the decision that the above named children be removed from your care.

My reasons for this decision are that:

- There have been two (2) previous matters of concern child protection notifications recorded and substantiated against you regarding your care of the children;
- On 1 September 2006 a further matter of concern child protection notification was recorded in relation to your care of the children on the basis of allegations that you struck the child, Jess Smith, about the face;
- Following joint interviews by the department and Queensland Police the decision was made to remove the children from your care after disclosures were made by Jess that you hit her about the face. Furthermore, you made admissions to the same.

If you disagree with this removal decision, you are entitled to request a departmental review of the decision. This can occur in the following ways:

- You can contact me to discuss your concerns. If necessary, I can arrange a meeting with relevant staff to talk with you about the decision.
- You can request an internal review of this decision through the department's complaints system – this is likely to involve a review of the decision by a senior departmental officer. If you wish, I can assist you to access the department's complaints system.

You are entitled to request a review of this decision by the Children Services Tribunal. If you decide you wish to access the Children Services Tribunal review process, you must do so within 28 days of receiving this letter. Please contact the Children's Services Tribunal on (07) 3225 8346 for further information.

If you have any queries regarding this information please contact myself on (07) 9999 9999

Yours Sincerely

Jasmine Green  
Manager  
Evergreen Child Safety Service Centre

## Children Services Tribunal

<b>Stage in Process</b>	<b>Court Services Adviser</b>	<b>Court Co-ordinator</b>
<p>Receipt of Notice of Review</p>	<p>The CSA will assess the Notice to determine:</p> <ul style="list-style-type: none"> <li>▪ whether the application is within 28 day review period</li> <li>▪ the jurisdiction of the Tribunal to review in accordance with Schedule 2 and/or if factual information is required from the CSSC to determine this matter</li> <li>▪ if jurisdictional issues are identified, CSA will prepare legal submissions in writing to the CST Registrar for determination</li> </ul>	<p>The CC will</p> <ul style="list-style-type: none"> <li>▪ collate factual information as requested by CSA in support of jurisdictional submissions</li> </ul>
<p>Central Liaison Point for CST Re: Distribution of Notices of Review to the CSSC</p>	<p>The CSA will:</p> <ul style="list-style-type: none"> <li>▪ identify the relevant CSSC and staff and issue the Notice of Review via facsimile</li> <li>▪ the CSA will prepare advice email correspondence to CSSC staff identifying: <ul style="list-style-type: none"> <li>✓ (as required under section 60 (2) of the CST Act 2000, other aggrieved persons entitled to seek review for the purpose of filing Notice of Election details</li> <li>✓ the filing date for the Statement of Reasons</li> </ul> </li> </ul>	<p>The CC will:</p> <ul style="list-style-type: none"> <li>▪ ensure the Notice is received and filing dates are identified to the Manager/Team Leader</li> <li>▪ facilitate a case discussion re: allocation of preparation tasks as raised by CSA, within identified filing deadlines</li> <li>▪ provide feedback to CSA as required</li> </ul>

<p>Preparation of Statement of Reasons Preparation of Statement of Reasons (continued)</p>	<ul style="list-style-type: none"> <li>✓ suggestions re: critical matters to be addressed</li> <li>✓ identifying related reviewable decisions for action by CSSC in accordance with information notice provisions in <i>Child Protection Act 1999</i></li> </ul>	
	<p>The CSA will:</p> <ul style="list-style-type: none"> <li>▪ provide 2<sup>nd</sup> level quality assurance of the Statement of Reasons having particular regard to the accuracy of <i>Child Protection Act 1999</i> and <i>Children Services Tribunal Act 2000</i> and departmental policy references within</li> <li>▪ review and analyse evidence referred to in the Statement of Reasons in order to identify other information to be gathered and the overall strengths and weaknesses of the decision on review. If necessary prepare correspondence to the CSSC Manager in relation to any identified concerns</li> <li>▪ review the Statement of Reasons to identify potential legal submissions to be made at the Preliminary Conference under Tribunal Legislation eg: Notice to Produce, Notice to Attend, Confidentiality Order, Order for</li> </ul>	<p>The CC will:</p> <ul style="list-style-type: none"> <li>▪ track preparation of the Statement of Reasons and associated tasks in accordance with filing deadlines</li> <li>▪ provide 1<sup>st</sup> level quality assurance having particular regard to case content matters</li> </ul>

	<p>Separate Representation etc</p> <ul style="list-style-type: none"> <li>▪ File the Statement of Reasons with the Children Services Tribunal Registry</li> </ul>	
<p>Preparation for Stay Hearing and/or Preliminary Conference</p>	<p>The CSA will facilitate a preparation telelink with CSSC Manager/Team Leader to:</p> <ul style="list-style-type: none"> <li>▪ explain the process of a Stay Hearing and/or Preliminary Conference</li> <li>▪ provide clear guidelines about the Tribunal's expectation of their conduct and presentation during the Stay Hearing/Preliminary Conference</li> <li>▪ distinguish the roles of the CSSC representative and the CSA when appearing before the Tribunal</li> <li>▪ make suggestions to CSSC as to the content of oral submissions to be made to the Tribunal in support of their case</li> <li>▪ identify and explain to the CSSC staff the nature and purpose of any legal submission to be made by the CSA</li> <li>▪ discuss a preliminary witness list</li> </ul>	<p>The CC will:</p> <ul style="list-style-type: none"> <li>▪ Participate in preparation telelink</li> <li>▪ track and assist Manager/Team Leader in preparation of oral submissions as suggested by the CSA during telelink</li> </ul>

	<ul style="list-style-type: none"> <li>▪ provide information to the CSSC staff about the Tribunal Panel, their field of expertise and past impressions of them as Tribunal members</li> <li>▪ provide an opportunity to the CSSC staff to address any questions they may have</li> </ul>	
<p>Stay Hearing/Preliminary Conference</p>	<p>The CSA will:</p> <ul style="list-style-type: none"> <li>▪ make submissions on behalf of the department (as respondent) and/or respond to questions raised by the Tribunal in relation to policy and legislative matters</li> <li>▪ make submissions in relation to specific orders sought by the department (as respondent)</li> <li>▪ assist the CSSC representatives in the delivery of their oral submissions</li> <li>▪ following the Preliminary Conference identify and note Tribunal actions/decisions that may have broader implications for referral to Court Services Unit Manager/Team Leader and discussion at stakeholder forums</li> </ul>	<p>The CC will:</p> <ul style="list-style-type: none"> <li>▪ attend only with leave of the Tribunal and with the consent of the applicant for learning purposes</li> </ul>

<p>Post Stay Hearing/Preliminary Conference</p>	<p>The CSA will provide a summary email of Stay/Preliminary Conference proceedings including</p> <ul style="list-style-type: none"> <li>▪ identifying and explaining the practical and/or legal implications of any Interim Orders made</li> <li>▪ identifying filing deadlines</li> </ul> <p>The CSA will:</p> <ul style="list-style-type: none"> <li>▪ distribute to CSSC any written Interim Orders of the Tribunal to the CSSC</li> </ul>	<p>The CC will:</p> <ul style="list-style-type: none"> <li>▪ ensure tasks identified are allocated and commenced having regard to filing deadlines</li> </ul>
<p>Hearing Preparation</p>	<p>The CSA will convene a preparation telelink with all relevant CSSC staff making suggestions about:</p> <ul style="list-style-type: none"> <li>▪ witness statements required for hearing and relevant content</li> <li>▪ identifying urgent tasks in relation to the gathering of additional evidence</li> <li>▪ identifying other administrative matters to be addressed in preparation for Hearing.</li> <li>▪ identifying filing deadlines</li> <li>▪ following telelink prepare and issue via email, minutes of telelink to relevant CSSC staff</li> <li>▪ if advised of necessity by CC, liaise with non-departmental and professional witnesses and</li> </ul>	<p>The CC will:</p> <ul style="list-style-type: none"> <li>▪ liaise with non-departmental and professional witnesses about preparing a witness statement and attending as a witness on behalf of the department. This should include providing a template witness statement and information about they type of content sought in their statement</li> <li>▪ notify the CSA if any external witnesses are seeking witness expenses</li> <li>▪ track preparation tasks in accordance with filing</li> </ul>

<p>Hearing Preparation (Continued)</p>	<p>negotiate in writing witness expenses in accordance with the Legal Aid Queensland Schedule of Fees</p> <ul style="list-style-type: none"> <li>▪ provide 2<sup>nd</sup> level quality assurance of material to be filed by the department</li> <li>▪ make any further legal submissions in writing as required. For example an application under section 97 of <i>CST Act 2000</i> for notices to produce documents or to attend as a witness</li> <li>▪ file the material relied upon by the department (as respondent) with the Children Services Tribunal Registry in accordance with filing directions issued by the Tribunal</li> </ul>	<p>deadlines and advise CSA of emergent issues requiring their response or advice. For example, a witness requiring leave for telephone evidence</p> <ul style="list-style-type: none"> <li>▪ 1<sup>st</sup> level quality assurance of material to be filed by department</li> </ul>
<p>Hearing Preparation - Post filing of departmental evidence</p>	<p><b>Post filing the CSA will:</b></p> <ul style="list-style-type: none"> <li>▪ meet with Manager/Team Leader and assist them to prepare opening submissions</li> <li>▪ meet with Manager/Team Leader and assist them to prepare a framework of questions for departmental witnesses</li> <li>▪ review material filed on behalf of the applicant in order to identify a framework of questions on cross examination of applicant witnesses and in order to identify additional</li> </ul>	<p><b>Post filing: the CC will:</b></p> <ul style="list-style-type: none"> <li>▪ assist Manager/Team Leader to action CSA advices about submissions with witness questions</li> <li>▪ distribute proposed questions to departmental witnesses and provide information tips about giving evidence in a Tribunal</li> <li>▪ prepare a timetable about the</li> </ul>

	<p>matters to be clarified by departmental witnesses during oral evidence</p>	<p>availability and contact details of departmental witnesses</p> <ul style="list-style-type: none"> <li>▪ provide pre-hearing support to proposed departmental witnesses</li> </ul>
<p>Full Hearing by Children Services Tribunal</p>	<p>The CSA will:</p> <ul style="list-style-type: none"> <li>▪ assist the Manager to integrate matters raised by the applicant into the department's opening submissions</li> <li>▪ assist the Manager to put questions to witnesses</li> <li>▪ identify as evidence progresses any necessity for additional legal submissions and make those submissions on behalf of the department (as respondent)</li> <li>▪ respond to questions raised by the Tribunal in relation to policy and legislative matters</li> <li>▪ make submissions in relation to specific orders sought by the department (as respondent)</li> <li>▪ assist the Manager to amend questions for witnesses in response to other evidence or</li> </ul>	<p>The CC will:</p> <ul style="list-style-type: none"> <li>▪ attend only with leave of the Tribunal and with the consent of the applicant for learning purposes</li> <li>▪ depending on competing CSSC demands, CC may attend to organise witnesses and to seek information required as evidence progresses and to debrief witnesses post evidence</li> </ul>

	<p>having regard to impressions of the matters the Tribunal seeks to inquire into</p> <ul style="list-style-type: none"> <li>▪ keep a log of key evidence to assist the Manager to prepare closing submissions</li> <li>▪ assist the Manager to present oral closing submissions if required</li> <li>▪ make notation of Tribunal actions/decisions that may have broader implications for referral to Court Services Unit Manager/Team Leader</li> <li>▪ track timing of evidence by non-departmental witnesses and professional witnesses for the purpose of calculation of witness expenses</li> </ul>	
<p>Post Hearing</p>	<p>The CSA will:</p> <ul style="list-style-type: none"> <li>▪ provide 2<sup>nd</sup> level quality assurance to the CSSC manager re: draft written closing submissions in these have been ordered</li> <li>▪ issue correspondence in writing to non-departmental and professional witness in relation to witness entitlements</li> <li>▪ track administrative follow up of invoices received</li> </ul>	<ul style="list-style-type: none"> <li>▪ provide 1<sup>st</sup> level quality assurance of CSSC Manager's written closing submissions</li> <li>▪ ensure preparation is completed having regard to filing deadlines</li> </ul>

<p>Provision of Tribunal Decision in Writing</p>	<p>The CSA will:</p> <ul style="list-style-type: none"> <li>▪ issue copy of the Tribunal's written decision to the CSSC via facsimile</li> <li>▪ identify and explain the practical and/or legal implications of the Tribunal's decision</li> <li>▪ identify key comments by the Tribunal within the written decisions</li> <li>▪ bring to the attention of the Court Services Unit Manager any particular criticisms of departmental actions/practice raised and respond as directed by the Court Services Manager</li> <li>▪ identify to the Court Services Unit Manager if the Tribunal has or intends to exercise a power on review (section 38 (3)) to make written recommendations to the Chief Executive</li> </ul>	<p>The CC will:</p> <ul style="list-style-type: none"> <li>▪ ensure that the decision of the Tribunal is made known to all relevant people and the information is provided that the Tribunal's decision must be given effect to</li> </ul>
<p>Appeal of Tribunal Decision to District Court  (department as respondent)</p>	<p>The CSA will:</p> <ul style="list-style-type: none"> <li>▪ distribute the Notice and Grounds of Appeal to CSSC</li> <li>▪ prepare a brief of Instruction to Crown Law</li> <li>▪ liaise with the Children Services Tribunal Registry in relation to provision of Hearing</li> </ul>	<p>The CC will:</p> <ul style="list-style-type: none"> <li>▪ collate any additional information requested by the CSA</li> </ul>

<p>Appeal of Tribunal Decision to the District (department as</p>	<p>transcript</p> <ul style="list-style-type: none"> <li>▪ provide advice to the CSSC about the practical and legal implications of the appeal in relation to the operation of the Tribunal's orders</li> <li>▪ if necessary or a dispute arises, facilitate a case discussion with Court Services Unit Manager, CSSC Manager and relevant staff in relation to Crown Law advice about prospects of success on defence of an appeal</li> <li>▪ attend Hearing and Instruct Crown Law Officer</li> </ul> <p><b>Upon determination of the Appeal</b> the CSA will:</p> <ul style="list-style-type: none"> <li>▪ provide a copy of the District Court judgement to the CSSC</li> <li>▪ provide further advice to the CSSC about the practical and legal implications of the appeal in relation to the operation of the Tribunal's orders</li> </ul>	<p><b>Upon determination of the Appeal</b> the CC will:</p> <ul style="list-style-type: none"> <li>▪ ensure the District Court judgement is complied with</li> </ul>
	<p>The CSA will:</p> <ul style="list-style-type: none"> <li>▪ facilitate discussion between the Court Services Unit Manager and CSSC Manager &amp; relevant staff re: merits of appeal</li> </ul>	<p>The CC will:</p> <ul style="list-style-type: none"> <li>▪ will participate in Advice in Conference and collate information as required by</li> </ul>

appellant)	<ul style="list-style-type: none"> <li>▪ prepare requests in writing to the Children Services Tribunal in relation to provision of Hearing Transcript</li> <li>▪ prepare a brief of instruction to Crown Law in relation to opinion about prospects of success on appeal</li> <li>▪ assist in preparation of a brief to the Director General for authority to file appeal</li> <li>▪ arrange and participate in an Advice in Conference with Crown Law</li> <li>▪ attend Hearing and Instruct Crown Law Officer</li> </ul> <p><b>Upon determination of the Appeal the CSA will:</b></p> <ul style="list-style-type: none"> <li>▪ provide a copy of the District Court judgement to the CSSC</li> <li>▪ provide further advice to the CSSC about the practical and legal implications of the appeal in relation to the operation of the Tribunal's orders</li> </ul>	<p>CSA</p> <p><b>Upon determination of the Appeal the CC will:</b></p> <ul style="list-style-type: none"> <li>▪ ensure the District Court judgement is complied with</li> </ul>
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As an auxiliary function Court Services Advisers provide a departmental intake service to the Children Service Tribunal Registry staff and maintain an intake register of Tribunal inquiries.

All Tribunal applications and related outcome are tracked in order to provide statistical analysis and observation of practice trends

# List of relevant QCAT Forms

## **Children and young people matters**

-  [Form 17 - Application to review a decision - childrens matters](#)
-  [Form 18 - Child Guardian application](#)
-  [Form 19 - Application for prohibition on entering premises of instructional institutions - \*Education \(General Provisions\) Act 2006\*](#)
-  [Form 23 - Application to review a decision](#)
-  [Notice of election - \*Child Protection Act 1991\*](#)

## **Generic forms**

-  [Application for attendance at hearing compulsory conference or mediation by remote conferencing](#)
-  [Application for leave to be represented](#)
-  [Application for decision order by consent](#)
-  [Credit Card Payment Authorisation](#)
-  [Request to file agreement](#)
-  [Transcript or audio recording request form](#)
-  [Form 9 - Affidavit of service](#)
-  [Form 23 - Application to review a decision](#)
-  [Form 36 - Response and Counter-application](#)
-  [Form 37 - Request for a decision by default in matters other than minor civil dispute](#)
-  [Form 38 - Application for notice requiring witness to attend or produce document or thing](#)
-  [Form 39 - Application for leave to appeal or appeal](#)
-  [Form 40 - Application for miscellaneous matters](#)
-  [Form 41 - Application for interim order or injunction](#)
-  [Form 42 - Application to extend or shorten a time limit or for waiver of compliance with procedural requirement](#)
-  [Form 43 - Application for reopening correction renewal or amendment](#)
-  [Form 44 - Application to stay a decision](#)
-  [Form 45 - Application to be joined to a proceeding](#)
-  [Form 46 - Application for punishment for contempt](#)
-  [Form 49 - Application for waiver of fees by reason of financial hardship](#)

Summary of Provisions in the Queensland Civil and Administrative  
Tribunal (Jurisdiction Provisions) Amendment Act 2009  
Relevant to Amendment of the Child Protection Act 1999

Chapter 2 Department of Communities  
Part 2 Amendment of Child Protection Act 1999

**Part 2 Amendment of Child Protection  
Act 1999**

**13 Act amended**

This part amends the *Child Protection Act 1999*.

**14 Amendment of s 78 (Chief executive's powers)**

(1) Section 78(2)—

*omit, insert—*

'(2) The notice mentioned in subsection (1) must comply with the QCAT Act, section 157(2).

(2) Section 78(4)—

*omit, insert—*

'(4) The tribunal may not stay the operation of the decision under the QCAT Act, section 22(3).'

**15 Amendment of s 86 (Chief executive to notify parents of  
placing child in care—child protection order)**

(1) Section 86(2)(c) and (d)—

*omit, insert—*

'(c) the child or child's parent may apply to the tribunal to have the decision reviewed;

(d) how, and the time within which, the child or child's parent may apply to have the decision reviewed;

(e) any right the child or child's parent has to have the operation of the decisions stayed.'

(2) Section 86(5)(c) and (d)—

*omit, insert—*

'(c) the child or child's parent may apply to the tribunal to have the decision reviewed;

(d) how, and the time within which, the child or child's parent may apply to have the decision reviewed;

(e) any right the child or child's parent has to have the operation of the decisions stayed.'

## **16 Amendment of s 87 (Chief executive to provide contact between child and child's parents)**

Section 87(4)—

*omit, insert—*

'(4) The notice mentioned in subsection (3) must comply with the QCAT Act, section 157(2).'

[s 17]

## **17 Amendment of s 90 (Notice of removal from care)**

(1) Section 90(3)(b)(ii) and (iii)—

*omit, insert—*

'(ii) how, and the time within which, the carer may apply to have the decision reviewed; and

(iii) any right the carer has to have the operation of the decisions stayed.'

(2) Section 90(4)(c) and (d)—

*omit, insert—*

'(c) how, and the time within which, the child may apply to have the decision reviewed; and

(d) any right the child has to have the operation of the decisions stayed.'

## **18 Insertion of new ch 2A**

After section 99—

*insert—*

# **'Chapter 2A Tribunal proceedings**

## **'Part 1 Preliminary**

### **'99A Application of ch 2A**

'This chapter applies to a proceeding before the tribunal that relates to this Act.

### **'99B Definitions for ch 2A**

'In this chapter—

**president** means the president under the QCAT Act.

[s 18]

**registrar** means the principal registrar under the QCAT Act.

**reviewable decision** includes a reviewable decision under the *Commission for Children and Young People and Child Guardian Act 2000*, section 140A.

**review application** means an application made, as provided under the QCAT Act, for review of a reviewable decision by the tribunal.

**separate representative** see section 99Q(3).

**support person** means a person allowed by the tribunal under the QCAT Act, section 91 to attend a hearing for the purpose of supporting a party or witness.

**'99C Object of ch 2A** *(section 6 (a) to (d) of the CST Act 2000)*

'The object of this chapter is to provide for the tribunal—

- (a) to make decisions in a review that promote the welfare and best interests of the child about whom the reviewable decision was made; and
- (b) to conduct proceedings in a way that uses adversarial and inquisitorial procedures, as appropriate, to arrive at the best possible decision in the circumstances; and
- (c) to foster an atmosphere of review that enhances the delivery of services to children.

**'99D Principles for tribunal in matters relating to this Act**

'In exercising its jurisdiction, functions or powers in relation to this Act, the tribunal must have regard to the principles mentioned in section 5.  
*(specific link to CPA 1999 principles)*

**'Part 2 Tribunal proceedings**

**'99E Registrar to give notice of review application** *(section 60 of CST Act 2000)*

'(1) The registrar must give notice of a review application to the decision-maker.

'(2) Within 7 days after receiving the notice, the decision-maker must give the registrar notice of the names and addresses of all persons, apart from the applicant—

- (a) who are entitled to apply for a review of the reviewable decision concerned; and
- (b) of whom the decision-maker is aware.

'(3) The tribunal may shorten the period for giving the decision-maker's notice to the registrar.

'(4) The tribunal may act under subsection (3) only if satisfied that not to do so will result in a child's interests being adversely affected or another party to the review suffering hardship.

'(5) For subsection (2), a person's entitlement to apply for a review is taken to be unaffected by the ending of the period of 28 days mentioned in the QCAT Act, section 33(3).

'(6) Immediately on receipt of the decision-maker's notice, the registrar must give an information notice to each person named in the decision-maker's notice.

'(7) The information notice must state—

- (a) details of the review application; and
- (b) that the person may elect to become a party to the review and the period within which the notice of election must be filed under section 99ZB; and
- (c) how the person may elect to become a party to the review.

**'99F Review applications by commissioner**

'(1) This section applies if the applicant for a review application is the commissioner.

'(2) The review application must be made within 28 days after the commissioner gives notice under the *Commission for Children and Young People and Child Guardian Act 2000*, section 140B(4) to the chief executive about the reviewable decision.

'(3) In this section—

**commissioner** means the Commissioner for Children and Young People and Child Guardian established under the *Commission for Children and Young People and Child Guardian Act 2000*.

**'99G Government entity may nominate decision-maker** (*section 134 of CST Act 2000*)

'The department may give the registrar a notice nominating an officer or employee of the department, or the holder for the time being of an office in the department, as the decision-maker for a review.

**'99H Constitution of tribunal** (*combination of sections 28, 29, 30 of CST Act 2000*)

'(1) The tribunal must be constituted by 3 members with at least 1 legally qualified member.

'(2) However, if the tribunal is constituted for a compulsory conference, the tribunal may be constituted by only 2 members, with at least 1 legally qualified member.

'(3) If a child to which a proceeding before the tribunal relates is Aboriginal or Torres Strait Islander, the tribunal hearing the proceeding must include, if practicable, a member who is Aboriginal or Torres Strait Islander.

'(4) The president may choose a member to constitute the tribunal for a proceeding to which this part applies only if the president considers the member—

- (a) is committed to the principles mentioned in section 5;  
and
- (b) has extensive professional knowledge and experience of children; and
- (c) has demonstrated a knowledge of and has experience in 1 or more of the fields  
of administrative review, child care, child protection, child welfare, community  
services, education, health, indigenous affairs, law, psychology or social  
work.

'(5) A member is ineligible to be a constituting member for a review of a reviewable decision if the member—

- (a) has been refused a certificate of approval, or a renewal of a certificate of approval, as an approved carer; or
- (b) has had a certificate of approval as an approved carer cancelled.

'(6) In this section—

**legally qualified member** has the meaning given by the QCAT Act.

**member** has the meaning given by the QCAT Act.

**'99I Power of tribunal to stay operation of decision limited in particular circumstances**

'(1) This section applies if the tribunal is constituted by less than 3 members for a compulsory conference.

'(2) The tribunal may, under the QCAT Act, section 22(3), only make an order staying the operation of a reviewable decision if the relevant decision-maker for the reviewable decision does not oppose the staying of the decision's operation.

**'99J Proceedings relating to this Act must usually be held in private (section 48 of CST Act 2000)**

'(1) A hearing of a proceeding before the tribunal to which this part applies must be held in private.

'(2) However, the following are entitled to be present at the proceeding—

- (a) each party to the proceeding;
- (b) if, under an Act, a party is entitled to be represented by someone else at the proceeding, the party's representative;
- (c) a separate representative representing a child in the proceeding;
- (d) a witness while giving evidence;
- (e) a support person for a witness, while the witness is giving evidence;
- (f) a person allowed to be present by the tribunal.

'(3) This section is subject to the QCAT Act, section 220.

**'99K When proceeding may be held in public**

'Despite section 99J, the tribunal may allow a proceeding before the tribunal to be held in public if information identifying, or likely to lead to the identification of, a particular child will not be given in the proceeding (*section 50 of CST Act 2000*)

**'99L Adjournments** (*section 55 of CST Act 2000*)

'(1) In considering whether to adjourn a proceeding before the tribunal involving a child, the tribunal must take into account any impact that adjourning the proceeding will have on the child.

'(2) When it adjourns a proceeding, the tribunal must—

- (a) give reasons for the adjournment; and
- (b) state any matters it requires a party to the proceeding to address during the adjournment; and
- (c) give directions and make orders it considers necessary or desirable.

**'99M When matter before court** (*section 40 of CST Act 2000*)

'(1) Subsection (2) applies if—

- (a) a review application is before the tribunal; and
- (b) some or all the matters to which the reviewable decision relates are also before a court.

'(2) The president must suspend the tribunal's review if the president considers—

- (a) the court's decision about the matters would effectively decide the same issues to be decided by the tribunal; and
- (b) the matters will be dealt with quickly by the court.

'(3) If the president acts under subsection (2), the court decides the matters and the decision effectively decides the issues before the tribunal, the president must dismiss the review application.

'(4) Subsection (5) applies if—

- (a) the president has suspended the tribunal's review; and
- (b) the matters have not been decided by the court.

'(5) The president may cancel the suspension and the tribunal may continue to deal with the review application.

'(6) The president may act under subsection (2), (3) or (5) on the president's own initiative or on application by a party to the review.

**'99N Compulsory conferences** (*components of section 79 Preliminary Conferences of CST Act 2000*)

'(1) This section applies to a compulsory conference under the QCAT Act to which the parties to a proceeding before the tribunal have been directed to attend by the tribunal or principal registrar.

'(2) In addition to anything the person presiding over the conference may do under the QCAT Act, the person may do 1 or more of the following—

- (a) identify information to be given to the tribunal by the parties;
- (b) give the parties information about the tribunal's practice and procedures;
- (c) refer the parties to alternative dispute resolution.

'(3) Also, the person presiding over the conference may meet with a party separately—

- (a) if the person considers doing so may avoid the escalation of conflict between the parties; or
- (b) if the party is a child and the person considers doing so is in the child's best interests having regard to the child's views and wishes.

## **'Part 3 Children in tribunal Proceedings**

### **'99O Requirements about ensuring proper understanding of tribunal proceedings**

'(1) In addition to the QCAT Act, section 29 the tribunal must take all reasonable steps to ensure each child taking part in a proceeding before the tribunal, who is not a party to the proceedings, understands the tribunal's procedures.

'(2) Also, a child entitled to start, or participate in, a proceeding before the tribunal—

- (a) should be given the information and help necessary for the child to do so; and
- (b) should have access to appropriate representation.

### **'99P Review applications on behalf of children** (*section 59 of CST Act 2000*)

'(1) A person may file a review application on behalf of a child only with the president's permission.

'(2) The president may give permission only if the president considers—

- (a) the person is not, on the person's own behalf, entitled to apply for the decision to be reviewed by the tribunal;
- and
- (b) it is in the child's best interests that the application be made; and

(c) it would be inappropriate for, or unreasonable to require, the child to make the application himself or herself.

'(3) An applicant may withdraw a review application filed on behalf of a child only with the permission of the president or the tribunal.

'(4) The president or tribunal may give permission under subsection (3) only if the president or tribunal considers that, having regard to the child's views or wishes, if any, it is in the child's best interests that the application be withdrawn.

**'99Q Separate representation of children** (*section 68 of the CST Act 2000*)

'(1) This section applies if a reviewable decision is about a child and the decision is the subject of a review application.

'(2) Also, this section applies whether or not the child—

(a) is a party to a proceeding before the tribunal; or

(b) is represented by a lawyer or someone else under the QCAT Act, section 43.

'(3) The tribunal must consider whether it would be in the child's best interests for the child to be separately represented under this section before the tribunal by a lawyer (a **separate representative**).

'(4) If the tribunal considers it would be in the child's best interests for the child to be separately represented under this section before the tribunal by a lawyer, the tribunal must order that the child be represented by a separate representative.

'(5) A separate representative may represent more than 1 child in the same proceeding before the tribunal.

'(6) A separate representative must—

(a) act in the child's best interests having regard to any expressed views or wishes of the child; and

(b) as far as possible, present the child's views and wishes to the tribunal.

'(7) For the QCAT Act, a separate representative has the same rights and obligations as a party to the review.

**'99R Separate representative must not be called to give evidence** (*section 104 of CST Act 2000*)

'A separate representative must not, in any proceeding before the tribunal, be called to give evidence, and if called must not give evidence, about a communication between the representative and the child for whom the representative was appointed.

**'99S Representation of children** (*related to section 67 of CST Act 2000*)

'(1) This section applies if a party to a proceeding before the tribunal is a child who is represented by a separate representative under section 99Q.

'(2) In the proceeding, the party may also be represented by a lawyer or someone else under the QCAT Act, section 43.

**'99T Children must not be compelled to give evidence** (*similar to but more detail than section 91 of the CST Act 2000*)

'(1) A child must not be compelled to give evidence in a proceeding before the tribunal.

'(2) Without limiting subsection (1), the tribunal may not require a child to do either of the following under the QCAT Act, section 97(1)—

(a) attend a hearing of a proceeding to give evidence;

(b) produce a stated document or other thing to the tribunal.

'(3) Before a child gives evidence in a proceeding, the tribunal must satisfy itself that the child is willing to give the evidence.

**'99U Child's right to express views to tribunal** (*section 92 of the CST Act 2000*)

'(1) This section applies if a reviewable decision is about a child and the decision is being reviewed by the tribunal.

'(2) Whether or not the child is a party to the review or appears as a witness before the tribunal, the child has the right to express his or her views to the tribunal about matters relevant to the review.

**'99V Children giving evidence or expressing views to tribunal** (*section 93 of CST Act 2000*)

'(1) This section applies if a child is giving evidence or expressing the child's views to the tribunal.

'(2) Only the following persons may be present while the child gives evidence or expresses the child's views—

(a) the constituting members;

(b) the lawyer, if any, representing the child;

(c) the separate representative, if any, for the child;

(d) the child's support person if the child has a support person and agrees to that person's presence.

'(3) Despite subsection (2), the child may elect to give evidence or express the child's views in the presence of the parties and their representatives if the child—

(a) is 12 years or more; and

(b) is represented by a lawyer or a separate representative.

**'99W Questioning of children** (*section 94 of CST Act 2000*)

'(1) A child giving evidence or expressing the child's views in a proceeding before the tribunal must not be cross-examined.

'(2) Also, only the following persons may ask questions of a child giving evidence or expressing the child's views in a proceeding—

- (a) the constituting members;
- (b) the lawyer, if any, representing the child;
- (c) the separate representative, if any, for the child.

**'99X Provisions applying if party to review is a child who is a parent of the child about whom the reviewable decision was made** (*section 96 of the CST Act 2000*)

'(1) This section applies if—

(a) a party to a proceeding before the tribunal to have a reviewable decisions reviewed is—

- (i) a child; and
- (ii) a parent of the child about whom the reviewable decision was made; and

(b) in the proceeding the parent elects to give evidence.

'(2) Sections 99V and 99W do not apply to the parent.

'(3) Before the parent gives evidence, the tribunal must tell the parent that—

- (a) he or she may be cross-examined by the tribunal or a party to the proceeding; and
- (b) he or she may, at any time while the cross-examination is continuing, refuse to be further cross-examined; and
- c) if he or she acts under paragraph (b), this may affect the weight given by the tribunal to his or her evidence.

#### **'Part 4 Medical examinations**

**'99Y President or tribunal may authorise medical examination of child** (*section 106 of CST Act 2000*)

'(1) For a review, the president or the tribunal may, by order, authorise a medical examination of a child and require a report of the examination to be filed with the registrar.

'(2) The order must state the particular issues the report must address.

'(3) The president or tribunal must not make the order unless the president or tribunal is satisfied—

- (a) the medical information, if any, available to the tribunal about the child is insufficient to allow the tribunal to decide the review; and
- (b) the child's interests will be best served by making the order.

'(4) In deciding whether the child's interests will be best served by making the order, the president or tribunal must consider the child's views and wishes, if any, and the effect the medical examination may have on the child having regard to

the number and frequency of any previous medical examinations the child has undergone.

**'99Z Carrying out medical examinations** (*section 107 of CST Act 2000*)

'(1) This section applies if an order under section 99Y authorises a child's medical examination

'(2) A doctor may medically examine the child.

'(3) Subsection (2) applies even though the child's parents or guardian has not consented to the examination.

'(4) However, subsection (2) is subject to the rights the child has in relation to the examination.

'(5) For deciding any liability in relation to the carrying out of the examination, the doctor is taken to have the consent of the child's parents or guardian to the examination.

## **Part 5 Parties**

**'99ZA Parties to review** (*section 61 of CST Act 2000*)

'The parties to a review are—

- (a) the applicant for the review; and
- (b) the decision-maker; and
- (c) a person who elects to become a party under section 99ZB; and
- (d) a person joined as a party under section 99ZC.

**'99ZB Certain persons may elect to become parties** (*section 62 of the CST Act 2000*)

'(1) This section applies to a person who is given an information notice under section 99E(6).

'(2) The person may elect to become a party to the review to which the notice relates by filing a notice of election with the registrar.

'(3) The notice of election must be filed with the registrar within 7 days after the person receives the information notice.

'(4) The tribunal may shorten the period for filing the notice of election.

'(5) The tribunal may act under subsection (4) only if satisfied that not to do so will result in a child's interests being adversely affected or another party to the review suffering hardship.

**'99ZC Joinder of person as party to review** (*section 63 of CST Act 2000*)

'(1) The tribunal may join a person as a party to a review if it is satisfied the person is genuinely concerned in the subject matter of the review.

'(2) However, if the review concerns a child, the tribunal may not join a person as a party unless it is satisfied that to do so would be in the child's best interests.

'(3) The tribunal may join a person as a party to the review on its own initiative or on application by the person.

'(4) The tribunal may join a person as a party to the review at any time before the review application is finally decided by the tribunal.

## **'Part 6 Confidentiality**

### **'99ZD Confidentiality order** (*section 105 of CST Act 2000*)

'(1) The tribunal may, by order (a **confidentiality order**), prohibit or restrict the disclosure to a party to a proceeding before the tribunal of all or some of the evidence given before the tribunal, or of the whole or part of the contents of a document given to, or received in evidence by, the tribunal for the review.

'(2) Subsection (3) applies for the purpose of the tribunal—  
(a) deciding whether to make a confidentiality order; or  
(b) giving effect to a confidentiality order.

'(3) The tribunal may—  
(a) exclude a party, and any representative of the party, from part of the proceeding before the tribunal; or  
(b) deal with a document in a way that ensures it is not disclosed to a party.

'(4) The tribunal may make a confidentiality order only if it is satisfied that if it does not do so—  
(a) a child is likely to be harmed; or  
(b) the safety of another person is likely to be endangered;  
or  
(c) there would be undue interference with the privacy of a child or another person.

'(5) The tribunal may act under subsection (1) on its own initiative or on application by a party to the proceeding before the tribunal.

'(6) A confidentiality order does not act to prohibit or limit the disclosure of material to a separate representative in a proceeding before the tribunal.

### **'99ZE Limited access to tribunal's register of proceedings**

'(1) This section applies to the register of proceedings kept by the principal registrar under the QCAT Act, section 229(1).

'(2) Despite the QCAT Act, section 229(2) the principal registrar must ensure that part of the register which relates to proceedings before the tribunal to which this part applies is not available for inspection by the public.

'(3) The QCAT Act, section 229(4) does not apply to that part of the register which relates to proceedings before the tribunal to which this part applies.

**'99ZF Limited access to tribunal's record of proceedings**

'(1) This section applies to a record kept under the QCAT Act, section 230 for a proceeding before the tribunal to which this part applies.

'(2) Despite the QCAT Act, section 230(3) a person who is not a party to the proceeding may not inspect, or obtain a copy of, the record or a part of the record.

**'99ZG Certain information not to be published** (*section 141 of CST Act 2000*)

'(1) A person must not publish—

(a) information given in evidence or otherwise in a proceeding before the tribunal; or

(b) information that is likely to identify a person who—

(i) appears as a witness before the tribunal in a proceeding; or

(ii) is a party to the proceeding; or

(iii) is mentioned, or otherwise involved, in the proceeding.

Maximum penalty—

(a) for a corporation—1000 penalty units; or

(b) for an individual—100 penalty units or 2 years imprisonment.

'(2) Subsection (1)(a) does not apply to—

(a) a person if the tribunal or the president of the tribunal consents to the publication of the information by the person; or

(b) the tribunal publishing its final decision in a proceeding, with or without the reasons for the decision.

'(3) The tribunal or the president may only consent to the publication as mentioned in subsection (2) if the tribunal or the president is satisfied the publication of the information—

(a) is in the public interest; and

(b) does not conflict with the best interests of the child.

'(4) In this section—

**information** includes—

- (a) a matter contained in a document filed with, or received by, the tribunal; and
- (b) the tribunal's decision or reasons for a decision.

**publish**, for information, means to publish it to the public by way of the internet, newspaper, radio, television or other form of communication.

## **'Part 7 Ensuring tribunal decisions and recommendations are given effect**

*(sections 99ZH through to 99ZJ reflect and expand on section 129 of CST Act 2000)*

### **'99ZH Application of pt 7**

'(1) This part applies to each decision of the tribunal on a review application other than a decision to confirm the reviewable decision.

'(2) This part also applies to recommendations made by the tribunal, after reviewing a reviewable decision, to the chief executive about policies, practices and procedures of the entity relevant to the making of reviewable decisions.

### **'99ZI Requests to chief executive**

'The president may ask the chief executive to notify the president, within a reasonable stated time—

- (a) of the steps taken to give effect to the tribunal's decision; or
- (b) of the steps taken to give effect to the tribunal's recommendations and, if no steps have been taken, the reasons for this.

### **'99ZJ What happens if decision not given effect etc.**

'(1) This section applies if the president, after considering the response of the chief executive given under section 99ZI, is of the opinion that—

- (a) the tribunal's decision has not been given effect; or
- (b) no steps have been taken to give effect to the tribunal's recommendations or the steps taken are inadequate or inappropriate.

'(2) The president may report on the matter to the Minister responsible for the department.

'(3) The president must attach the following to the report—

- (a) if the report is about the tribunal's decision—copies of the decision and response;
- (b) if the report is about the tribunal's recommendations—copies of the recommendations and response.'

### **19 Amendment of s 129 (Refusal of application)**

Section 129(2)(c)(i) and (ii)—

*omit, insert—*

- '(i) state the applicant may apply to the tribunal to have the decision reviewed; and
- (ii) state how, and the time within which, the applicant may apply to have the decision reviewed; and
- (iii) state any right the applicant has to have the operation of the decisions stayed.'

**20 Amendment of s 136 (Refusal of application)**

Section 136(2)(c)(i) and (ii)—

*omit, insert—*

- '(i) state the applicant may apply to the tribunal to have the decision reviewed; and
- (ii) state how, and the time within which, the applicant may apply to have the decision reviewed; and
- (iii) state any right the applicant has to have the operation of the decisions stayed.'

**21 Amendment of s 137 (Amendment of authority on application of holder)**

Section 137(7)(c) and (d)—

*omit, insert—*

- '(c) state the applicant may apply to the tribunal to have the decision reviewed; and
- (d) state how, and the time within which, the applicant may apply to have the decision reviewed; and
- (e) state any right the applicant has to have the operation of the decisions stayed.'

**22 Amendment of s 138 (Amendment of authority by the chief executive)**

Section 138(6)(c) and (d)—

*omit, insert—*

- '(c) state the holder may apply to the tribunal to have the decision reviewed; and
- (d) state how, and the time within which, the holder may apply to have the decision reviewed; and
- (e) state any right the holder has to have the operation of the decisions stayed.'

**23 Amendment of s 140 (Procedure for suspension or cancellation)**

Section 140(5)(b) and (c)—

*omit, insert—*

- '(b) the holder may apply to the tribunal to have the decision reviewed; and
- (c) how, and the time within which, the holder may apply to have the decision reviewed; and
- (d) any right the holder has to have the operation of the decisions stayed.'

**24 Amendment of s 140A1 (Notice of cancellation)**

Section 140A1(2)(c)(i) and (ii)—

omit, insert—

- (i) the person may apply to the tribunal to have the decision reviewed; and
- (ii) how, and the time within which, the person may apply to have the decision reviewed; and
- (iii) any right the person has to have the operation of the decisions stayed.'

#### **25 Amendment of s 247 (Reviews of reviewable decisions)**

(1) Section 247, after 'apply'—

insert—

', as provided under the QCAT Act.'

(2) Section 247, editor's note—

omit, insert—

'Note—

Aggrieved persons and reviewable decisions are in schedule 2.'

#### **26 Amendment of sch 3 (Dictionary)**

(1) Schedule 3, definition *reviewable decision*—

omit, insert—

'**reviewable decision** means—

- (a) for chapter 2A—see section 99B; or
- (b) otherwise—a decision stated in schedule 2.'

(2) Schedule 3, definition *tribunal*—

omit, insert—

'**tribunal** means QCAT.'

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

#### **27 Act amended**

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

#### **28 Amendment of sch 4 (Dictionary)**

(1) Schedule 4, definitions *Children Services Tribunal* and *Guardianship and Administration Tribunal*—

omit.

(2) Schedule 4, definition *Queensland court*, paragraphs (e) and (f)—

omit, insert—

'(e) QCAT.'

(3) Schedule 4, definition *registrar*, paragraphs (e) and (f)—

omit, insert—

'(e) if the Queensland court is QCAT—the principal registrar of QCAT.'

## **Part 4 Amendment of Commission for Children and Young People and Child Guardian Act 2000**

### **29 Act amended**

This part amends the *Commission for Children and Young People and Child Guardian Act 2000*.

### **30 Amendment of s 40 (Grounds for not dealing with complaint)**

(1) Section 40(1)(b)(iii)—

*omit, insert—*

‘(iii) is before QCAT or has already been decided by QCAT or the former tribunal; or’

(2) Section 40(4)—

*insert—*

‘**former tribunal** means the Children Services Tribunal established under the repealed *Children Services Tribunal Act 2000*, section 8.’

### **31 Amendment of s 89ZG (Government entity may enter into arrangement with commissioner)**

Section 89ZG(4)(a), ‘the Children Services Tribunal’— *omit, insert—* ‘QCAT’.

### **32 Amendment of s 102B (Actions of commissioner after making decision on application)**

Section 102B(2)(b) to (d)— *omit, insert—*

(b) if the reasons do not include investigative information, a statement that the relevant person may apply, as provided under the QCAT Act, to QCAT for a review of

only a decision of the commissioner about whether there is an exceptional case as mentioned in section 102(4) or (7);

(c) if the reasons include investigative information, a statement that the relevant person—

(i) may appeal as mentioned in section 121C(2) to a Magistrates Court about only the investigative information; or

(ii) may decide not to appeal under section 121C(2) but apply, as provided under the QCAT Act, to QCAT for a review of only a decision of the commissioner about whether there is an exceptional case as mentioned in section 102(4) or (7);

(d) the period within which the person must apply to QCAT for the review, or appeal to a Magistrates Court;

(e) how the person may apply for the review to QCAT, or appeal to a Magistrates Court.’

### **33 Amendment of s 121 (Person may apply for review of**

**decision)**

(1) Section 121(1), 'the Children Services Tribunal'— *omit, insert*—  
'QCAT'.

(2) Section 121(1)— *insert*—

*Note*—

See sections 128E and 128F for particular provisions about applications for review made on behalf of a child.'

(3) Section 121(2)—

*omit, insert*—

(2) If a person applies under subsection (1) to have a decision reviewed, QCAT may not—

(a) stay the operation of the decision; or

(b) grant an injunction in the proceeding for the review.'

**34 Amendment of s 121AA (Effect of applicant under s 121 becoming a disqualified person)**

Section 121AA(2)(b) and (3), 'the Children Services Tribunal'—

*omit, insert*—

'QCAT'.

**35 Amendment of s 121C (Decision by police commissioner that information is investigative information)**

Section 121C(5), 'The Children Services Tribunal'—

*omit, insert*—

'QCAT'.

**36 Amendment of s 121E (Consequence of decision on appeal)**

Section 121E(2), from 'state'—

*omit, insert*—

'state—

(a) that within 28 days after the date the person is given the notice, the person may apply, as provided under the QCAT Act, to QCAT for a review of the commissioner's

decision to issue the negative notice; and

(b) how the person may apply for the review.'

**37 Insertion of new pts 6A and 6B**

After part 6—

*insert*—

**'Part 6A QCAT proceedings about child-related employment review**

**'128A Definitions for pt 6A**

'In this part—

**child-related employment decision** means a decision mentioned in section 121(1)(a) or (b).

**constituting members** means the member or members of QCAT constituting it for the proceeding concerned.

**QCAT child-related employment review** means a review by QCAT of a child-related employment decision.

**QCAT president** means the president of QCAT.

#### **'128B Application of pt 6A**

'This part applies for a child-related employment review.

*Note—*

The QCAT Act also applies for the review.

#### **'128C Principle for reviewing child-related employment decision**

'A child-related employment decision is to be reviewed under the principle that the welfare and best interests of a child are paramount.

#### **'128D Proceeding must always be held in private**

'(1) A hearing of a proceeding for a QCAT child-related employment review must be held in private.

'(2) However, the following are entitled to be present at the proceeding—

- (a) each party to the proceeding;
- (b) if, under an Act, a party is entitled to be represented by someone else at the proceeding, the party's representative;
- (c) a witness while giving evidence;
- (d) a person allowed to be present to support a party;
- (e) a person allowed to be present to support a witness, while the witness is giving evidence;
- (f) a person allowed to be present by QCAT.

'(3) This section is subject to the QCAT Act, section 220.

*Editor's note—*

QCAT Act, section 220 (Tribunal may exclude person)

#### **'128E Applications on behalf of children**

'(1) An application for a child-related employment review may be made on behalf of a child only with the permission of the QCAT president.

'(2) The QCAT president may give permission only if the president considers—

- (a) the person is not, on the person's own behalf, entitled to apply for the child-related employment review; and
- (b) it is in the child's best interests that the application be made; and
- (c) it would be inappropriate for, or unreasonable to require, the child to make the application himself or herself.

#### **'128F Withdrawal of application for review**

'(1) An applicant may withdraw an application made on behalf of a child under section 128E only with leave of the QCAT president or QCAT.

'(2) The QCAT president or QCAT may give leave under subsection (1) only if the president or QCAT considers that, having regard to the child's views or wishes, if any, it is in the child's best interests that the application be withdrawn.

**'128G Children must not be compelled to give evidence**

'(1) A child must not be compelled to give evidence in a proceeding for a QCAT child-related employment review.

'(2) Without limiting subsection (1), QCAT may not require a child to do the either of the following under the QCAT Act, section 97(1)—

- (a) attend a hearing of a proceeding to give evidence;
- (b) produce a stated document or other thing to QCAT.

'(3) Before a child gives evidence in a proceeding, QCAT must satisfy itself that the child is willing to give the evidence.

**'128H Children giving evidence**

'(1) This section applies if, in a proceeding for a QCAT child-related employment review—

- (a) a child is giving evidence; and
- (b) section 128J does not apply.

'(2) Only the following persons may be present while the child gives evidence—

- (a) the constituting members;
- (b) the child's support person if the child has a support person and agrees to that person's presence.

**'128I Questioning of children**

'(1) This section applies if, in a proceeding for a QCAT child-related employment review—

- (a) a child is giving evidence; and
- (b) section 128J does not apply.

'(2) The child must not be cross-examined.

'(3) Also, only the constituting members may ask questions of the child.

**'128J Provisions for QCAT child-related employment reviews**

'(1) This section applies if—

- (a) a child applies to QCAT for review of a child-related employment decision or a person makes the application on the child's behalf; and
- (b) in a proceeding for the review, the child elects to give evidence.

(2) Before the child gives evidence, QCAT must tell the child that—

- (a) he or she may be cross-examined by QCAT or a party to the proceeding; and
- (b) he or she may, at any time while the cross-examination is continuing, refuse to be further cross-examined; and
- (c) if he or she acts under paragraph (b), the application is taken to have been withdrawn and the review stops.

(3) If the child acts under subsection (2)(b), the application is taken to have been withdrawn and the review stops.

## **'Part 6B QCAT to give statistical information to commissioner**

### **'128K QCAT's principal registrar to give statistical information to commissioner**

(1) QCAT's principal registrar must, from time to time, give the commissioner statistical information about all of the following—

- (a) the number and types of prescribed reviewable decisions for which applications were made to QCAT for review;
- (b) QCAT's decisions on the applications;
- (c) recommendations mentioned in the *Child Protection Act 1999*, section 99ZH(2).

(2) The information must not identify the parties (other than the decision-maker) to, or other persons taking part in, a review.

(3) In this section—

**prescribed reviewable decision** means any of the following decisions—

- (a) a child-related employment decision;
- (b) a decision or assessment mentioned in the *Adoption of Children Act 1964*, section 13AA, 13AC, 13E or 14D;
- (c) a decision mentioned in the *Child Care Act 2002*, section 163;
- (d) a decision that is a reviewable decision under the *Child Protection Act 1999*.

**review** means a review by QCAT.

### **38 Amendment of s 140B (Commissioner may apply for review of reviewable decisions)**

Section 140B(2) to (4), 'the Children Services Tribunal'— *omit, insert*—  
'QCAT'.

**39 Amendment of sch 4 (Dictionary)**

(1) Schedule 4, definition *Children Services Tribunal*—  
*omit.*

(2) Schedule 4—  
*insert—*

*'child-related employment decision* see section 128A.

*constituting members*, for part 6A, see section 128A.

*QCAT child-related employment review*, for part 6A, see  
section 128A.

*QCAT president*, for part 6A, see section 128A.'

**Program Area - CST/QCAT Reviews**

<b>Stage in Process</b>	<b>Court Services Adviser</b>	<b>Court Co-ordinator</b>
<p>Receipt of Notice of Review</p>	<p>The CSA will assess the Notice to determine:</p> <ul style="list-style-type: none"> <li>▪ whether the application is within 28 day review period</li> <li>▪ the jurisdiction of the Tribunal to review in accordance with Schedule 2 and/or if factual information is required from the CSSC to determine this matter</li> <li>▪ if jurisdictional issues are identified, CSA will prepare legal submissions in writing to the Registrar for determination</li> </ul>	<p>The CC will</p> <ul style="list-style-type: none"> <li>▪ collate factual information as requested by CSA in support of jurisdictional submissions</li> </ul>
<p>Central Liaison Point for CST Re: Distribution of Notices of Review to the CSSC</p>	<p>The CSA will:</p> <ul style="list-style-type: none"> <li>▪ identify the relevant CSSC and staff and issue the Notice of Review via facsimile</li> <li>▪ the CSA will prepare advice email correspondence to CSSC staff identifying: <ul style="list-style-type: none"> <li>✓ (as required under section 60 (2) of the <i>CST Act 2000</i> (or as per <i>1/12/2009 CPA 1999, 99A and/or QCAT 2009</i>) other aggrieved persons entitled to seek review for the purpose of filing Notice of Election details</li> </ul> </li> </ul>	<p>The CC will:</p> <ul style="list-style-type: none"> <li>▪ ensure the Notice is received and filing dates are identified to the Manager/Team Leader</li> <li>▪ facilitate a case discussion re: allocation of preparation tasks as raised by CSA, within identified filing deadlines</li> <li>▪ provide feedback to CSA as required</li> </ul>

	<ul style="list-style-type: none"> <li>✓ the filing date for the Statement of Reasons</li> <li>✓ suggestions re: critical matters to be addressed</li> <li>✓ identifying related reviewable decisions for action by CSSC in accordance with information notice provisions in <i>Child Protection Act 1999</i></li> </ul>	
Preparation of Statement of Reasons Preparation of Statement of Reasons (continued)	The CSA will: <ul style="list-style-type: none"> <li>▪ provide 2<sup>nd</sup> level quality assurance of the Statement of Reasons having particular regard to the accuracy of <i>CPA 1999</i> and <i>CST Act 2000 (post 1/12/2009 QCAT Act 2009)</i> and departmental policy references within</li> <li>▪ review and analyse evidence referred to in the Statement of Reasons in order to identify other information to be gathered and the overall strengths and weaknesses of the decision on review. If necessary prepare correspondence to the CSSC Manager in relation to any identified concerns</li> <li>▪ review the Statement of Reasons to identify potential legal submissions to be made at the Preliminary Conference under Tribunal Legislation eg: Notice to Produce, Notice to</li> </ul>	The CC will: <ul style="list-style-type: none"> <li>▪ track preparation of the Statement of Reasons and associated tasks in accordance with filing deadlines</li> <li>▪ provide 1<sup>st</sup> level quality assurance having particular regard to case content matters</li> </ul>

	<p>Attend, Confidentiality Order, Order for Separate Representation etc</p> <ul style="list-style-type: none"> <li>▪ File the Statement of Reasons with the Children Services Tribunal Registry</li> </ul>	
<p>Preparation for Stay Hearing and/or Preliminary Conference</p>	<p>The CSA will facilitate a preparation telelink with CSSC Manager/Team Leader to:</p> <ul style="list-style-type: none"> <li>▪ explain the process of a Stay Hearing and/or Preliminary Conference</li> <li>▪ provide clear guidelines about the Tribunal's expectation of their conduct and presentation during the Stay Hearing/Preliminary Conference</li> <li>▪ distinguish the roles of the CSSC representative and the CSA when appearing before the Tribunal</li> <li>▪ make suggestions to CSSC as to the content of oral submissions to be made to the Tribunal in support of their case</li> <li>▪ identify and explain to the CSSC staff the nature and purpose of any legal submission to be made by the CSA</li> <li>▪ discuss a preliminary witness list</li> </ul>	<p>The CC will:</p> <ul style="list-style-type: none"> <li>▪ Participate in preparation telelink</li> <li>▪ track and assist Manager/Team Leader in preparation of oral submissions as suggested by the CSA during telelink</li> </ul>

	<ul style="list-style-type: none"> <li>▪ provide information to the CSSC staff about the Tribunal Panel, their field of expertise and past impressions of them as Tribunal members</li> <li>▪ provide an opportunity to the CSSC staff to address any questions they may have</li> </ul>	
<p>Stay Hearing/Preliminary Conference</p>	<p>The CSA will:</p> <ul style="list-style-type: none"> <li>▪ make submissions on behalf of the department (as respondent) and/or respond to questions raised by the Tribunal in relation to policy and legislative matters</li> <li>▪ make submissions in relation to specific orders sought by the department (as respondent)</li> <li>▪ assist the CSSC representatives in the delivery of their oral submissions</li> <li>▪ following the Preliminary Conference identify and note Tribunal actions/decisions that may have broader implications for referral to Court Services Unit Manager/Team Leader and discussion at stakeholder forums</li> </ul>	<p>The CC will:</p> <ul style="list-style-type: none"> <li>▪ attend only with leave of the Tribunal and with the consent of the applicant for learning purposes</li> </ul>

<p>Post Stay Hearing/Preliminary Conference</p>	<p>The CSA will provide a summary email of Stay/Preliminary Conference proceedings including</p> <ul style="list-style-type: none"> <li>▪ identifying and explaining the practical and/or legal implications of any Interim Orders made</li> <li>▪ identifying filing deadlines</li> </ul> <p>The CSA will:</p> <ul style="list-style-type: none"> <li>▪ distribute to CSSC any written Interim Orders of the Tribunal to the CSSC</li> </ul>	<p>The CC will:</p> <ul style="list-style-type: none"> <li>▪ ensure tasks identified are allocated and commenced having regard to filing deadlines</li> </ul>
<p>Hearing Preparation</p>	<p>The CSA will convene a preparation telelink with all relevant CSSC staff making suggestions about:</p> <ul style="list-style-type: none"> <li>▪ witness statements required for hearing and relevant content</li> <li>▪ identifying urgent tasks in relation to the gathering of additional evidence</li> <li>▪ identifying other administrative matters to be addressed in preparation for Hearing.</li> <li>▪ identifying filing deadlines</li> <li>▪ following telelink prepare and issue via email, minutes of telelink to relevant CSSC staff</li> <li>▪ if advised of necessity by CC, liaise with non-</li> </ul>	<p>The CC will:</p> <ul style="list-style-type: none"> <li>▪ liaise with non-departmental and professional witnesses about preparing a witness statement and attending as a witness on behalf of the department. This should include providing a template witness statement and information about they type of content sought in their statement</li> <li>▪ notify the CSA if any external witnesses are seeking witness expenses</li> <li>▪ track preparation tasks in</li> </ul>

<p>Hearing Preparation (Continued)</p>	<p>departmental and professional witnesses and negotiate in writing witness expenses in accordance with the Legal Aid Queensland Schedule of Fees</p> <ul style="list-style-type: none"> <li>▪ provide 2<sup>nd</sup> level quality assurance of material to be filed by the department</li> <li>▪ make any further legal submissions in writing as required. For example an application under section 97 of <i>CST Act 2000</i> for notices to produce documents or to attend as a witness</li> <li>▪ file the material relied upon by the department (as respondent) with the Children Services Tribunal Registry in accordance with filing directions issued by the Tribunal</li> </ul> <p><b>Post filing the CSA will:</b></p> <ul style="list-style-type: none"> <li>▪ meet with Manager/Team Leader and assist them to prepare opening submissions</li> <li>▪ meet with Manager/Team Leader and assist them to prepare a framework of questions for departmental witnesses</li> <li>▪ review material filed on behalf of the applicant in order to identify a framework of questions on cross examination of applicant</li> </ul>	<p>accordance with filing deadlines and advise CSA of emergent issues requiring their response or advice. For example, a witness requiring leave for telephone evidence</p> <ul style="list-style-type: none"> <li>▪ 1<sup>st</sup> level quality assurance of material to be filed by department</li> </ul> <p><b>Post filing: the CC will:</b></p> <ul style="list-style-type: none"> <li>▪ assist Manager/Team Leader to action CSA advices about submissions with witness questions</li> <li>▪ distribute proposed questions to departmental witnesses and provide information tips about giving evidence in a Tribunal</li> </ul>
<p>Hearing Preparation - Post filing of departmental evidence</p>	<p>departmental and professional witnesses and negotiate in writing witness expenses in accordance with the Legal Aid Queensland Schedule of Fees</p> <ul style="list-style-type: none"> <li>▪ provide 2<sup>nd</sup> level quality assurance of material to be filed by the department</li> <li>▪ make any further legal submissions in writing as required. For example an application under section 97 of <i>CST Act 2000</i> for notices to produce documents or to attend as a witness</li> <li>▪ file the material relied upon by the department (as respondent) with the Children Services Tribunal Registry in accordance with filing directions issued by the Tribunal</li> </ul> <p><b>Post filing the CSA will:</b></p> <ul style="list-style-type: none"> <li>▪ meet with Manager/Team Leader and assist them to prepare opening submissions</li> <li>▪ meet with Manager/Team Leader and assist them to prepare a framework of questions for departmental witnesses</li> <li>▪ review material filed on behalf of the applicant in order to identify a framework of questions on cross examination of applicant</li> </ul>	<p>accordance with filing deadlines and advise CSA of emergent issues requiring their response or advice. For example, a witness requiring leave for telephone evidence</p> <ul style="list-style-type: none"> <li>▪ 1<sup>st</sup> level quality assurance of material to be filed by department</li> </ul> <p><b>Post filing: the CC will:</b></p> <ul style="list-style-type: none"> <li>▪ assist Manager/Team Leader to action CSA advices about submissions with witness questions</li> <li>▪ distribute proposed questions to departmental witnesses and provide information tips about giving evidence in a Tribunal</li> </ul>

Full Hearing by Tribunal	witnesses and in order to identify additional matters to be clarified by departmental witnesses during oral evidence	<ul style="list-style-type: none"> <li>▪ prepare a timetable about the availability and contact details of departmental witnesses</li> <li>▪ provide pre-hearing support to proposed departmental witnesses</li> </ul>
	<p>The CSA will:</p> <ul style="list-style-type: none"> <li>▪ assist the Manager to integrate matters raised by the applicant into the department's opening submissions</li> <li>▪ assist the Manager to put questions to witnesses</li> <li>▪ identify as evidence progresses any necessity for additional legal submissions and make those submissions on behalf of the department (as respondent)</li> <li>▪ respond to questions raised by the Tribunal in relation to policy and legislative matters</li> <li>▪ make submissions in relation to specific orders sought by the department (as respondent)</li> <li>▪ assist the Manager to amend questions for</li> </ul>	<p>The CC will:</p> <ul style="list-style-type: none"> <li>▪ attend only with leave of the Tribunal and with the consent of the applicant for learning purposes</li> <li>▪ depending on competing CSSC demands, CC may attend to organise witnesses and to seek information required as evidence progresses and to debrief witnesses post evidence</li> </ul>

	<p>witnesses in response to other evidence or having regard to impressions of the matters the Tribunal seeks to inquire into</p> <ul style="list-style-type: none"> <li>▪ keep a log of key evidence to assist the Manager to prepare closing submissions</li> <li>▪ assist the Manager to present oral closing submissions if required</li> <li>▪ make notation of Tribunal actions/decisions that may have broader implications for referral to Court Services Unit Manager/Team Leader</li> <li>▪ track timing of evidence by non-departmental witnesses and professional witnesses for the purpose of calculation of witness expenses</li> </ul>	
<p>Post Hearing</p>	<p>The CSA will:</p> <ul style="list-style-type: none"> <li>▪ provide 2<sup>nd</sup> level quality assurance to the CSSC manager re: draft written closing submissions in these have been ordered</li> <li>▪ issue correspondence in writing to non-departmental and professional witness in relation to witness entitlements</li> <li>▪ track administrative follow up of invoices received</li> </ul>	<ul style="list-style-type: none"> <li>▪ provide 1<sup>st</sup> level quality assurance of CSSC Manager's written closing submissions</li> <li>▪ ensure preparation is completed having regard to filing deadlines</li> </ul>

<p>Provision of Tribunal Decision in Writing</p>	<p>The CSA will:</p> <ul style="list-style-type: none"> <li>▪ issue copy of the Tribunal's written decision to the CSSC via facsimile</li> <li>▪ identify and explain the practical and/or legal implications of the Tribunal's decision</li> <li>▪ identify key comments by the Tribunal within the written decisions</li> <li>▪ bring to the attention of the Court Services Unit Manager any particular criticisms of departmental actions/practice raised and respond as directed by the Court Services Manager</li> <li>▪ identify to the Court Services Unit Manager if the Tribunal has or intends to exercise a power on review (section 38 (3)) to make written recommendations to the Chief Executive</li> </ul>	<p>The CC will:</p> <ul style="list-style-type: none"> <li>▪ ensure that the decision of the Tribunal is made known to all relevant people and the information is provided that the Tribunal's decision must be given effect to</li> </ul>
<p>Appeal of Tribunal Decision to District Court (department as respondent)</p>	<p>The CSA will:</p> <ul style="list-style-type: none"> <li>▪ distribute the Notice and Grounds of Appeal to CSSC</li> <li>▪ prepare a brief of Instruction to Crown Law</li> </ul>	<p>The CC will:</p> <ul style="list-style-type: none"> <li>▪ collate any additional information requested by the CSA</li> </ul>

	<ul style="list-style-type: none"> <li>▪ liaise with the Tribunal Registry in relation to provision of Hearing transcript</li> <li>▪ provide advice to the CSSC about the practical and legal implications of the appeal in relation to the operation of the Tribunal's orders</li> <li>▪ if necessary or a dispute arises, facilitate a case discussion with Court Services Unit Manager, CSSC Manager and relevant staff in relation to Crown Law advice about prospects of success on defence of an appeal</li> <li>▪ attend Hearing and Instruct Crown Law Officer</li> </ul> <p><b>Upon determination of the Appeal the CSA will:</b></p> <ul style="list-style-type: none"> <li>▪ provide a copy of the District Court judgement to the CSSC</li> <li>▪ provide further advice to the CSSC about the practical and legal implications of the appeal in relation to the operation of the Tribunal's orders</li> </ul>	
Appeal of Tribunal Decision to the	<p>The CSA will:</p> <ul style="list-style-type: none"> <li>▪ facilitate discussion between the Court</li> </ul>	<p><b>Upon determination of the Appeal the CC will:</b></p> <ul style="list-style-type: none"> <li>▪ ensure the District Court judgement is complied with</li> </ul> <p>The CC will:</p> <ul style="list-style-type: none"> <li>▪ will participate in Advice in</li> </ul>

<p>District (department as appellant)</p>	<p>Services Unit Manager and CSSC Manager &amp; relevant staff re: merits of appeal</p> <ul style="list-style-type: none"> <li>▪ prepare requests in writing to the Children Services Tribunal in relation to provision of Hearing Transcript</li> <li>▪ prepare a brief of instruction to Crown Law in relation to opinion about prospects of success on appeal</li> <li>▪ assist in preparation of a brief to the Director General for authority to file appeal</li> <li>▪ arrange and participate in an Advice in Conference with Crown Law</li> <li>▪ attend Hearing and Instruct Crown Law Officer</li> </ul> <p><b>Upon determination of the Appeal</b> the CSA will:</p> <ul style="list-style-type: none"> <li>▪ provide a copy of the District Court judgement to the CSSC</li> <li>▪ provide further advice to the CSSC about the practical and legal implications of the appeal in relation to the operation of the Tribunal's orders</li> </ul>	<p>Conference and collate information as required by CSA</p> <p><b>Upon determination of the Appeal</b> the CC will:</p> <ul style="list-style-type: none"> <li>▪ ensure the District Court judgement is complied with</li> </ul>
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As an auxiliary function Court Services Advisers provide a departmental intake service to the Tribunal Registry staff and maintain an intake register of Tribunal inquiries. All Tribunal applications and related outcome are tracked in order to provide statistical analysis and observation of practice trends

# CASE EXAMPLE

## STATEMENT OF REASONS

CHILDREN SERVICES TRIBUNAL REVIEW APPLICATION NUMBER: 142 - 0607  
BROWN and the DEPARTMENT OF CHILD SAFETY

### Decision for Review

Ms Mary Brown is seeking a review of the decision, "removing child from carer's care" pursuant to section 89 of the *Child Protection Act 1999*.

On 2 September 2006, I Jasmine Green, Manager of the Evergreen Child Safety Service Centre, as the Chief Executive's delegated officer, made the decision to remove the subject children Jane Smith born 13 January 1994, John Smith born 8 May 1999 and Jess Smith born 4 August 1996 from the care of Ms Brown and place them in an alternative out of home care placement.

On 2 September 2006, a letter was sent to Ms Brown advising her of the decision to remove the Smith siblings from her care and her right to seek review of this decision by the Children Services Tribunal. A copy of this correspondence is annexed hereto and marked **Exhibit "A"**.

On 29 September 2006, a letter was sent to Ms Brown advising her of the outcome of the matter of concern, child protection notification recorded in relation to the subject children dated 1 September 2006. A copy of this correspondence is annexed hereto and marked **Exhibit "B"**.

Jane, John and Jess Smith are currently placed with approved foster carers Jessica and Joseph Graves.

### Relevant Legislation and Policy

In making these decisions, consideration was given to sections 5, 6, 89, 90 and 91 of *Child Protection Act 1999* and Schedule 1 *Child Protection Act 1999*. A true and correct copy of these legislative provisions is annexed hereto and marked **Exhibit "C"**.

Further, consideration was given to the policies and procedures as outlined in Chapter 9 of the Department's Child Safety Practice Manual, relating to Matters of Concern.

**Family Details/Relevant persons**

.....

**Legal Status of Child**

On 5 December 2004 in the Children’s Court at Evergreen, Child Protection Orders were made granting long term guardianship of Jane, John and Jess Smith to the Chief Executive. True copies of the Child Protection Orders in relation to each of the subject children are annexed hereto and collectively marked **Exhibit “D”**.

**Ms Brown’s Foster Carer Approval History**

On 3 September 2000 Ms Mary Brown lodged an application for approval in the approved form for a certificate of approval as a foster carer.

A carer assessment was undertaken by Ms Bruce Wayne of “Kids First”. A report of this assessment dated 25 November 2000 was provided.

Re-approval applications and assessments were completed for Ms Brown in December 2001, December 2003 and October 2005.

Copies of the original assessment report and subsequent re-approval assessment reports are annexed hereto and collectively marked **Exhibit “E”**.

Some key themes or issues identified in approval assessments for Ms Brown include:

.....

Ms Brown’s most recent Certificate of Approval expired on 10 October 2006. A copy of her Certificate of Approval as a foster carer is annexed hereto and marked **Exhibit “F”**.

**History of Placements with Ms Brown**

Since her original approval in December 2000 eleven (11) children who have been in the custody or guardianship of the Chief Executive have been placed with Ms Brown.

.....

Key observations or issued identified in Ms Brown’s placement history are:

.....

**Child Protection Notifications & Investigation and Assessment Interviews & Outcomes**

In total four (4) matter of concern child protection notifications have been recorded in relation to Ms Brown's care of children. These are as follows:

***CPN 3 January 2005***

.....

***CPN 4 June 2006***

.....

***CPN 1 September 2006***

.....

**Action and/or Support Plans Implemented with Ms Brown**

In response to the investigation and assessment outcomes recorded in relation to Ms Brown the following Action and/or Support Plans were developed and implemented:

***CPN 3 January 2005***

.....

***CPN 4 June 2006***

.....

**Training History of Ms Brown**

Ms Brown completed foster carer training between 15 September and 15 November 2000. A list of the training modules completed by Ms Brown is annexed hereto and marked **Exhibit "G"**.

Since her original approval Ms Brown has completed further training in the following.....

**Contact between Ms Brown and Smith children since removal**

Since removal from her care the Smith children have been having contact with Ms Brown on a weekly basis for a one (1) hour supervised period. The rationale for the decision to provide contact was:

.....

Key observations arising from this contact include:

.....

**Identified needs of the Smith children**

(eg. medical/therapeutic/educational/behavioural)

**Jess Smith**

.....

**John Smith**

.....

**Jane Smith**

.....

Annexed hereto and marked **Exhibit "H"** are reports confirming the medical/therapeutic/educational/behavioural needs of Jess, John and Jane Smith

**Views of the Smith children**

On 2 September 2006 Child Safety Officer Tracey Barrett met with each of the Smith children separately to discuss consideration that they be removed from Ms Brown's care. The key comments reported to have been made by the children included:

**Jess Smith**

.....

**John Smith**

.....

**Jane Smith**

.....

On 2 September 2006 Child Safety Officer Tracey Barrett met with each of the Smith children separately and provided each child with a letter advising them that a decision had been made to remove them from the care of Ms Brown and place them into the care of approved foster carers Jessica and John Graves.

The letter provided advice to each child that if they were not satisfied with either the decision to remove them from Ms Brown's care and/or the decision regarding in whose care and where they were now to be placed they could seek a review of this decision by the Children Services Tribunal. Ms Barrett provided each of the children and a copy of the Children's Guide to the Children Services Tribunal.

During her discussions with the children about the above decisions, the key comments reported to have been made by them included:

**Jess Smith**

.....  
**John Smith**

.....  
**Jane Smith**

**Other Consultation**

In making the decision to remove the children subject from the care of Ms Brown I have consulted the following people and/or agencies:

- Recognised Entity
- Shared Family Care Coordinator
- Child Safety Officer
- Team Leader
- Department of Child Safety Out of Home Care Coordinator

**Presentation of the Smith children since removal**

**In placement setting**

.....

**In education setting**

.....

**In therapeutic setting**

.....

**Reasons for reviewable decision**

.....

**Conclusion**

.....

**Jasmine Green  
Manager  
Evergreen Child Safety Service Centre  
Department of Child Safety**

9 October 2006

**CASE EXAMPLE**

Children Services Tribunal

S 58(1), s 147 Children Services Tribunal Act 2000

Form 1 Version 3

REVIEW APPLICATION

Children Services Tribunal

**FILED**

15/10/2009

**PLEASE CONSULT ATTACHMENT A BEFORE SUBMITTING THIS FORM**

If you have difficulties completing this form please contact the Tribunal on (07) 3225 8346 for assistance.

**Applicant(s)****Name(s)**

Mr Lance and Mrs Selina Reardon

**Address**

Include full address including suburb

Lot 569 Rainforest Drive Iron Range QLD 4859

Postcode

   **Telephone**

(07) 4907 2985

**Facsimile**

(07) 4907 3399

**Mobile**

0467 902 853

**Email address**

reardon\_83@hotmail.com

**Date/s of birth of applicant/s**

28/09/1965 (Lance)

01/12/168 (Selina)

If your contact details change please advise the registry as soon as possible of your new contact details.

Commission for Children and Young People and Child Guardian Act 2000 applications under s 121(1)a and s121(1)b do not have to complete Section 1 but go straight to Section 2 and complete the remainder of the form.**Section 1****Name and D.O.B of child(ren) decision is about**Name

(1) Abigail Longsdale

(2) Trent Longsdale

D.O.B

(1) born 25 May 1999

(2) born 25 May 1999

**Tick the box that best describes your relationship with the subject child** Mother Brother Foster Carer Father Sister Other (Please Specify) \_\_\_\_\_**Is this an application brought on behalf of a child. YES  NO** 

(If you are entitled to apply on your own behalf, you are not able to bring an application on behalf of a child. If an application is brought on behalf of a child, the President's permission is required by the Children Services Tribunal Act 2000 s59(1)).

**Section 2**

The completed application form must be filed with the Tribunal's registry within 28 days after you receive notice of the decision. The President of the Tribunal may at any time extend the time for filing the application if the president is satisfied the reason for the delay is reasonable in the circumstances.

**Do you need an extension of time for the filing of this application? YES  NO** 

If YES, you need to give reasons why the application was not made within the required time period.

**Reasons**

## CASE EXAMPLE

why application was not filed within time

Briefly outline the decision that has been made

We are kinship carers and these two children Abigail and Trent have been in our care since June 2009. These children are our niece and nephew by Selina's brother Logan and his partner Taylor. This is the only stable placement these children have had since coming into care in November 2008. They have been placed with other carers for only days or weeks at time. We have given them a safe home not like their mother and father where there were drugs, alcohol and violence. The children were very happy living with us. When the department took them away they were screaming and yelling that they didn't want to leave us.

See Attachment A for decisions that can be reviewed

Please attach a copy of the decision or letter notifying the reasons from the Department of Child Safety or Department Communities or Commission for Children and Young People and Child Guardian. (Do not send originals)

**Is a stay of the decision requested** YES  NO  If you need help answering this question contact the Registry. A hearing for a stay of the decision under review will, if successful, only temporarily suspend the decision until a full hearing. In making a decision about a stay, the Tribunal will have regard to the principle that the welfare and best interests of the child/ren are paramount. The Tribunal will also take into account the interests of other persons likely to be affected by the decision and the submissions received from the decision maker and other parties. A stay is not the final decision of the Tribunal.

A stay is not possible for decisions being reviewed under sections 121(1)(a) and 121 (1)b of the *Commission for Children and Young People and Child Guardian Act 2000*.

Reasons why a stay is requested

**Complete this section if a stay is requested**

Name, Position and Child Safety Service Centre of Decision-Maker

Miley Snowski Manager Weymouth Child Safety Service Centre

Have you asked for an internal review of the decision?

YES  and the outcome was:

NO  because

I have tried to speak with them but they don't answer my calls. Someone separate from the department needs to look into this terrible decision

## CASE EXAMPLE

<b>State briefly why you think the decision is wrong or not properly made</b>	<p>The children have been in our care since June 2009 and they are a significant part of our family and our lives. We love them and care for them like our own children. We are related and they should be living with us because we are family.</p> <p>Abigail and Trent came to reside with us after having to live with lots of different people, changing schools and being unsettled. When they were placed in our care, they asked us for weeks whether they would have to leave us soon. They didn't unpack their belongings until at least a month after they came to live with us. They were very fearful that they would be moved again. We promised them that they would live with us for as long as they needed to. We have broken our promise to them and the department made us do that. The department are horrible to cause such pain for these children so unnecessarily.</p>
---	--

<b>Briefly describe any other facts you think are important</b>	<p>Logan and Taylor hate us for taking their children away from them and stopping them from coming to our home whenever they wanted. We don't speak anymore. We did as the department asked and now we're being punished with them being removed from our care.</p>
---	---

<b>Briefly describe what you want to happen</b>	<p>We want Abigail and Trent returned to our care immediately. The department need to get into trouble for causing such heartache for these children.</p>
---	---

### Section 3

The questions in this section will help us prepare for the hearing.

<b>Cultural heritage or ethnicity</b>	<p>The applicant <input type="checkbox"/>, the child <input type="checkbox"/> or another party interested in these proceedings <input type="checkbox"/> identifies with Aboriginal <input type="checkbox"/> or Torres Strait <input type="checkbox"/> or other cultural or linguistic background <input type="checkbox"/> (please identify background) .....</p> <p><i>Please tick appropriate box(s)</i></p>
---------------------------------------	---

<b>Interpreter</b>	<p>Is an interpreter required YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> If YES, please specify language:</p> <p>_____</p>
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<b>Phone Hearing</b>	<p>Some or all of the hearing may be by telephone. Please provide a number to be contacted on for this purpose <u>(07) 4907 2985</u></p>
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You are able to have a person with you to support you at the preliminary conference or the hearing. This person cannot talk to the Tribunal on your behalf and cannot be a party to the review. Do you wish to have a support person at the preliminary conference or the hearing? YES  NO  If YES, please supply these details:

Name of support person	Relationship to you	Do they have any personal involvement in the issues you want the Tribunal to consider? Describe their involvement.

Will you be asking the Tribunal to listen to other people (witnesses) about the issues you want the Tribunal to consider? For example, will you be asking the Tribunal to listen to friends or relatives who may be able to confirm what you will be saying to the Tribunal? YES  NO  If YES, please supply these details for each witness:

## CASE EXAMPLE

Names and addresses of witnesses	Relationship to you	What will they be saying?
Albert Wilder	Best friend	How much the kids were happy residing with us and how much we love each other
Sila Longsdale	Selina's mother	Saw the children regularly when they lived with us and can tell the Tribunal how happy she is that they are now normal grandchildren

<b>Signature of Applicant/s</b>	Filed by (please print)    Lance and Selina Reardon	
	Signature            L. Reardon	Date        15 /10/2009
	Signature            S. Reardon	Date        15 /10/ 2009

**PLEASE ALSO COMPLETE ATTACHMENT A**

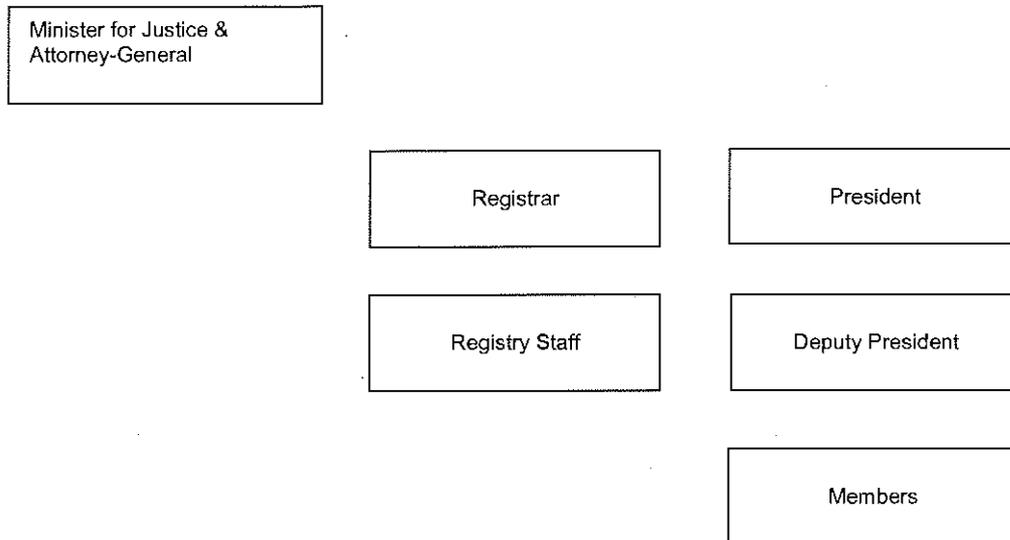
SAMPLE TRIBUNAL DOCUMENT

## What is the Children Services Tribunal?

The Tribunal is:

- An independent body reviewing certain decisions made by:
  - Department of Child Safety
  - Department of Communities
  - Commission for Children and Young People and Child Guardian
- Consists of a President, Deputy President and members appointed by the Minister (Dept Justice & Attorney General), but not subject to direction by the Minister.

### Tribunal Structure



## **Reviewable Decisions**

### Child Protection Act 1999

Children in care issues:

- s.78 Directing a parent re: a supervision matter in a child protection order
- s.86(2) in whose care to place a child (under a child protection order)
- s.86(4) not informing a child's parents of where and with whom the child is living
- s.87(2) refusing, restricting or imposing conditions on contact
- s.89 removal of a child from carer's care

Licensing of Care Services

- sections 129, 137, 138, 140 relate to an authority to run services for children

### Adoptions of Children Act 1964

- s.14D removal of a person's name from a list

### Child Care Act 2002

- s.163 regarding licensing

### Commission for Children and Young People Act 2000

- s.121 regarding employee screening certificate

## **What is Merit Review?**

Merit Review involves the capacity of the Tribunal to 'step into the shoes' of government decision makers and to remake an administrative decision according to the merits of the particular case.

The Tribunal takes a fresh look at the evidence and determines the facts of the case and the way the law is interpreted and applied to those facts.

A Tribunal's task is different to that of an Ombudsman. The latter may undertake a form of merits review while investigating government maladministration but does not have the powers to substitute his or her decision for that of the original decision maker but can only make recommendations.

## **The purpose of Administrative or Merit Review**

- to ensure the transparency and fairness of decisions made by government officers
- to enable citizens affected by the decision to question if the correct and preferable decision was made
- review through an informal, quick, fair and just process at not cost to the applicant

## Starting the Review Process

- Person is informed about their right of review in Dept's 'notice of decision' letter – apply within 28 days (can be extended s58).
- Person phones the Registry or downloads the application form from [www.justice.qld.gov.au/cst/home](http://www.justice.qld.gov.au/cst/home)
- A completed application form processes (reviewable decision s.57); panel constituted (s28)
- Court Liaison Unit notified (ss60(1)) – Dept must tell Tribunal within 7 days of other persons entitled to be involved in the review process (ss60(2))
- Applications of behalf of children s59
  - (1) a person may file a review application on behalf of a child only with the president's permission.
  - (2) The president may give permission only if the president considers:
    - (a) the person is not, on the person's own behalf, entitled to apply for the decision to be reviewed in the tribunal; and
    - (b) it is in the child's best interests that the application be made; and
    - (c) it would be inappropriate for, or unreasonable to require, the child to make the application.
- Helping children and young people have a voice at the Tribunal.
- The Young Person's Guide
- The Children's Guide

## The Proceedings

### Preliminary Conference

- May be 1, 2 or 3 members of the panel. S79:
  - (1) the president, registrar or tribunal may require the parties to a review to attend one or more preliminary conferences before the tribunal.
  - (2) At a preliminary conference, the tribunal may do 1 or more of the following:
    - (a) decide issues about representation under s66 or 68
    - (b) stay the operation of a reviewable decision under s70
    - (c) identify and clarify the issues in dispute
    - (d) identify the questions of fact and law to be decided by the tribunal
    - (e) identify information to be given to the tribunal by the parties
    - (f) give the parties information about the tribunal's practice and procedures
    - (g) refer the parties to alternative dispute resolution
    - (h) give directions and make orders about the conduct of the review
  - (3) The procedure for a preliminary conference is at the discretion of the tribunal.
  - (4) Without limiting subsection (3), at a preliminary conference the tribunal may meet with a party separately –
    - (a) if it considers doing so may avoid the escalation of conflict between the parties; or
    - (b) if the party is a child and the tribunal considers doing so is in the child's best interest having regard to the child's views and wishes.

### Stay

- must be a 3 member panel (s70)
  - (1) The tribunal may stay the operation of a reviewable decision if a review application relating to the decision has been filed with the registrar.
  - (2) The tribunal may act under subsection (1) on its own initiative or on application by a party to the review.
  - (3) In deciding whether to stay the decision, the tribunal must:
    - (a) having regard to the principles mentioned in s7, have particular regard to the principle mentioned in s7(a)(i) and
    - (b) take into account:
      - i. the interests of persons likely to be affected by the tribunal's decision on the review application; and
      - ii. any submissions made to it by the decision maker and other parties to the review.

- (4) Subsection (3) does not limit the things the tribunal may take into account.
- (5) The stay –
  - (a) may be given on conditions the tribunal considers appropriate; and
  - (b) operates for the period fixed by the tribunal; and
  - (c) may be revoked or amended by the tribunal.
- (6) however, the period of the stay must not extend past the time when the tribunal decides the review.

### Hearing

- must be 3 member panel (s28 unless a CCYP matter; where a party/subject is an indigenous person – the panel is to have, where reasonable, an indigenous member).

### Powers of the Tribunal (s38)

- can confirm
- set aside and substitute a new decision
- set aside and send it back to the ODM with directions
- vary the decision

### Reasons for decision

Generally the tribunal does not give a decision immediately after the hearing but takes some time to consider the evidence, issues and law.

The Tribunal must give reasons for the decision in writing.

### Appeal from a Tribunal decision

- a party to a review may appeal to the District Court against a decision of the Tribunal on a question of law.
- The appeal must be filed in the registry of the District Court within 28 days of receiving notice about the decision.

### Who are the parties?

- The decision maker must inform the Registrar of other people entitled to apply for a review of the relevant reviewable decision within 7 days of being informed about the application.
- Parties to a review are:
  - the applicant
  - the decision maker
  - a person who is eligible and elects to be a party
  - a person the tribunal joins as a party

### Documents

The decision maker must give a statement of the reasons for the decision and a copy of every other relevant document the decision maker has.

The tribunal may obtain copies of other relevant documents.

### What does the Tribunal need from you?

Some background of the case:

- history of notifications and outcomes
- why the child/ren originally came into care
- a copy of the order which will include the date
- what was the case plan at the time
- what is the current status of that case plan and if it has changed, why?
- Issues that prompted the current decision/s

### Legal basis of the decision

Include relevant sections of the Act upon which the decision was based.

## **Current Tribunal membership**

28 members with experience in:

- administrative review
- child care
- child protection
- child welfare
- community services
- education
- health
- indigenous affairs
- law
- psychology or
- social work

## **Criteria for appointment**

The principles outlined in section 7 of the *Children Services Act (2000)* to issues likely to come before the Tribunal (see schedule 2 of the *CPA 1999*).

Professional knowledge and experience in one or more of the fields as outlined above.

**CASE EXAMPLE**

Children Services Tribunal  
S 58(1), s 147 Children Services Tribunal Act 2000

Form 1 Version 3

REVIEW APPLICATION

Children Services Tribunal

**FILED**

08/10/2006

**PLEASE CONSULT ATTACHMENT A BEFORE SUBMITTING THIS FORM**

If you have difficulties completing this form please contact the Tribunal on (07) 3225 8346 for assistance.

**Applicant(s)****Name(s)**

Ms Mary Brown

**Address**Include full  
address  
including  
suburb

131 Violet Parade Evergreen QLD 4999

Postcode

   
**Telephone**

(07) 3366 3366

**Facsimile**

(07) 3366 3377

**Mobile**

0403 026 978

**Email address**

maryb@hotmail.com

**Date/s of birth of applicant/s**

07/07/1968

If your contact details change please advise the registry as soon as possible of your new contact details.

Commission for Children and Young People and Child Guardian Act 2000 applications under s 121(1)a and s121(1)b do not have to complete Section 1 but go straight to Section 2 and complete the remainder of the form.

**Section 1**
**Name and  
D.O.B of  
child(ren)  
decision is  
about**
Name

- (1) Jane Smith  
(2) John Smith  
(3) Jess Smith

D.O.B

- (1) born 13 January 1994  
(2) born 8 May 1999  
(3) born 4 August 1996

**Tick the box  
that best  
describes  
your  
relationship  
with the  
subject child**

- Mother                       Brother                       Foster Carer  
 Father                               Sister  
 Other (Please Specify) \_\_\_\_\_

**Is this an application brought on behalf of a child** YES  NO

(If you are entitled to apply on your own behalf, you are not able to bring an application on behalf of a child. If an application is brought on behalf of a child, the President's permission is required by the Children Services Tribunal Act 2000 s59(1)).

**Section 2**

The completed application form must be filed with the Tribunal's registry within 28 days after you receive notice of the decision. The President of the Tribunal may at any time extend the time for filing the application if the president is satisfied the reason for the delay is reasonable in the circumstances.

**Do you need an extension of time for the filing of this application?** YES  NO

If YES, you need to give reasons why the application was not made within the required time period.

**Reasons  
why**

## CASE EXAMPLE

application was not filed within time

Briefly outline the decision that has been made

I am an approved foster carer and these three siblings Jane, John and Jess Smith have been in my care since 2004. On 2 September 2006 I received a letter from Jasmine Green, the Manager of Evergreen Child Safety Service Centre advising me that she had decided to remove the children from my care. This letter is attached to this application.

See Attachment A for decisions that can be reviewed

Please attach a copy of the decision or letter notifying the reasons from the Department of Child Safety or Department of Communities or Commission for Children and Young People and Child Guardian. (Do not send originals)

**Is a stay of the decision requested** YES  NO  If you need help answering this question contact the Registry. A hearing for a stay of the decision under review will, if successful, only temporarily suspend the decision until a full hearing. In making a decision about a stay, the Tribunal will have regard to the principle that the welfare and best interests of the child/ren are paramount. The Tribunal will also take into account the interests of other persons likely to be affected by the decision and the submissions received from the decision maker and other parties. A stay is not the final decision of the Tribunal.

A stay is not possible for decisions being reviewed under sections 121(1)(a) and 121 (1)b of the *Commission for Children and Young People and Child Guardian Act 2000*).

Reasons why a stay is requested

**Complete this section if a stay is requested**

Name, Position and Child Safety Service Centre of Decision-Maker

Jasmine Green Manager Evergreen Child Safety Service Centre

Have you asked for an internal review of the decision?

YES  and the outcome was:

NO  because

I don't see any point to asking for an internal review. It is my preference to have a more object party like the Tribunal review the facts of the matter.

## CASE EXAMPLE

<b>State briefly why you think the decision is wrong or not properly made</b>	<p>The children have been in my care since April 2004 and we are attached to each other.</p> <p>Jess can be a difficult child and she requires a firm hand to contain her behaviours and it is not fair to the other children that they are removed from my care simply because of an isolated incident of behaviour on my part involving one child.</p> <p>My history as a carer over time should be considered, not just this one event.</p> <p>I am aware that since the children were removed from my care, they have been placed with foster carers who live about 30 minutes from my home so as a result the children have been required to attend a different school. This must be a difficult adjustment for them.</p>
---	--

<b>Briefly describe any other facts you think are important</b>	<p>The children's parents have never liked me.</p> <p>I believe the department was motivated to make this decision, not because it is in the children's best interests but because they want to placate the parents.</p> <p>The parent's views about me and/or about placement of the children in my care should not be the most relevant consideration because these children are subject to Child Protection Orders granting long term guardianship to the Chief Executive and only have contact with their parents for 4hours each fortnight on a Saturday in any case. There is no case plan suggesting the children will ever return to their parent's care</p>
---	--

<b>Briefly describe what you want to happen</b>	<p>I want all three children returned to my care and I want the Tribunal to make the department stop providing contact between the children and their parents because I think it is this fortnightly contact which makes Jess behave so badly.</p>
---	--

### Section 3

The questions in this section will help us prepare for the hearing.

<b>Cultural heritage or ethnicity</b>	<p>The applicant <input type="checkbox"/>, the child <input type="checkbox"/> or another party interested in these proceedings <input type="checkbox"/> identifies with Aboriginal <input type="checkbox"/> or Torres Strait <input checked="" type="checkbox"/> or other cultural or linguistic background <input type="checkbox"/> (please identify background) .....</p> <p><i>Please tick appropriate box(s)</i></p>
---------------------------------------	--

<b>Interpreter</b>	<p>Is an interpreter required <b>YES</b> <input type="checkbox"/> <b>NO</b> <input checked="" type="checkbox"/> If YES, please specify language: _____</p>
--------------------	--

<b>Phone Hearing</b>	<p>Some or all of the hearing may be by telephone. Please provide a number to be contacted on for this purpose <u>(07) 3366 3366</u></p>
----------------------	--

You are able to have a person with you to support you at the preliminary conference or the hearing. This person cannot talk to the Tribunal on your behalf and cannot be a party to the review. Do you wish to have a support person at the preliminary conference or the hearing? **YES**  **NO**  If YES, please supply these details:

Name of support person	Relationship to you	Do they have any personal involvement in the issues you want the Tribunal to consider? Describe their involvement.
Sarah Stiles	Shared Family Care Agency Support Worker	She has been visiting me and the children in their support role

### CASE EXAMPLE

		since 2004 so can attest to how much the children love me
--	--	---

Will you be asking the Tribunal to listen to other people (witnesses) about the issues you want the Tribunal to consider? For example, will you be asking the Tribunal to listen to friends or relatives who may be able to confirm what you will be saying to the Tribunal? **YES**  **NO**  If YES, please supply these details for each witness:

Names and addresses of witnesses	Relationship to you	What will they be saying?
Darren Clementine	My defacto partner	Darren stays almost every night in my home so he can attest to Jess' difficult behaviours and how a firm hand is required

<b>Signature of Applicant/s</b>	Filed by (please print) <span style="float: right;">Mary Brown</span>		
	Signature	M.Brown	Date <span style="float: right;">08 /10/2006</span>
	Signature		Date <span style="float: right;">/ /</span>

**PLEASE ALSO COMPLETE ATTACHMENT A**

SAMPLE

Attachment

## QUEENSLAND CIVIL & ADMINISTRATIVE TRIBUNAL (QCAT)

### The announcement of QCAT

On 12 March 2008, the Premier, the Hon Anna Bligh MP, announced the establishment of a Queensland Civil and Administrative Tribunal (QCAT); and the establishment of an independent panel to report to Government about the implementation of a new Civil and Administrative Tribunal for Queensland.

### QCAT amalgamates CST

QCAT will take over the functions of a number of different tribunals as well as some review functions of the courts and other administrative bodies - including the *Children Services Tribunal*.

Decisions made by the Department of Child Safety under the *Child Protection Act 1999 (CPA)* and *Adoption of Children Act 1964 (ACA)* are reviewable by the *Children Services Tribunal*. For example:

- removing a child from the care of the child's carer;
- refusing an application for, or to renew, a certificate of approval as an approved foster carer or an approved kinship carer; and
- removal of a person's name from an expression of interest register for adoptions.

### QCAT Legislation

In order to establish QCAT, two pieces of legislation are being prepared:

- The Queensland Civil and Administrative Tribunal Bill 2009 (the QCAT Bill), which will establish QCAT and provide for its generic functions, powers and procedures; and
- The Queensland Civil and Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2009, which will amend over 160 pieces of legislation to transfer jurisdiction from existing tribunal and courts to QCAT, including the *CPA* and the *ACA*.

### **Jurisdictional scope of QCAT**

- Because of the wide variety of matters that QCAT will deal with, the tribunal will be organised into three divisions:
  - Human Rights;
  - Civil; and
  - Administrative and Disciplinary Matters

### **Specialist provisions retained**

QCAT legislation is to provide for the general users of the tribunal and includes provisions regarding children who may more generally come into contact with the tribunal.

However there are specialist provisions of the *Children Services Tribunal Act 2000* which need to be retained and for which do not fit with the more general approach of the QCAT legislation.

The specialist provisions will be placed in a new part (Tribunal Proceedings) of the *CPA* and *ACA*.

### **Registrar to give notice of review application**

- The registrar must give notice of a review application to the decision maker.
- Within 7 days after receiving the notice, the decision maker must give the registrar notice of the names and addresses of all persons, apart from the applicant who are entitled to apply for a review of the reviewable decision concerned and of whom the decision maker is aware.
- Registrar must immediately on receipt of decision maker's notice, give an information notice to each person named in the decision maker's notice.

### **Review applications by Commissioner (CPA 1999)only**

If the applicant for a review application is the Commissioner for Children and Young People and Child Guardian the review application must be made within 28 days after the commissioner gives notice under the *Commission for Children and Young People and Child Guardian Act 2000* section 140B(4), to the chief executive about the reviewable decision.

### **Government entity may nominate decision maker**

The department may give the registrar a notice nominating an officer or employee of the department, or the holder for the time being of an office in the department, as the decision maker for a review.

### **Constitution of tribunal**

- President may choose a member to constitute the tribunal only if the president considers the member is committed to the principles; has extensive professional knowledge and experience of children; and has demonstrated a knowledge of and has experience in 1 or more fields of the fields listed, for example child protection, social work, administrative review.
- A member is ineligible to be a constituting member if the member has been refused a certificate of approval, or a renewal of a certificate of approval, as an approved carer or has had a certificate of approval as an approved carer cancelled.
- Panel must be constituted by 3 members with at least 1 legally qualified member with at least 5 years experience. However for preliminary conference may be constituted by 2 members, one of whom is a legally qualified member.
- If a child to which a proceeding relates is Aboriginal or Torres Strait islander, the tribunal hearing the proceeding must include, if practicable, a member who is Aboriginal or Torres Strait Islander.

### **Hearing must usually be held in private**

A hearing of a proceeding before the tribunal must be held in private. However, the following are entitled to be present at the proceeding-

- each party to the proceeding
- if, under the QCAT Act, a party is entitled to be represented by someone else at the proceeding, the party's representative;
- a separate representative representing a child in the proceeding;
- a witness while giving evidence;
- a support person for a party or a witness;
- a person allowed to be present by the tribunal.

### **When a proceeding may be held in public**

Despite the provision that "Proceedings relating to this Act must usually be held in private" the tribunal may allow a proceeding before the tribunal to be held in public if information identifying, or likely to lead to the identification of, a particular child will not be given in the proceeding.

### **Adjournments CPA 1999 only**

- In considering whether to adjourn a proceeding involving a child, the tribunal must take into account any impact that adjourning the proceeding will have on the child.
- When it adjourns a proceeding, the tribunal must:
  - Give reasons for the adjournment; and
  - State any matters it requires a party to the proceeding to address during the adjournment; and
  - Give directions and make orders it considers necessary or desirable.

### **When matter before Court**

- If a review application is before the tribunal and some or all of the matters to which the reviewable decision relates are also before a court then on the president's own initiative or on application by a party to the review the president must suspend the tribunal's review if the president considers:
  - The court's decision about the matters would effectively decide the same issues to be decided by the tribunal; and
  - The matters will be dealt with quickly by the court.
- If the president suspends the tribunal's review and the **court decides the matters** and the decision effectively decides the issues before the tribunal then president must dismiss the review application.
- If the president has suspended the tribunal's review and the matters have not been decided by the court the president may cancel the suspension and the tribunal may continue to deal with the review application.

### **Requirements about ensuring proper understanding of tribunal proceedings**

In addition to the QCAT legislation provisions that ensure the tribunal take all reasonable steps to ensure proper understanding and regard, the tribunal must take all reasonable steps to ensure each child taking part in a proceeding who is not a party to the proceedings understands the tribunal's procedures.

The QCAT legislation provisions include general steps that must be taken by the tribunal to ensure proper understanding and regard and include to ensure proceedings are conducted in a way that recognises and is responsive to the needs of a party or witness in a proceeding who is a child.

### **Review of applications of behalf of children CPA 1999 only**

- A person may file a review application on behalf of a child only with the president's permission.
- The president may give permission only if the president considers:
  - the person is not, on the person's own behalf, entitled to apply for the decision to be reviewed by the tribunal; and
  - it is in the child's best interests that the application be made; and
  - it would be inappropriate for, or unreasonable to require, the child to make the application himself or herself.
- A review application filed on behalf of a child with the president's permission can only be withdrawn with the president or tribunal's permission. Such permission can only be given if the president or tribunal considers that, having regard to the child's views or wishes, if any, it is in the child's best interests that the application be withdrawn.

### **Representation of children by lawyers**

- The QCAT legislation provides that parties are to represent themselves unless the interests of justice require otherwise.
- The QCAT legislation identifies those situations in which a party may be represented including when the party is a child or person with impaired capacity; or when an enabling Act or the rules states the person may be represented.
- The *ACA* and *CPA* (enabling Acts) provide that the child may be represented before the tribunal by a lawyer.

### **Separate representation of children**

- The QCAT legislation provides that parties are to represent themselves unless the interests of justice require otherwise.
- The QCAT legislation identifies those situations in which a party may be represented including when the party is a child or person with impaired capacity; or when an enabling Act or the rules states the person may be represented.
- The *ACA* and *CPA* (enabling Acts) provide that the child may be represented before the tribunal by a lawyer.
- A separate representative must not in any proceeding be called to give evidence, and if called must not give evidence, about a communication between the representative and the child for whom the representative was appointed.

### **Children must not be compelled to give evidence**

A child must not be compelled to give evidence in a proceeding.

Before a child gives evidence in a proceeding, the tribunal must satisfy itself that the child is willing to give the evidence.

### **Child's right to express views to the tribunal**

- If a reviewable decision is about a child and the decision is being reviewed by the tribunal then whether or not the child is a party to the review or appears as a witness before the tribunal, the child has the right to express his or her views to the tribunal about matters relevant to the review.

### **Children providing evidence and expressing views**

When a child is giving evidence or expressing the child's views to the tribunal the only persons who may be present are:

- the constituting members;
- the lawyer, if any, representing the child;
- the separate representative, if any, for the child;
- the child's support person if the child has a support person and agrees to that person's presence.

Despite this the child may elect to give evidence or express the child's views in the presence of the parties and their representatives if the child is 12 years or more; and is represented by a lawyer or a separate representative.

### **Questioning of children**

- A child giving evidence or expressing the child's views in a proceeding must not be cross-examined.
- Also, only the following persons may ask questions of a child giving evidence or expressing the child's views in a proceeding:
  - the constituting members;
  - the lawyer, if any, representing the child;
  - the separate representative, if any, for the child.

**Provisions applying if party to review is a child who is a parent of the child about whom the reviewable decision was made**

- If a party to a review is a child who is a parent of the child about whom the reviewable decision was made; and in a proceeding for the review the parent elects to give evidence then the provisions regarding “Children giving evidence or expressing views to the tribunal” and “Questioning of children” do not apply to the parent.
- Before the parent gives evidence, the tribunal must tell the parent that:
  - he or she may be cross examined by the tribunal or a party to the proceeding; and
  - he or she may, at any time while the cross-examination is continuing, refuse to be further cross-examined; and
  - if he or she refuses to be further cross-examined then this may effect the weight given by the tribunal to his or her evidence.

**President or tribunal may authorise a medical examination of a child (CPA only)**

- For a review, the president or the tribunal may, by order, authorise a medical examination of a child and require a report of the examination of a child and require a report of the examination to be filed with the registrar.
- The order must state the particular issues the report must address.
- The president or tribunal must not make the order unless the president or tribunal is satisfied:
  - The medical information, if any, available to the tribunal about the child is insufficient to allow the tribunal to decide the review; and
  - The child’s interests will be best served by making the order.
- In deciding whether the child’s interests will be best served by the making the order, the president or tribunal must consider the child’s views and wishes, if any, and the effect the medical examination may have on the child having regard to the number and frequency of any previous medical examinations the child has undergone.

**Carrying out medical examinations**

If the president or tribunal authorises a child’s medical examination a doctor may medically examine the child even though the child’s parents or guardian has not consented to the examination, subject to the rights the child has in relation to the examination.

In deciding any liability in relation to the carrying out of the examination, the doctor is taken to have the consent of the child’s parents or guardian to the examination.

### Parties to a review

The parties to a review are:

- the applicant for the review; and
- the decision maker; and
- a person who elects to become a party under the provision "Certain persons may elect to become parties".

### Certain person may elect to become parties

- Persons who are given an information notice detailing a review application may elect to become a party to the review to which the notice relates by filing a notice of election with the registrar.
- The notice of election must be filed with the registrar within 7 days after the person receives the information notice.
- The tribunal may shorten the period for filing the notice of election only if satisfied that not to do so will result in a child's interests being adversely affected or another party to the review suffering hardship.

### Joining of a person as a party to proceedings

The tribunal may join a person as a party to a review if it is satisfied the person is genuinely concerned in the subject matter of the review.

However, if the review concerns a child, the tribunal must not join a person as a party unless it is satisfied that to do so would be in the child's best interests.

The tribunal may join a person as a party to the review on its own initiative or on application by the person.

The tribunal may join a person as a party to the review at any time before the review application is finally decided by the tribunal.

### Confidentiality Order

- On its own initiative or on application by a party to the review the tribunal may, by order (a **confidentiality order**), prohibit or restrict the disclosure to a party to a review of all or some of the evidence given before the tribunal, or of the whole or part of the contents of a document given to, or received in evidence by, the tribunal for the review. The tribunal must be satisfied that if it were not to issue the confidentiality order:
  - a child is likely to be harmed; or
  - the safety of another person is likely to be endangered; or
  - there would be undue interference with the privacy of a child or another person.

- In deciding whether to make a confidentiality order or giving effect to a confidentiality order the tribunal may exclude a party, and any representative of the party, from part of the review or deal with a document in a way that ensures it is not disclosed to a party.
- A confidentiality order does not act to prohibit or limit the disclosure of material to a separate representative in a review.

### **Certain information not to be published**

- A person must not publish information given in evidence or otherwise in a proceeding before the tribunal unless the tribunal consents to the publication. To consent to the publication the tribunal must be satisfied the publication is in the public interest and does not conflict with the best interests of the child.
- A person must not publish information that is likely to identify a person who:
  - Appears as a witness before the tribunal in a proceeding; or
  - Is a party to the proceeding; or
  - Is mentioned, or otherwise involved, in the proceeding.

### **Confidentiality of Information**

- A person who is, or was, a member, an expert, an independent inquirer or a member of the tribunal's staff and obtained information in the course of performing the person's functions under the Act must not disclose that information if the information is about another person's affairs. Maximum penalty 100 penalty units or 2 years imprisonment.
- However if the information is disclosed in the performance of the functions under the Act or the QCAT Act; or relates to an adult and the information is disclosed with the written consent of the adult and the information is unlikely to identify a child or the disclosure is otherwise authorised or permitted under an Act or required by law then the penalty does not apply.

### **Requests to the Chief Executive**

- The president may ask the chief executive to notify the president, within a reasonable state time:
  - of the steps taken to give effect to the tribunal's decision; or
  - of the steps taken to give effect to the tribunal's recommendations and, if no steps have been taken, the reasons for this.

### **What happens if a decision is not given effect?**

- If the president after considering the response of the chief executive given under “Requests to chief executive” is of the opinion that:
  - the tribunal’s decision has not been given effect; or
  - no steps have been taken to give effect to the tribunal’s recommendations or the steps taken are inadequate or inappropriate.
- The president may report on the matter to the Minister responsible for the department.
- The president must attach the following to the report:
  - if the report is about the tribunal’s decision then must attach copies of the decision and response;
  - if the report is about the tribunal’s recommendations then must attach copies of the recommendations and response.

### **Representation**

- Generally people who file an application with QCAT will have to appear in person before the tribunal.
- Leave is to be sought should the person wish to have a lawyer, advocate or friend represent them at the tribunal.
- Where there are complex issues of fact and law then it is likely the tribunal will allow the person to be represented.
- Specific provisions relating to the representation of children will be included in the *CPA* and *ACA*.

### **Costs**

- As a general rule each party to a QCAT matter will have to pay their own costs.
- QCAT will however be able to require a person to pay another party’s costs.
- However the tribunal must not award costs against a child.
- Although a representative of a child may have costs awarded against them if the representative acted in a way which caused unnecessary costs to another party to the proceeding.

### **Rights of Appeal**

- QCAT will have its own internal appeal jurisdiction (the Appeal Tribunal).
- However in certain situations a person will need to ask the QCAT President for permission to start the appeal.
  - E.g. if the appeal is based on a question of fact; question of mixed law and fact; decision that is not a final decision (stay); decision to award costs.
- A final decision of an appeal heard by the QCAT Appeal Tribunal can be appealed with leave of the Court of Appeal only on a question of law.

### **Vulnerable persons**

- QCAT Bill includes provisions to help ensure the tribunal is responsive to all people that might appear before it. Such provisions include:
  - proceedings are to be responsive to parties with particular needs including children;
  - provisions for 'special witness' which allow the tribunal to protect children who may suffer disadvantage or trauma in the process of giving evidence, by ordering that the evidence is to be given in a particular way; and
  - that hearings can be closed to protect the privacy of parties in certain circumstances.

### **Commencement of the Legislation**

- QCAT commenced 1 December 2009.

### **Want more information**

- refer to the website [www.tribunalsreview.qld.gov.au](http://www.tribunalsreview.qld.gov.au) for further information. The website includes a summary sheet that sets out how the new legislation will affect the current operation of the Children Services Tribunal.

## QCAT'S REVIEW JURISDICTION - TIME LINES

Decision Phase	No	Time line	Event
	1a	Not stipulated but probably as soon as practicable after decision made:	<p><i>Decision letter</i> &amp; statement of reasons to be issued by decision-maker ("D-M") re:</p> <ul style="list-style-type: none"> <li>• "supervision direction" (s 78(1) CPA);</li> <li>• "withholding" (s 86(5) CPA);</li> <li>• "contact" (s 87(3) CPA).</li> </ul>
	1b	As soon as practicable after decision made:	<p><i>Decision letter</i> &amp; statement of reasons to be issued by D-M re:</p> <ul style="list-style-type: none"> <li>• "in whose care (s 86(2) CPA);</li> <li>• "remove from care" (s 90(2) CPA).</li> </ul>
	1c	Within 10 days after decision made:	<p><i>Decision letter</i> &amp; statement of reasons to be issued by D-M re:</p> <ul style="list-style-type: none"> <li>• "refuse to issue or renew application for licence (s 129(2)(a) CPA);</li> <li>• "refuse to issue or renew application for certificate" (s 136(2)(a) CPA);</li> <li>• "refuse application to amend an authority" 137(7)(a) CPA);</li> <li>• "amend an authority" (s 138(6)(a) CPA);</li> <li>• "suspend or cancel authority (s 140(4) CPA).</li> </ul>
	1d	Immediately after decision made:	<p><i>Decision letter</i> &amp; statement of reasons to be issued by D-M re:</p> <ul style="list-style-type: none"> <li>• "cancel authority" (s 140A(1) CPA).</li> </ul>
<b>Application phase</b>	2	Within 28 days after "relevant day":	Applicant must file review application within 28 days of the "relevant day" (usually the day decision letter received) (s 33(3) QCAT Act).
<b>Notice of Application</b>	3	As soon as practicable but not less than 7 days after application filed:	Registrar must give to D-M notice of application and a copy of the application (s 99E(1) CPA; s 37 QCAT Act; r 19 QCAT Rules).
<b>Notice of persons</b>	4	Within 7 days of receipt of the notice of application:	D-M must give to the registrar notice of the names and addresses of all person entitled to apply (s 99E(2) CPA).
<b>Notice of Election</b>	5	Immediately upon receipt of the notice of other entitled persons:	Registrar must give all entitled persons an information notice and notice of election (s 99E(6) CPA).
	6	Within 7 days of receipt of notice of election (or shorter period):	Entitled persons must file a notice of election within 7 days of receipt (s 99ZB(3) CPA) unless the period is shortened by the tribunal (s 99ZB(4)).
<b>SOR Phase</b>	7	Within 28 days of receipt by D-M of copy of review application:	D-M must give the registrar a statement of reasons and all other relevant documents within 28 days of receiving a copy of application (s 21(2) QCAT Act).

## **Statement of Reasons for the Children Services Tribunal**

### **Purpose:**

The purpose of the Statement of Reasons is to assist the Tribunal. The statement is to be submitted within 21 days of receipt of the section 60(1) & 74 "Notice of a Review Application".

The statement of reasons must:

- Set out the findings on material questions of fact
- Refer to the evidence/material on which those findings were based and
- Give the reasons for the decision

The Statement of Reasons is the first written material that the Tribunal receives from the Department. After reading the Statement of Reasons, the Tribunal should have a clear understanding of:

- what the decision was, (authority and departmental policy relied on, who is the delegated officer etc)
- what was the sequence of events and assessments that lead up to the decision ,
- the decision making process,
- any review processes used,
- how the decision was communicated to the parties

It is useful to attach any relevant documents that were used to reach the decision. For example:

- Departmental policy documents
- Records of family meetings, letters provided to the parties
- Research, literature, training material that was read
- Chapter/sections from the Careprovider Handbook

Some brief background information is also useful to include such as:

- How the subject child came into care, family constellation
- Brief history of contact with the Department of Child Safety
- If careprovider, their placement history, any training attended, assessment process, recommendations from the assessment as relevant.

It is the responsibility of the department to provide as thorough information as possible. Although many of the Tribunal members have extensive experience in family law and child welfare, it should not be assumed that they have a background in departmental decision making, policy and procedures.

### **Style**

- Language – Keep it simple and precise – remember it is as much for the parent and child as it is for the Tribunal.
- Font type and style – select a style that makes it easy to read
- Headings are useful
- Numbering pages and paragraphs is essential
- Authors name, date and signature are essential.

## SUBPOENAS

### What is a subpoena?

A subpoena (or summons in a lower Court) is an order issued by the Court requesting the production of documents or individuals be brought before a Court to assist in the resolution of litigation.

There are 3 types of subpoena:

1. A subpoena to appear & give evidence:
  - when the department has been served with a subpoena to appear and give evidence, someone from the department must attend court on the date and time specified
  - a subpoena for individual officers to appear should be served on those officers personally.
2. A subpoena for production of documents and to appear and give evidence:
  - someone from the department must attend court on the date and time indicated, give evidence in the proceeding and produce the documents set out in the subpoena schedule
  - the subpoena should be service on that officer personally
  - the production of documents refers to **limited** file material to be taken by the officer to court. (eg Initial Assessment or affidavit the officer subpoenaed to give evidence has authored)
  - the officer is usually asked to speak to these documents
  - where the entire file is required a separate subpoena for production of these documents is requested.
3. A subpoena for production of documents:
  - if the department has been served with a subpoena to produce documents the department has a choice as to how the subpoena will be complied with.
  - the documents may be produced to the court registry before the return date (court date)
  - if this is done, the subpoena has been complied with and someone from the department will not have to appear in court on the date specified in the subpoena.
  - Alternatively, someone from the department may appear in court on the date specified if we objected to having to produce the material or having the parties inspect or copy the documents.

**The Director-General** is the lawful owner and controller of all departmental records including case records, emails, file notes and all other written and electronic material.

**Subpoena's for documents should be served at Court Services and addressed to the Director-General.** A departmental officer cannot be required to produce any of the departmental records as they are not the owner or controller of those records.

**If an officer is service with a subpoena to produce documents addressed to that officer, then this should not be complied with and the person serving the subpoena should be advised to have the subpoena re-issued and addressed to the Director-General and directed to the Subpoena Team.**

\*\* Cheques for conduct money /witness expenses made out to individual officers to attend court should be signed over to the department and then banked or forwarded to finance.

#### **What information is privileged?**

- notifier and linking information
- sensitive or personal information
- information which may impact on deliberative process
- information which attracts legal privilege

#### **Notifier information is strictly confidential, disclosure can only occur:**

- in the course of performing functions under the *CPA 1999* to someone else performing functions under the Act eg police officer involved in a joint investigation.
- to the Ombudsman when as investigation is being conducted
- when giving evidence in legal proceedings – only with the leave of the court.

For most subpoenas sensitive or identifying information is deleted prior to production in court. Section 191(1)(b)&(d) of the *CPA 1999* allows for refusal of disclosure of certain information during proceedings.

Personal information not relevant to the proceedings (eg foster carer or other persons information) is also withheld.

All notifier identities should be withheld unless they are statutory officers with delegations under the *Child Protection Act 1999*. This is because only statutory officers have the power to act under the *CPA 1999* – it is their job and the public perception is that these officers report and assess child abuse and neglect.

**Notifier information which is usually not privileged:**

- when police are notifiers
- when a CSO is the notifier

**Search warrants / Orders:**

- Police / Coroners Search Warrants to produce documents are service upon the individual CSSC or YJC.
- Warrants / Orders require that all relevant information be provided to them. However, if the officer serving the warrant agrees or the Department has some notice, attempts should be made to privilege notifier identities.
- In the event of this being unable to occur, a letter should be attached to the files stating that the information ordered contains confidential and sensitive information and that the police should adhere to the confidentiality provisions of the *CPA 1999*.

## UNDERSTANDING EVIDENCE:

The evidence necessary to include in an Affidavit in support of an Application for a Child Protection Order, will typically require the following to be established:

1. The child is a child in need of protection. See s.10 *Child Protection Act 1999* (hereinafter "CPA 1999") definition of "child in need of protection":-
  - a) Child has suffered harm, is suffering harm or is at an unacceptable risk of suffering harm; and
  - b) The child does not have a parent able and willing to protect them from harm ["Harm" is defined at s.9 CPA 1999]
2. That the Order being sought is the most appropriate and least intrusive Order to protect the child; and
3. That the Department taken reasonable steps to assist the family in addressing the protective concerns prior to seeking the Order (an assessment of the case plan and that it is appropriate for meeting the protection and care needs of the child).

Many of you will recognise that the above canvasses matters that are outlined in s.59 (1) (a) – (e) *Child Protection Act 1999*:-

(a) the child is a child in need of protection and the order is appropriate and desirable for the child's protection; and

(b) there is a case plan for the child-

- (i) that has been developed or revised under Part 3A; and
- (ii) That is appropriate for meeting the child's assessed protection and care needs; and

(c) if the making of the order has been contested, a conference between the parties has been held or reasonable attempts to hold a conference have been made; and

(d) the child's wishes or views, if able to be ascertained, have been made known to the court; and

(e) the protection sought to be achieved by the order is unlikely to be achieved by an order under this part on less intrusive terms.

The reason that proving these elements is of utmost importance is that s.59(1) clearly states that the Childrens Court **may only** make a Child Protection Order **if it is satisfied** that these matters have been established.

Do not however forget that there are other elements of s.59 that also need to be established by the evidence, predominantly when the Application is for Long-Term Guardianship (and may be relevant for a custodial Child Protection Order if it is sought in favour of another suitable person).

1. Consider the elements of s.59 *Child Protection Act 1999* when preparing to draft an Affidavit;

2. Ensure that the evidence exists to establish these elements and importantly, that it supports the nature of the Child Protection Order that you are seeking;
3. In addition to s.59, also have regard to sections 5, 9, 10 *Child Protection Act 1999* and remember sections 6 & 83 for indigenous children;
4. In determining what Order to make, the Court must have regard to the welfare and best interests of the child as paramount (s.104 *Child Protection Act 1999*).

### **Rules of Evidence**

Evidence is the cornerstone of a legal system and without it, nothing can be proved or disproved. As a result, strict rules have developed to ensure that the legal process is fair to all.

These rules apply to written, oral and recorded evidence, which is allowed to be admissible in a court if it complies with these rules. Given that the focus of this lecture is on Affidavits, we will briefly look at the rules of evidence, as they apply to Affidavit writing.

### **Relevant Evidence**

- The most fundamental rule is **relevance**.
- What is relevant or not is determined by what you have to prove to get the Order you seek.
- In the previous slide regarding necessary elements any evidence that goes to proving any of those points will be considered "relevant".
- There are no specific legal formulas to determine if something is relevant or not.
- Everything which you do put in an Affidavit should be relevant.

The three ways of putting written evidence before the Court are:

#### 1. Direct Evidence

**Direct** evidence is when the person who saw/heard/smelt or felt the information *is the actual person* who provides the evidence to the Court.

E.g. An Affidavit from a neighbour who witnessed a fight between parents in front of the children. That neighbour will provide the information in their Affidavit in the first person – "I saw/heard..." In other words, that neighbour will give **direct** evidence regarding the fight.

#### 2. Admissions

An **admission** is a statement of fact made by a parent, contrary to their interests, in relation to a factual issue that the Applicant is attempting to prove.

For Example – The Mother stated to the Applicant that she took drugs whilst the children were in her care.

#### 3. Hearsay Evidence

Hearsay evidence is a *minefield!* Hearsay is evidence of something reported to the Court indirectly.

## **R v Hennessey (1978) 68 CrAppR419**

*"Witnesses, whether for the prosecution or the defence, are required to testify to what they saw, heard, smelt or felt and not what they know because of what they have been told"*

### **Hearsay Evidence & the Evidence of Children**

s.112 CPA 1999 provides that children are **not** called to give evidence in child protection proceedings without leave of the Court. Given that it is necessary to place the evidence of children before the Court, as it is not coming directly from the mouth of the child, or by way of written Affidavit of the child, the evidence of the child is **hearsay**.

### **Best Evidence Rule**

This rule requires that the best evidence is to be used to prove a fact and that the best evidence is **Direct Evidence**.

**But! Can't we use hearsay evidence anyway?**– s.105 CPA 1999  
*The Court can "inform itself in any way that it sees fit"*

Queensland has **not** dispensed with the rules of evidence. Rather, the Childrens Court has a *discretion* to relax the operation of the rules of evidence as it sees fit in appropriate cases (see *Dale v Scott ex parte*; *Dale* (1985) 1 QdR 406 @ 413, 414)

### **AND**

In *Taylor v L*, Thomas J, emphasising the Court's need for caution when allowing hearsay material into evidence stated:

*"...I agree that the liberty to tender hearsay could be abused. I cannot imagine any judge would allow a grave allegation against a parent be proved solely by hearsay, at any rate in a case in which direct evidence could be produced..."*

Further –

It is open for the Legal Representatives for Respondent parents to make objections to hearsay evidence given that the Rules of Evidence have not been dispensed with.

Remember that a party to the proceeding has the right to challenge every piece of evidence by asking questions such as:

- ✓ Who said this? To whom? Who else was there?
- ✓ What was the context in which this happened?
- ✓ What were your observations of this person at the time?
- ✓ How can you make an assessment on any of the above if you were not their in person?

### **REMEMBER:**

- Best to get direct evidence;
- Admission evidence is useful;
- Disclosures made by children are hearsay but can & do carry weight; and
- Use hearsay as a last resort.

**Form 27**  
*Childrens Court Act 1992*  
*Child Protection Act 1999*  
(Section 171)

**APPLICATION FOR WARRANT FOR APPREHENSION OF CHILD**

**THE INFORMATION OF:**

(Name), \*an authorised officer / a police officer,  
of:

\*sworn / affirmed this day before the undersigned Stipendiary Magistrate, who says –

- \* Under an order made pursuant to the *Child Protection Act 1999*, the chief executive has been granted \*custody / guardianship of the child (name and date of birth), and the chief executive has not been able to take the child into the chief executive's custody
  
- \* Under an order made pursuant to the *Child Protection Act 1999*, \*the chief executive / (name of relative or other person) has been granted \*custody / guardianship of the child (name and date of birth), and the child has been unlawfully removed from the custody of \*the chief executive / (name of relative or other person).

The grounds of this application are as follows:

I request that the Stipendiary Magistrate issue a warrant for apprehension of the child authorising an authorised officer or police officer to, for that purpose –

- a) enter any 1 or more places the officer reasonably believes the child is;
- b) search the places to find the child;
- c) remain in the places for as long as the officer considers is reasonably necessary to find the child;
- d) take the child to a safe place.

**Signature of Applicant:**

**SWORN / AFFIRMED** before me:

**Magistrate**

Place:

Date:

\*delete whichever is not applicable  
Form 27 – Version 1, March 2000

**Form 28**  
*Childrens Court Act 1992*  
*Child Protection Act 1999*  
(Section 172, 173)

**WARRANT FOR APPREHENSION OF A CHILD**

TO: All police officers  
All authorised officers under the *Child Protection Act 1999*

Information has been supplied upon oath before me, and I am satisfied that –

- \* a warrant is necessary to enable an authorised officer or police officer to take the child (name and date of birth) into the chief executive's custody;
- \* the child (name and date of birth) has been unlawfully removed from a person's custody or guardianship under the *Child Protection Act 1999*;

**YOU ARE** required to apprehend the child and you are authorised, for that purpose to –

- a) enter any 1 or more places you reasonably believe the child to be;
- b) search the places to find the child;
- c) remain in the places for as long as you consider is reasonably necessary to find the child;
- d) take the child to a safe place.

For the purpose of executing this warrant the person executing the warrant may exercise powers under the warrant with the help, and using the force, that is reasonable in the circumstances.

This warrant ends on (day and date).

**Magistrate**

Place:

Date:

---

This warrant was made by means of \*telephone/ /radio/other pursuant to section 173 of the *Child Protection Act 1999*.

I hereby certify that this document is a true representation of the warrant issued by the above-named Magistrate.

**Signed:**

Name:

\*Authorised officer / police officer

\*delete whichever is not applicable  
Form 28 – Version 1, March 2000

## Enacting a Queensland warrant in another state or territory

### **Authority**

- Child Protection Act 1999, section 171 and 172
- Service and Execution of Process Act 1992
- Interstate Child Protection Warrants Protocol (21 March 2002)

### **Why a warrant?**

When a child subject to a child protection order in Queensland has been unlawfully removed or withheld from a person's custody or guardianship in Queensland, and is currently in another state or territory, the child may be recovered from the other state or territory using the Interstate Child Protection Warrants Protocol (Warrants Protocol).

When seeking to recover a child subject to a child protection order in Queensland from another state or territory:

- follow the procedures outlined in the Child Safety Practice Manual, in consultation with the ILO;
- apply for a warrant under the Child Protection Act 1999, section 171;
- refer to the Child Protection Act 1999, section 172, for an explanation of the matters the court must be satisfied with before a warrant can be issued; and
- ensure that a departmental staff member is available to travel interstate at the time of the child's apprehension.

### **Warrant process – Queensland enacting our warrant in another jurisdiction**

- A warrant for the recovery of a child from another jurisdiction can only be made when the child has been unlawfully removed or withheld from a person's custody or guardianship under the Child Protection Act 1999, section 171(1). A warrant for recovery can not be obtained if the child has voluntarily moved interstate, for example, a 15 year old voluntarily moving interstate to live with her boyfriend.
- The child must be located interstate before the warrant recovery process can be initiated.
- If the child's whereabouts are not known, the child must be listed as a missing person with the QPS, who will then notify their interstate colleagues.
- Once the child has been located interstate, and a decision has been made by the CSSC that the child is to be returned to Queensland, it is best to try to negotiate with all parties to see if the child can be returned without the instigation of the warrant process.
- If this is not successful and a decision is made to return the child to Queensland using the warrant process, the CSO **should contact the Queensland ILO to discuss the process** and for guidance regarding the procedures to be followed. The ILO will not make decisions for the CSSC, but will guide and assist with the decision making and recovery process.
- If it is agreed that the child should be recovered via the warrant process, the CSO will complete a 'Form 27 - Application for Warrant for Apprehension of Child' and make an application to the Children's Court for a warrant to be issued for the apprehension of the child from another jurisdiction.

Additional notes

- Sometimes assistance is requested from the other jurisdiction's child protection department with attending court. This would normally only occur when the Queensland CSO travelling to the other jurisdiction is delayed.
- In this instance it is possible for the Magistrate to make an order giving temporary custody of the child to a child protection worker in the other jurisdiction, with the child to be handed to the Queensland CSO as soon as possible.

**INTERSTATE**

**CHILD PROTECTION WARRANTS**

**PROTOCOL**

**21 MARCH 2002**

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## INTRODUCTION

### 1. *Purpose*

The purpose of this Protocol is to:

- a) improve the provision of services to children and young persons who are the subject of an interstate child protection warrant of apprehension;
- b) provide guidance to Departmental and Police Officers and improve the co-ordination of Departmental and Police operations; and

Decisions made under this Protocol should promote the care, protection and best interests of children and young persons who are subject to Child Protection Warrants.

Whilst this Protocol is not legally binding on the Parties, all Parties undertake to comply with its terms.

### 2. *Definitions*

For the purposes of this protocol:

“Accompanying Child Protection Officer” means the Child Protection Officer who is referred to in clause 14(b)(iv) below;

“Child Protection Officer” means a person who has statutory authority or responsibility for undertaking child protection work within a Department;

“Child Protection Warrant” means a warrant, which is issued under a Child Welfare Law, for the apprehension of a child;

“Child Welfare Law” means State child protection legislation;

“Children’s Court Magistrate” means a magistrate who, in that capacity, deals with cases relating specifically to children. If there are no such magistrates in a State, then for that State it means a magistrate who can make orders in that State pursuant to the Child Welfare Laws;

“Department” means a State Department which has responsibility for administering the Child Welfare Law of the State or which has officers who have such responsibility;

“Interstate Departmental Liaison Officer” means a person appointed pursuant to clause 11 below;

“Interstate Liaison Officer” means an Interstate Departmental Liaison Officer and/or an Interstate Police Liaison Officer;

“Interstate Police Liaison Officer” means a person appointed pursuant to clause 12 below;

“Justice of the Peace who is able to issue warrants” means a justice of the peace who has power to issue warrants under a law of the State in which the office is held;

“Victorian Bail Justice” means a person who is appointed under section 120 of the *Magistrates’ Court Act 1989* (Vic) as a bail justice;

“Person under a Restraint” is defined in section 3 of SEPA and includes a person on bail or most other non-custodial sentences;

“Police” means a State police force or service or the Australian Federal Police;

“SEPA” means the *Service and Execution of Process Act 1992* (Cth); and

“State” includes the Northern Territory and the Australian Capital Territory.

“Warrant” includes the original document and subsequent copies made and distributed to Interstate Police

## **The Role of Police and the Departments in Relation to Interstate Child Protection Warrants**

### **3. *The Role of Police***

Police are responsible for finding a child who is referred to in a Child Protection Warrant, executing that warrant, taking the child into safe custody and seeking the orders referred to in this Protocol.

### **4. *The Role of the Departments***

The Departments are responsible for seeking Child Protection Warrants and providing care to the children who are apprehended pursuant to those warrants in accordance with the directions of a Magistrate or Justice of the Peace who is able to issue warrants (or a Victorian Bail Justice).

## **Outline of SEPA**

### **5. *SEPA’s Applicability to Interstate Child Protection Warrants***

- a) SEPA is a Commonwealth Act which enables, amongst other things, for warrants from one State to be executed in another State. If a warrant is executed interstate, it must be executed in accordance with SEPA. SEPA addresses issues such as who can execute the warrant, taking the apprehended person before the Court and the orders that the Court can then make.
- b) SEPA enables valid child protection warrants to be executed interstate.
- c) Warrant is defined in section 3 of SEPA to include “a process issued by a court ... in accordance with a law of a State ... that authorises the apprehension of a person.”

- d) A person who is named in a Child Protection Warrant issued in a State may be apprehended in another State, if that person is not in gaol: s.82(1) & (2).

**6. Who May Apprehend a Person Under SEPA**

The person may be apprehended by:

- a) a police officer in the State in which the person is found; or  
b) the Sheriff of that State or any of the Sheriff's officers; or  
c) a member of the Australian Federal Police: s.82(3).

**7. When Must the Person be Taken Before a Magistrate or Justice of the Peace Who Is Able To Issue Warrants (or Victorian Bail Justice)**

Section 83(1)(a) provides that:

*"As soon as practicable after being apprehended, the person is to be taken before a magistrate or justice of the peace who is able to issue warrants" [or Victorian bail justice] "of the State in which the person was apprehended."*

**8. Adjourning an Application**

Section 83(14)(a) has the following provision for adjournments:

*"the magistrate or justice of the peace who is able to issue warrants" [or Victorian bail justice] "may adjourn the proceeding and remand the person on bail, or in such custody as the magistrate or justice of the peace who is able to issue warrants" [or Victorian bail justice] "specifies, for the adjournment."*

**9. Final Orders**

Section 83(8) provides, amongst other things, that if:

- \* a Child Protection Warrant is valid and produced to the court (the warrant can be either a copy or the original); and
- \* the magistrate or justice of the peace who is able to issue warrants [or Victorian bail justice] does not adjourn the hearing; and
- \* the magistrate or justice of the peace who is able to issue warrants [or Victorian bail justice] does not place the child on bail; and
- \* the person is not a Person Under Restraint or in a gaol:

*"the magistrate or justice of the peace who is able to issue warrants" [or Victorian bail justice] "must order*

... (b) that the person be taken, in such custody or otherwise as the magistrate or justice of the peace who is able to issue warrants” [or Victorian bail justice] “specifies, to a specified place in the place of issue of the warrant.”

#### **10. Ancillary Provisions**

Sub-sections 83(9),(11) & (12) also provide that:

- (9) *The order may be subject to other specified conditions.*
- (11) *The magistrate or justice of the peace who is able to issue warrants [or a Victorian bail justice] may suspend an order made under Section 83 paragraph (8)(b) for a specified period.*
- (12) *On suspending the order, the magistrate or justice of the peace [or Victorian bail justice] must order that the person be remanded ...*
  - (a) *in such custody as the magistrate or justice of the peace [or Victorian bail justice] specifies ... until the end of that period.*

#### **Interstate Liaison Officers**

##### **11. Interstate Departmental Liaison Officer**

Each Department must nominate a position which will be referred to in this Protocol as the “**Interstate Departmental Liaison Officer**”. This position must have either a 24 hour number or there must be an alternative number which is an after hours number.

##### **12. Interstate Police Liaison Officer**

Each Police Force and Service must nominate a position which will be referred to in this Protocol as the “**Interstate Police Liaison Officer**”. This position must have either a 24 hour number or there must be an alternative number which is an after hours number.

##### **13. Providing Information Regarding Officers**

- a) Each Police and Department must provide:
  - i) the contact details of each Interstate Liaison Officer to all of the other Police and Departments; and
  - ii) the details of the senior officer referred to in clause **24** (b) below;
- b) If any of the above details change, the Police or Department (as the case may be) must notify the other Police and Departments of the new details within 2 weeks of the change.
- c) The Interstate Liaison Officer is responsible for:

- i) ensuring that this clause is complied with in relation to his or her Department or Police Force or Service; and
- ii) promoting knowledge of, and compliance with, this Protocol.

## **Process**

### **14. *The Initial Steps for the Child Protection Officer***

If a Child Protection Officer obtains a Child Protection Warrant which is to be executed interstate:

- a) the Child Protection Officer must arrange for the the original warrant to be forwarded to the Interstate Police Liaison Officer from his or her own State;
- b) the Child Protection Officer must inform the Interstate Departmental Liaison Officer from his or her own State and the Police Liaison Officer from his or her own State of:
  - i) the type of warrant and child protection order, if any, that applies to the child; and
  - ii) where the child may be located, who may be with the child; and
  - iii) any special circumstances regarding the child; and
  - iv) if available, the details of the Child Protection Officer who is likely to accompany the child from the place where the child is apprehended to the State where the Child Protection Warrant was issued ("Accompanying Child Protection Officer").
- c) If any of the above details change, the Child Protection Officer must inform the Interstate Departmental Liaison Officer from her/his State of the changes.
- d) The Child Protection Officer must ensure that the warrant contains the details of the person who applied for the warrant and, if possible, the details of the Interstate Departmental Liaison Officer from the officer's State.

### **15. *The Interstate Departmental Liaison Officer Informs Interstate Officers***

The Interstate Departmental Liaison Officer (from the State where the warrant was issued) will provide the information which he or she received pursuant to clause 14 above to:

- a) the Interstate Departmental Liaison Officer from the State where the child is believed to have gone; and
- b) the Interstate Police Liaison Officer from the State where the child is believed to have gone; and

- c) the Interstate Police Liaison Officer from the State where the warrant was issued.

**16. Interstate Police Liaison Officer Overseeing Control of the Warrant**

The Interstate Police Liaison Officer (from the State where the warrant was issued) oversees the control of the warrant and is responsible for copying the warrant and, where appropriate, arranging for the destruction of the warrant.

When the Interstate Police Liaison Officer provides a copy of the warrant to interstate police, the warrant should have a coversheet which :

- a) provides the details of the warrant; and
- b) provides contact details from the Department where the warrant was sought; and
- c) refers to this Protocol; and
- d) any other information that would assist in the execution of this warrant, such as where the child may be located, who may be with the child and any special circumstances regarding the child.

**17. Once Police Apprehend a Child**

Once Police have apprehended the child, the police must promptly notify the Interstate Departmental Liaison Officer from the State where the child was apprehended of:

- a) the place and time of the apprehension of the child; and
- b) the likely place and time when the child will be taken before a magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice).

The Interstate Departmental Liaison Officer from the State where the child was apprehended must then promptly provide this information to the Interstate Departmental Liaison Officer from the State where the warrant was issued and the Accompanying Child Protection Officer.

**18. Bringing the Child Before a Magistrate or Justice of the Peace who is able to issue warrants [or Victorian bail justice]**

As soon as practicable after the child is taken into safe care, the police must have the child brought before a magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice). If practicable, the police should seek to have the matter heard by a Children's Court Magistrate.

**19. Order if the Accompanying Child Protection Officer is Present**

If, at the time that the child is brought before a magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice), the

Accompanying Child Protection Officer is present, the police should seek an order that the child is placed in the custody of the Accompanying Child Protection Officer.

**20. *Interim Order if the Accompanying Child Protection Officer is Not Present***

If, at the time that the child is brought before a magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice), the Accompanying Child Protection Officer is not present, the police should seek an interim order which provides that:

- a) the child is placed in the custody of the Department Head or a Child Protection Officer from the Department in the State where the child was apprehended until the earlier of:
  - i) custody is transferred to the person referred to in paragraph "(b)" below; or
  - ii) a specified period (eg 5 working days);
- b) the Department Head or a Child Protection Officer (as the case may be) from the Department in the State where the warrant was issued shall have custody of the child when custody is transferred by the person referred to in paragraph "(a)".

**21. *Varying the Process - General Principles***

The process outlined in this protocol is based on the actions which the parties believe are in the best interests of the child who is subject to an Interstate Child Protection Warrant. The process may be varied in the following situations:

- a) If the following people agree to a varied process:
  - i) a Child Protection Officer from the State where the warrant was issued;
  - ii) a Child Protection Officer from the State where the child is apprehended to the extent (if any) that the decision relates to the care of a person pursuant to an order referred to in clause 20 above; and
  - iii) a Police Officer to the extent (if any) that the decision would impose further obligations upon the relevant officer from the Police
- b) If:
  - i) the child is in gaol;
  - ii) the child is a Person Under Restraint; or

- iii) a magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice) notes that he or she is unwilling to grant the orders which are sought by the police officer,

the orders sought should reflect what the officers, referred to in clause "21(a)" above, believe is appropriate and in the best interests of the child.

**22. *Varying the Process - Illustrative examples:***

If the child is apprehended very close to the office of the Department which sought the warrant, the police force which apprehended the child may deal directly with that Department. For instance, the police may apprehend a child in Albury in accordance with a warrant issued in Wodonga. In this case, the police who apprehend the child may deal directly with the Departmental Liaison Officer in Wodonga (this is different to the process contained in clause 17 above);

After the execution of the warrant, the child could be placed on a plane in the State where the child was apprehended and the relevant officer in the State which issued the child protection warrant could collect the child at the airport. This approach would need to be consistent with the order of a magistrate or justice of the peace who is able to issue warrants (or a Victorian bail justice);

If, at the time that the child is brought before the magistrate or justice of the peace who is able to issue warrants (or Victorian bail justice), the Accompanying Child Protection Officer is not present and the Magistrate is not prepared to grant the order outlined in clause 20 above, the police should seek an order adjourning the hearing and placing the child in the custody of the Department Head or a Child Protection Officer from the Department in the State where the child was apprehended. Upon the return of the matter, the child could be placed with the Department Head or a Child Protection Officer from the Department in the State which sought the order.

These examples are not exhaustive. They illustrate the capacity for some flexibility in ensuring the best interests of the child who is subject to an Interstate Child Protection Warrant.

## **Financial Arrangements**

### **23. Costs**

Each Department and Police Force or Service shall be responsible for the costs it incurs in relation to any proceeding under SEPA.

## **Dispute Resolution Process**

### **24. Dispute Resolution**

- a) Any dispute in relation to a party's compliance with this protocol should initially be dealt with by the relevant Interstate Liaison Officers.
- b) If the dispute cannot be settled by the respective Interstate Liaison Officers, then the matter shall be referred to people who are senior officers nominated by each Department and Police Force or Service as the appropriate officers to resolve such disputes.

## **Review & Withdrawal**

### **25. Commencement of the Protocol**

This protocol will commence operation on 1 June 2002.

### **26. Review of the Protocol**

The parties will constantly monitor the Protocol and will commence a formal review of the Protocol 12 months after it comes into effect.

### **27. Amendments to the Protocol**

The Protocol can be amended if all of the Interstate Liaison Officers agree to the change.

### **28. Withdrawal**

A party to this protocol may withdraw from the protocol with 12 months notice. If a party withdraws from the protocol, the protocol continues to apply to all other parties.

**Sue Birtles**  
**Executive Director**  
**Children's Youth and Family Services**  
**Department of Education and Community Services**  
**Australian Capital Territory**

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**Carmel Niland**  
**Director-General**  
**Department of Community Services**  
**New South Wales**

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**Paul Bartholomew**  
**Secretary**  
**Territory Health Services**  
**Northern Territory of Australia**

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**Frank Peach**  
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**John Ramsay**  
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**Pam White**  
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**Victoria**

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**Jane Brazier**  
**A/Director General**  
**Family and Children's Services**  
**Western Australia**

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# ROLE OF LEGAL SERVICES

Presented by  
**Steve Habermann**

**Director -Legal Services – Child Safety Services & Sport**



## Who are we?

- Legal Services serves as a primary role the Executive of the department
- the branch will take care, for the executive, of all of its legal requirements
- One of the major matters that Legal Services administers is the litigation that exists, essentially with the department being nominated as defendant. In fact it is the State of Queensland that is actually named as defendant in any such proceedings

## What litigation do we do?

- Currently there are about 120 claims against the department. Of these 120 there are currently 46 that are active and current and which require the attention of Legal Services.
- The remainder are claims that have been commenced but have not been actively pursued by the claimants.
- The majority of the claims are personal injuries claims brought by former children in foster care.
- Overall there are four main types of claims

## What are the types of claims?

1. **First**, and in the **majority**, are "**abuse**" **claims** where the **statute of limitations does apply**. Claims have been brought by former residents of Queensland institutions as well as former children in foster care. The claimants will have to demonstrate to a court why they should not be barred from bringing their claims because the claims have been commenced "out of time". The claimants allege that they were abused whilst in care of the State and that the State failed in its duty of care to them. Most of the claims have been made in the last four years

Many claims by former residents in institutions have been finalised using the REDRESS SCHEME which spent an estimated \$100 Million dollars in an administrative process which created an automatic entitlement for every person that had been in an orphanage and who had met certain other criteria.

2. **Second**, there are **abuse claims** where the **statute of limitations does not apply** - that is, the claims have been commenced within the time limits provided for by the *Limitation of Actions Act 1974*. Where the alleged abuse is said to have occurred within the limitation period and the Director-General is still the guardian of the child then the State will refer the matter to the Public Trustee to act in the child's interests.

The Public Trustee would normally brief the matter to a private firm of solicitors to act for the child. This is appropriate as the State would have a conflict of interest and could not provide instructions on behalf of the child.

These matters are where a child in care has a claim against the State , usually this Department and the Director-General would, but for this referral be the litigation guardian and the proper defendant. We currently have three such matters

3. **Third**, there are claims by foster carers who have been injured by children in our care. This commonly occurs where we have placed a difficult or violent child with the carer. Or we have claims where workers in residential care services try and recover damages from the State. We currently have two highly contested matters.
4. **Fourth**, there are claims where the claimants allege that they have suffered as a result of the adoption process. Most of the claims have been made in the last four years. None have been pursued and all remain dormant at this time. We would anticipate a significant reduction in such claims due to the new *Adoption Act 2009*
5. **Fifth**, there are some claims where a person alleges that the State of Queensland failed to remove them from their parents and or care situation in breach of the duty of care owed by the Department to all children in Queensland. We currently have 8 of these types of claims.
6. **Last**, there are a small number of miscellaneous claims, such as work related stress injuries etc.

## Who represents the department in these cases?

- In relation to these matters Crown Law acts on behalf of the department, and a significant amount of the legal work is completed in partnership between Legal Services and Crown Law.
- Legal Services locates relevant evidence, considers advice provided, interprets the advice for relevant persons such as the Director General and Minister and will provide opinions on the advice given by Crown Law, suggest the most appropriate course to adopt so that the executive can provide proper instructions back to Crown Law .
- The ultimate responsibility for the litigation matters lies with QGIF ( Queensland Insurance Fund) who are our insurers for unforeseen contingencies.
- There are also cases where the chief executive of the department acts as litigation guardian for children. In these cases, the department is not being sued. The child is suing someone else for a wrong that it is alleged that other person has committed against the child. We are currently managing 12 such cases.

## What else do we do?

- As to the other duties performed by Legal Services, imagine all of the issues that can come up in any corporate entity that may have a legal component, and this is what we deal with on a daily basis. Therefore, our tasks are not limited to dealing with child protection issues. Our work is extremely wide ranging with the branch being called upon to deal with any legal issue that arises within the department.
- On a daily basis Legal Services deals with 20 to in excess of 30 of email requests for authoritative legal advice on many issues. For instance we may be dealing at one moment with a legislation question in relation to a child protection matter, be required in the next instance to draft overnight a contract for the retention of specialised services and in the next be drafting statements of reasons for judicial review purposes.

## Legal Services v Court Services

- We also deal with inquests and all matters arising from Coronial Inquiries into deaths of children. We deal with the provision of evidence, we draft and edit statements for the coroner, we conduct witness preparation for witnesses and we keep the executive informed.
- As to the interface with Court Services and Child Safety Service Centres, the difference between our dealings with Court Services and the CSSC's is that in relation to Court Services we are almost always dealing with child protection legislative issues. With the CSSC's, it can again be any one of the raft of legal questions that arises as a result of general business of the department.
- In relation to child protection legislative issues, if a CSSC has a question that has arisen as a general issue – say something that keeps arising and needs an answer with general application of the legislation, Legal Services should be approached for legal advice. Unless it is a very basic question, the request should be in writing – email – so that everyone knows precisely what is being considered. Likewise, Legal Services will then respond in writing.

- Where there is a specific issue that has arisen because of a matter currently being dealt with in the court or tribunal, such issues must be referred to Court Services in the first instance. Court Services has the experience of being able to interpret the legislation and of being able to apply it in the court and tribunal environment.
- Court Services also has the benefit of a close contact with the Brisbane Children's Court magistrate and members of the tribunal, so officers from Court Services will be far more aware than Legal Services of what sort of consideration is to be given to application of the legislation in the court situation.
- Therefore no specific matters that are before the court or tribunal should be referred to Legal services. If there is a legal issue that Court Services needs to clarify, it will be for Court Services to contact Legal Services. From the point of view of the CSSC's, they will refer the matter to, and receive a response from, Court Services.

- It is probably clear, therefore, that the interaction between Court Services and Legal Services is one where Legal Services will be requested to provide, from time to time, authoritative legal advice where specific issues arise. We will be looking at the specifics of a case and at the literal correct interpretation of the legislation, or whether there is more than one interpretation for instance, and will provide advice accordingly.
- We will also look at matters where it is perhaps hoped that a particular interpretation can be placed on legislation and determine whether an argument can be mounted that supports the interpretation. Of course we are bound by what are called model litigant principles, so we are not in a position to promote a dubious interpretation of the law.

## Judicial Review v Administrative Review

- Judicial Review looks at whether the decision was made contrary to legislation, rules of natural justice, made on no evidence or otherwise made outside of power. See section 20(2) of the *Judicial Review Act 1991*. It basically looks at whether a decision was made contrary to law. We are currently involved in three such reviews and they are generally around grant funding issues and around licensing decisions. The only result that can come from a Judicial Review is an order to make the decision again.
- Administrative review is a merits review process which looks at all the information afresh and any new information to determine if the decision made was the correct one.

In Queensland judicial review is undertaken by the Supreme Court pursuant to the *Judicial Review Act 1991* and other Tribunals in relation to specific legislation (for example QCAT deals with Child Safety (Schedule 2) and Children's Commission (blue card refusals etc)).

The Queensland *Judicial Review Act 1991* (JR Act) gives the public the right to:

request the reasons for the decisions which adversely affect them;  
or

seek a review of a decision in the Supreme Court.

As well as administrative decisions of Government departments and local authorities, the JR Act also applies to administrative decisions of semi-government agencies and statutory authorities.

'Administrative decisions' which are made under an enactment are reviewable. An enactment includes part of an Act or a statutory instrument such as regulations, rules, by-laws, ordinances, guidelines or standards.

'Decisions' include a failure to make a decision and actions and conduct leading up to the making of the decision. A decision can be an order, award or determination, certificate, direction, approval, consent or permission, licence, condition or restriction, declaration, requirement, demand or a refusal to hand over an article.

Some of the more quirky applications we have seen recently were:

- seeking a Statement of Reasons from a person that did not make the decision and
- A request for a judicial review of a decision not to answer a letter of demand, essentially seeking to have children returned to a parent.

## Grounds for seeking a review

- The decision-maker breached the rules of natural justice;
- The decision-maker did not observe the correct legal procedures;
- The decision-maker did not have the authority to make the decision;
- The decision was not authorised by the legislation it was purported to be made under;
- The decision involved an improper use of power;
- The decision involved an error of law;
- The decision is or may be tainted by fraud;
- There was no evidence or other material supporting the decision;
- or
- The decision was in some other way unlawful

## Overview Of Court Hierarchy

Although Parliament decides what the laws will be, it is the courts' role to decide how these laws will be applied to particular cases.

Some courts, such as the Family Court and the High Court, are federal courts, which means they have been established by the Federal Government. However, most cases in Queensland are decided in the State courts: the Supreme Court, the District Courts or the Magistrates Courts.

Cases are described as being either criminal or civil. A civil case is one in which a person, a company or the Government claims that another party has acted contrary to the law. A criminal case is one in which the police or the Government says that a person has broken the criminal law, for example by killing someone or stealing property.

## Role of the High Court

The High Court is the highest court in the Australian judicial system. It was established in 1901 by Section 71 of the Constitution. The functions of the High Court are to interpret and apply the law of Australia; to decide cases of special federal significance including challenges to the constitutional validity of laws and to hear appeals, by special leave, from Federal, State and Territory courts.

The seat of the High Court is in Canberra, where it is located in its own building within the Parliamentary Triangle. In addition, there are offices of the High Court Registry in Sydney and Melbourne, staffed by officers of the High Court. In Brisbane and Perth registry functions are performed on behalf of the High Court by officers of the Federal Court of Australia, and in Adelaide, Hobart and Darwin they are performed by officers of the Supreme Court of the respective State or Territory.

## Family Court of Australia

The Family Court of Australia was created by the [Family Law Act 1975 \(Cth\)](#) to interpret and apply that law to individual cases. The Family Court has registries in Brisbane and Townsville and sub-registries in Rockhampton and Cairns. This initiative was aimed not only at improving the manner in which separation and marriage dissolution were managed but also aimed at providing specialised facilities and services concerned with the welfare of children of the separating couples.

The Court also has jurisdiction in some matters under other legislation such as the *Marriage Act 1961* (Cth) and the Child Support legislation. The jurisdiction and the administration of the Court has changed over time as a result of changes to the Family Law Act, in response to recommendations of reviews both internal and external, and the creation of the Federal Magistrates Court.

The Family Law Act defines the jurisdiction of the Family Court and of the State Courts which may also exercise some jurisdiction under it.

For example, the Family Court has jurisdiction to hear matters related to divorce whereas the Federal Court does not have this power because these matters are not within its jurisdiction.

## Family Court

The Family Court's jurisdiction in relation to children includes the power to make parenting orders, which may include one or more of the following:

- the person or persons with whom a child is to live (*Family Law Act 1975*, section 64B(2)(a));
- the time the child is to spend with another person or other persons (*Family Law Act 1975*, section 64B(2)(b));
- the allocation of parental responsibility for a child for making daily and long-term decisions about a child's care, welfare and development (*Family Law Act 1975*, section 64B(2)(c));
- if two or more persons are to share parental responsibility for a child, the form of consultations those persons are to have with one another about decisions to be made in the exercise of that responsibility (*Family Law Act 1975*, section 64B(2)(d));
- the communication a child is to have with another person or other persons (*Family Law Act 1975*, section 64B(2)(e)); and
- maintenance of a child (*Family Law Act 1975*, section 64B(2)(f)).
- Consent to adoptions of children by step parents

The Family Court also has a broad welfare jurisdiction to deal with special matters such as consent to medical treatment and certain powers under international conventions.

## Other Courts with Family Law Act jurisdiction

The Federal Magistrates Service and state Magistrates Courts also have jurisdiction under the *Family Law Act 1975* to deal with children's matters. The Federal Magistrates Court, which shares registries with the Family Court in Brisbane and Townsville, can deal with contested children's matters provided the consent of all parties has been provided. For the purpose of this procedure, the Family Court also refers to the Federal Magistrates Service. The State Magistrates Court has jurisdiction to make consent orders only.

## Roles of Family Court and Department

The role of the Family Court is to determine disputes between separated parents and other persons concerned with the child's welfare or about the care of the child. In deciding whether to make a particular parenting order, the Family Court must regard the best interests of the child as the paramount consideration.

If there is suspected harm or risk of harm to a child, the department is the mandated authority to investigate the allegations. The Family Court does not have the expertise, role or resources to perform this function. Whether or not there are proceedings in the Family Court, the department has the lead responsibility to ensure the child's safety and need for protection. A child of separated parents has the same right to protection and to receive departmental services, as do other children.

## Roles of Family Court and the department

The *Family Law Act 1975* recognises the child protection role of the state in the following ways:

- Family Court personnel are mandated to report cases of suspected harm and risk of harm, and family violence, to the state welfare authority (*Family Law Act 1975*, section 67Z, 67ZA);
- the Family Court cannot make a parenting order in relation to a child in the care of a person under the *Child Protection Act 1999*, unless the order is to come into effect when the child ceases to be in that care or the chief executive consents to the application proceeding in the Family Court (*Family Law Act 1975*, section 69ZK(1));

## Roles of Family Court and the department

nothing in the *Family Law Act 1975* or any order under that Act affects:

- the jurisdiction of the Childrens Court to make an order by which a child is placed in the care of a person under the *Child Protection Act 1999*;  
or
  - the power of the department under the *Child Protection Act 1999* to take any action by which a child is placed in the care of a person under the Act; or
  - the operation of the *Child Protection Act 1999* in relation to a child (section 69ZK(2));
- ❖ the department has the right to intervene in Family Court proceedings and deal with child protection issues in the Family Court if it chooses (*Family Law Act 1975*, section 92A);
  - ❖ the Family Court may request the department to intervene in the proceedings (*Family Law Act 1975*, section 91B); and
  - ❖ under the *Family Law Rules 2004*, rule 6.02(2), the chief executive of the department must be served as a respondent to any application relating to a child for whom a care agreement, assessment order or child protection order under the *Child Protection Act 1999* is in place.

## What is the Supreme Court?

The Supreme Court is the highest court in the Queensland court system. It consists of the Chief Justice and two divisions, the Trial Division and the Court of Appeal.

Presiding over the court is a justice (judge) of the Supreme Court. The Supreme Court hears serious criminal offences, such as murder and certain serious drug offences. The Supreme Court hears civil disputes where the amount in dispute is more than \$750,000.

Like the District Courts, the Trial Division of the Supreme Court must use a jury to determine guilt or innocence in criminal cases. Civil cases are usually decided by a judge without a jury.

In certain circumstances, parties may dispute the decision of a court or the sentence imposed through a process called an appeal. Most appeals are heard in the Court of Appeal. It is part of the Supreme Court and handles only appeals; it does not decide cases initially. The Court of Appeal does not have a jury. Three justices of the Supreme Court make the decisions.

## What is a District Court?

Serious criminal cases, such as rape and armed robbery, are decided in a District Court. A District Court also handles civil disputes where the amount in dispute is between \$150,000 and \$750,000.

Appeals against some decisions of a Magistrates Court may also be dealt with by a District Court.

A District Court judge presides over a District Court. In criminal trials, a jury decides whether the person charged is guilty or not. If the person is found guilty, the judge then decides on the penalty.

Most civil cases are decided by a judge sitting without a jury

Some Judges of the District Court also sit in the Planning and Environment Court and in the Childrens Court.

## What is a Magistrates Court?

### **What is a Magistrates Court?**

A magistrate presides over a Magistrates Court. There is no jury.

These courts deal with less serious offences. More serious criminal matters are decided in the higher courts, that is, the District or Supreme Courts.

In less serious criminal cases, the magistrate must decide whether the accused person is guilty or not. If he or she is guilty, the magistrate also fixes the penalty.

If a criminal case is too serious to be dealt with in a Magistrates Court, it must be decided in the District or Supreme Court. However, the accused is first charged in a Magistrates Court and the magistrate must then decide whether there is enough evidence to justify sending the matter for trial in one of the higher courts. This is called a committal for trial.

Magistrates Courts deal with civil matters if the amount in dispute is \$150,000 or less.

## Childrens Court

A Childrens Court is presided over by a magistrate or two Justices of the Peace (Qualified).

The Children's Court has separate jurisdiction from the adult jurisdiction of the Magistrates, District and Supreme Courts. The Childrens Court has the jurisdiction to:

- determine certain offences against young people under 17 years who have offended
- determine child protection matters in accordance with the [Child Protection Act 1999](#).

Childrens Courts are convened in the same locations as Magistrates Courts throughout Queensland - except in central Brisbane where there is a separate Childrens Court building.

## Childrens Court

The Childrens Court is a closed court and therefore only certain persons are allowed to be present. Those who are allowed to attend court include:

- the magistrate (or judge in the Childrens Court of Queensland)  
court clerk

and representatives from the Department of Child Safety - applicant  
and court officer/legal representative

- parents and their legal representative

- the child (if old enough) and their legal representative

- the Separate Representative (lawyer) appointed by the court to represent the child's interests

a representative of a Recognised Entity if the child is an  
Aboriginal or Torres Strait Islander child or young person

- non-parties who the magistrate would like to hear from.

## Childrens Court

The child safety officer of the Department of Communities is known as the 'Applicant' in court.

Parents are referred to as the 'Respondents'.

Magistrates in the Childrens Court must be addressed as 'Your Honour'.

## Contact by email is preferred

Legal Services

GPO Box 806

Brisbane Qld 4001

Phone: 07 3234 1829

Fax: 07 3235 9788

Email: [steve.habermann@communities.qld.gov.au](mailto:steve.habermann@communities.qld.gov.au)



# APPEALS

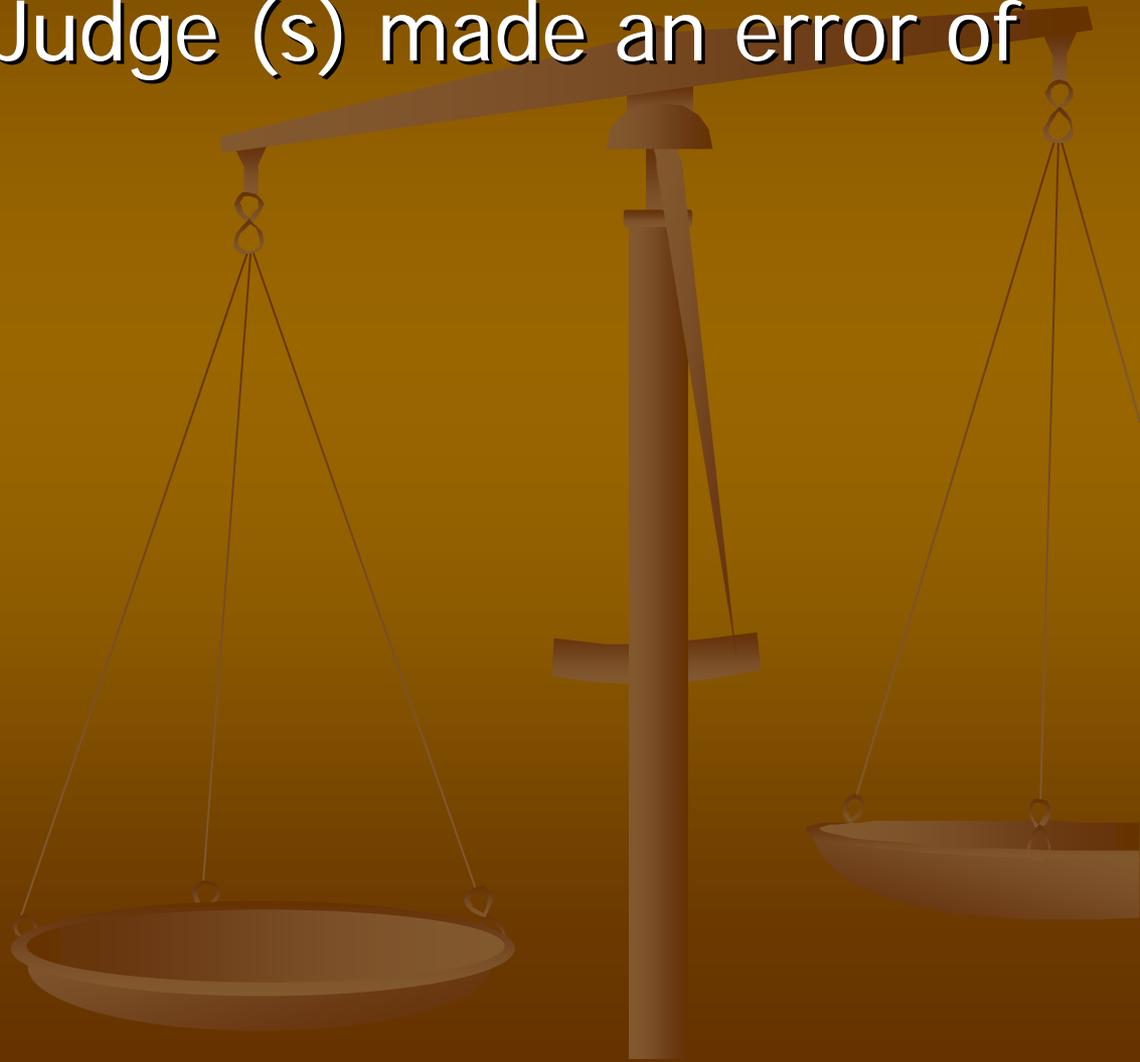
COURT COORDINATOR INDUCTION

DEVELOPED BY COURT SERVICES CHILD SAFETY

UPADTED: 3 AUGUST 2011

# What are the grounds for an appeal?

- The Magistrate/Judge (s) made an error of fact or law.



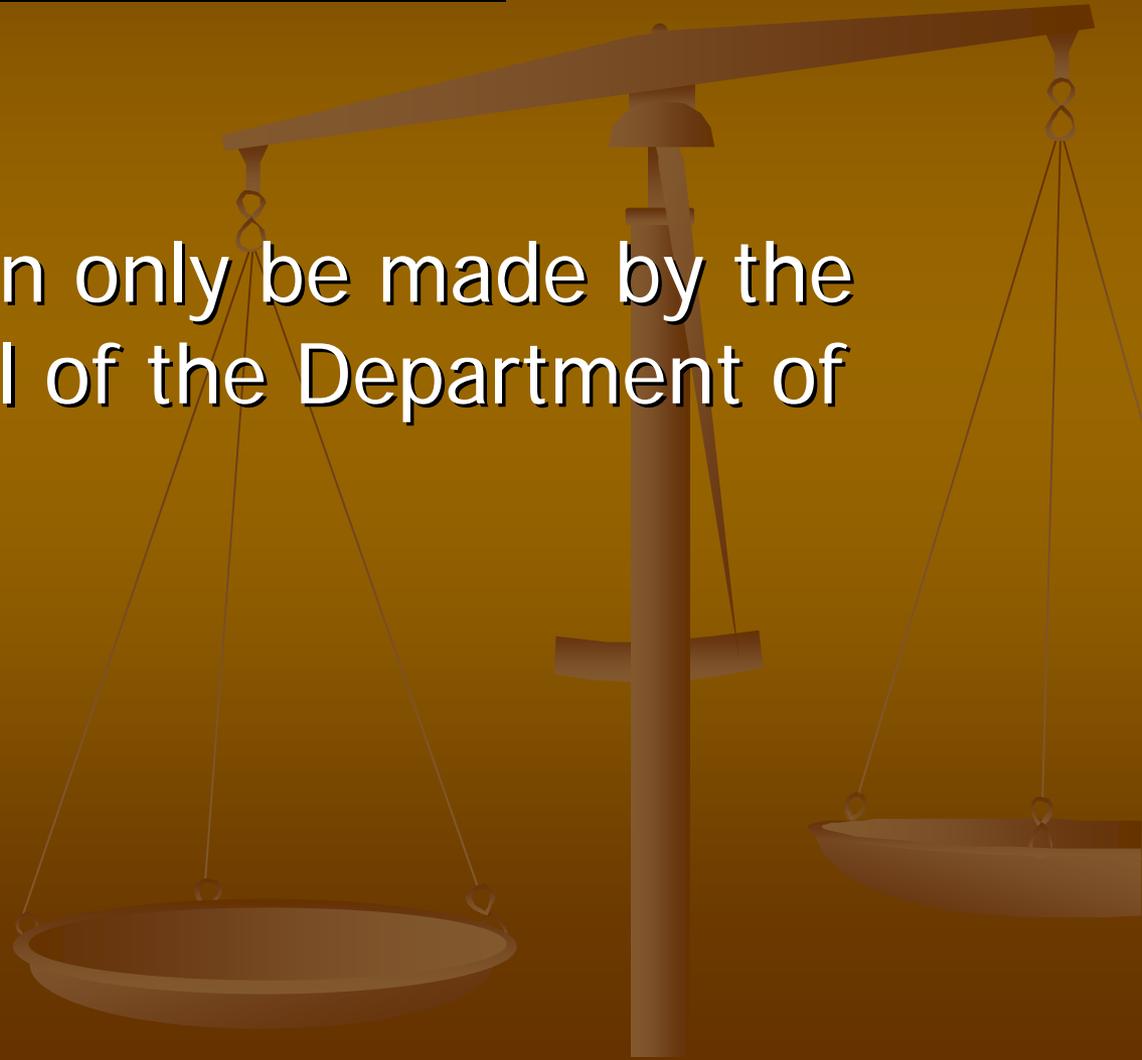
# What are the grounds for an appeal?

## Note:

- The appeal court can only consider the same material that was before the lower court at the time the decision was made. Section 120(1) of the *Child Protection Act 1999*.
- If a party seeks to introduce new material, leave is required from the appeal court to do so.
- If the Department does seek to rely on further material not filed at the time of the original decision, it may be more appropriate to file further updated material in the court that made that decision and seek that the matter be listed for further mention (this will be possible only where the decision is an interim decision).
- However, section 120(3) of the *Child Protection Act 1999* provides that the appellate court may order that the appeal be heard afresh in whole, or part.
- An appeal in respect of a TAO is not restricted to the material before the Magistrate, section 120(1) *Child Protection Act 1999*.

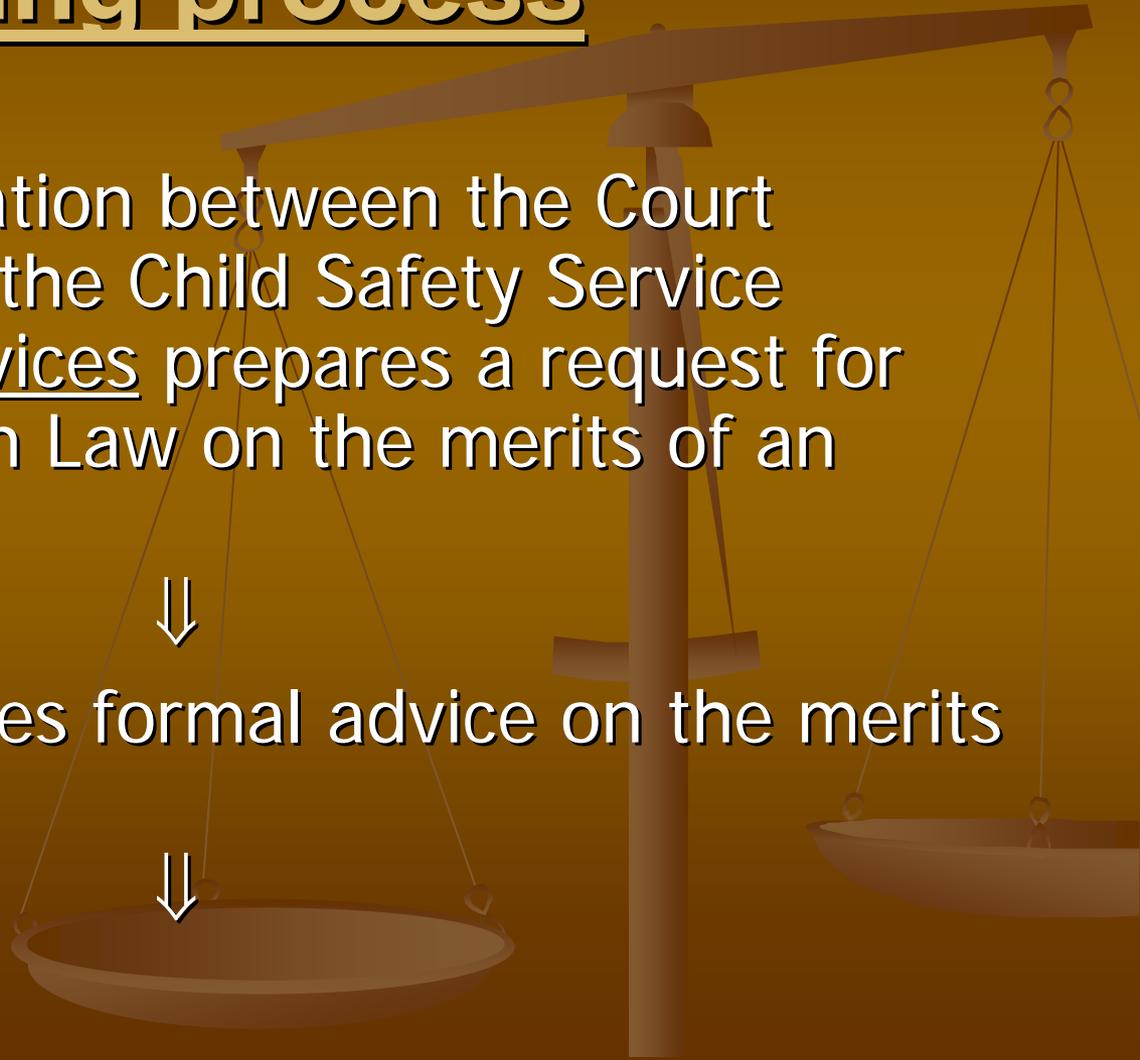
# Who makes the decision to appeal on behalf of the department?

- This decision can only be made by the Director General of the Department of Communities.



# Role of Court Services and Crown Law in the decision making process

- Following consultation between the Court Services Unit and the Child Safety Service Centre, Court Services prepares a request for advice from Crown Law on the merits of an appeal.
- Crown Law provides formal advice on the merits of an appeal.



- Subject to a favourable advice, the Manager of Court Services makes the decision as to whether to brief the DG for approval for an appeal to be lodged. This will involve consultation with the Manager of the CSSC. The brief is prepared by Court Services.

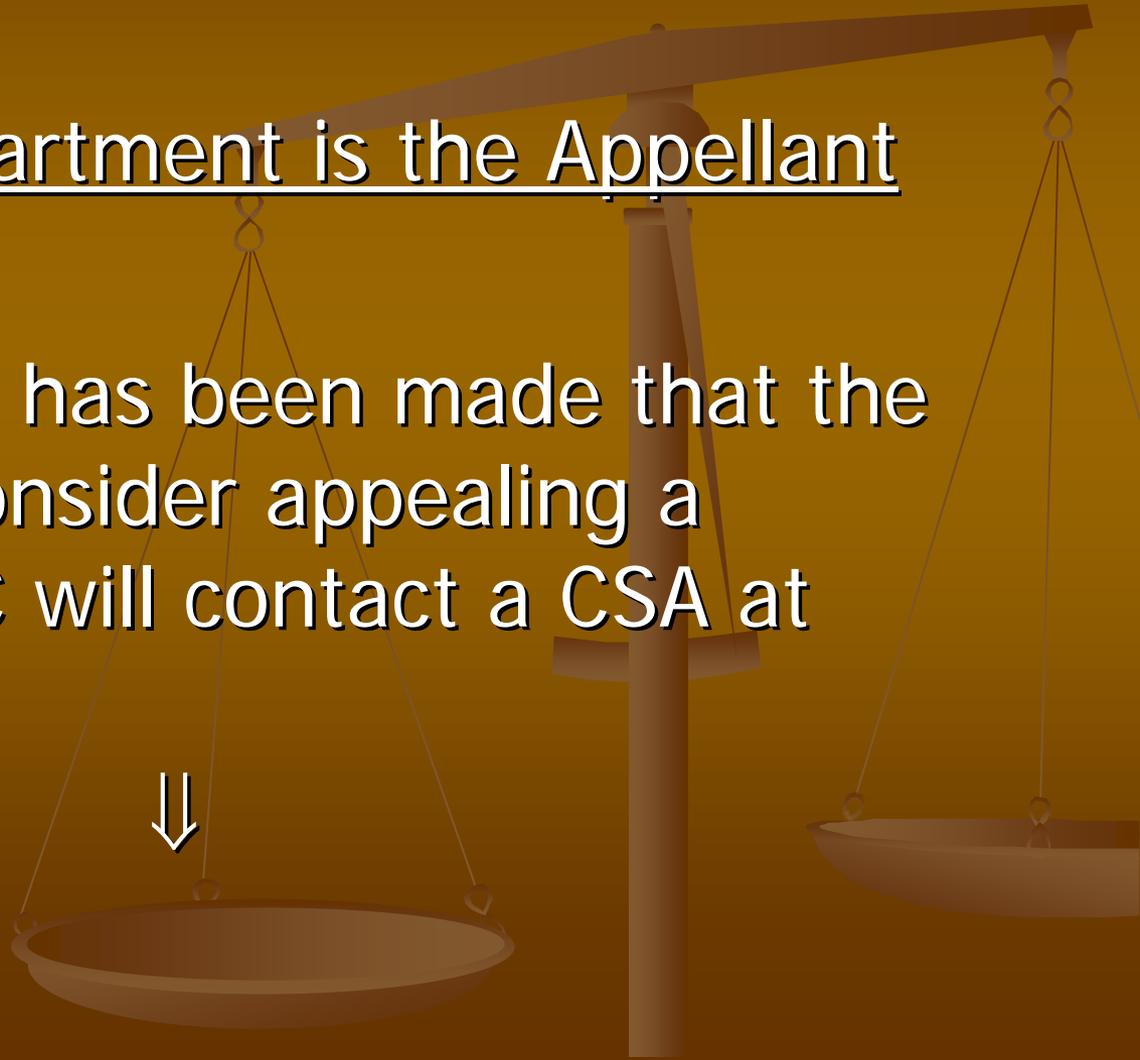


- Subject to approval being given by the DG for an appeal to be lodged, Crown Law prepares and files the Notice of Appeal which initiates proceedings in the appellate court.

# Role of the Court Coordinator in an appeal

## When the department is the Appellant

- Once a decision has been made that the CSSC wish to consider appealing a decision, the CC will contact a CSA at Court Services.



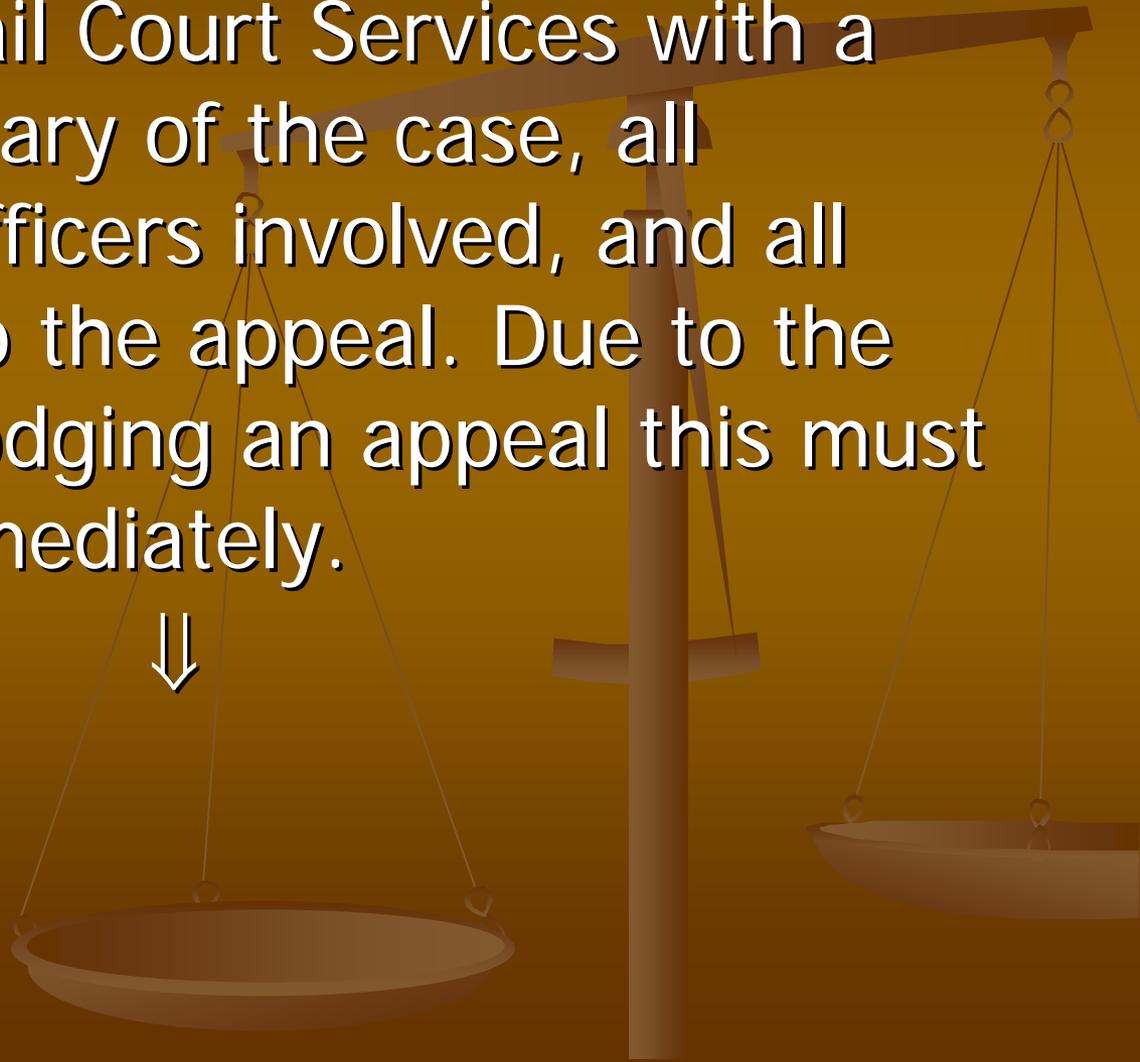
- If possible, the CC will obtain a transcript of the decision the CSSC are seeking to appeal.

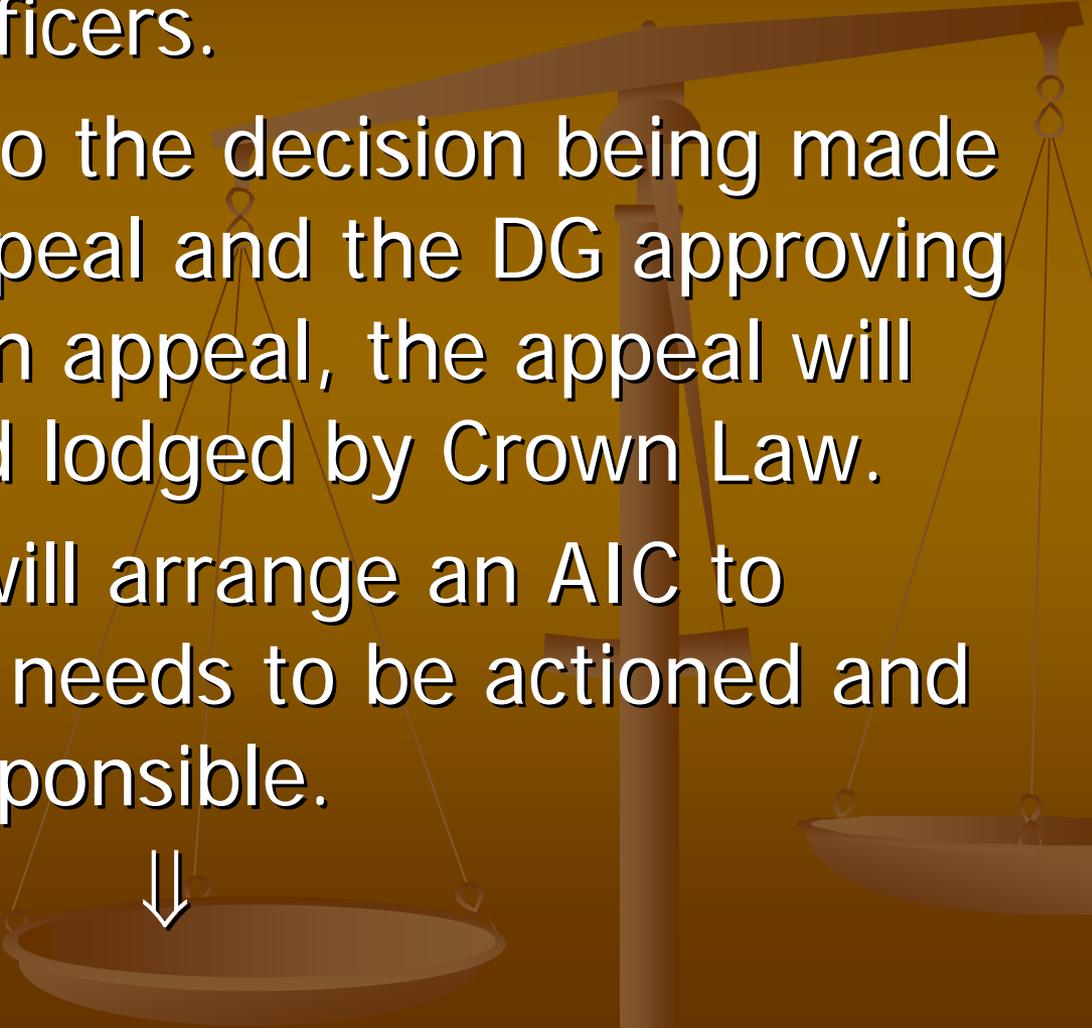
NOTE: Not all mentions are recorded, so if it is anticipated that a decision will be appealed, the CC needs to take thorough notes of the decision and request that the Magistrate provides reasons for the decision.

Section 104 (2) of the *Child Protection Act 1999* provides that 'when making a decision under this Act, the Childrens Court must state its reasons for the decision'.

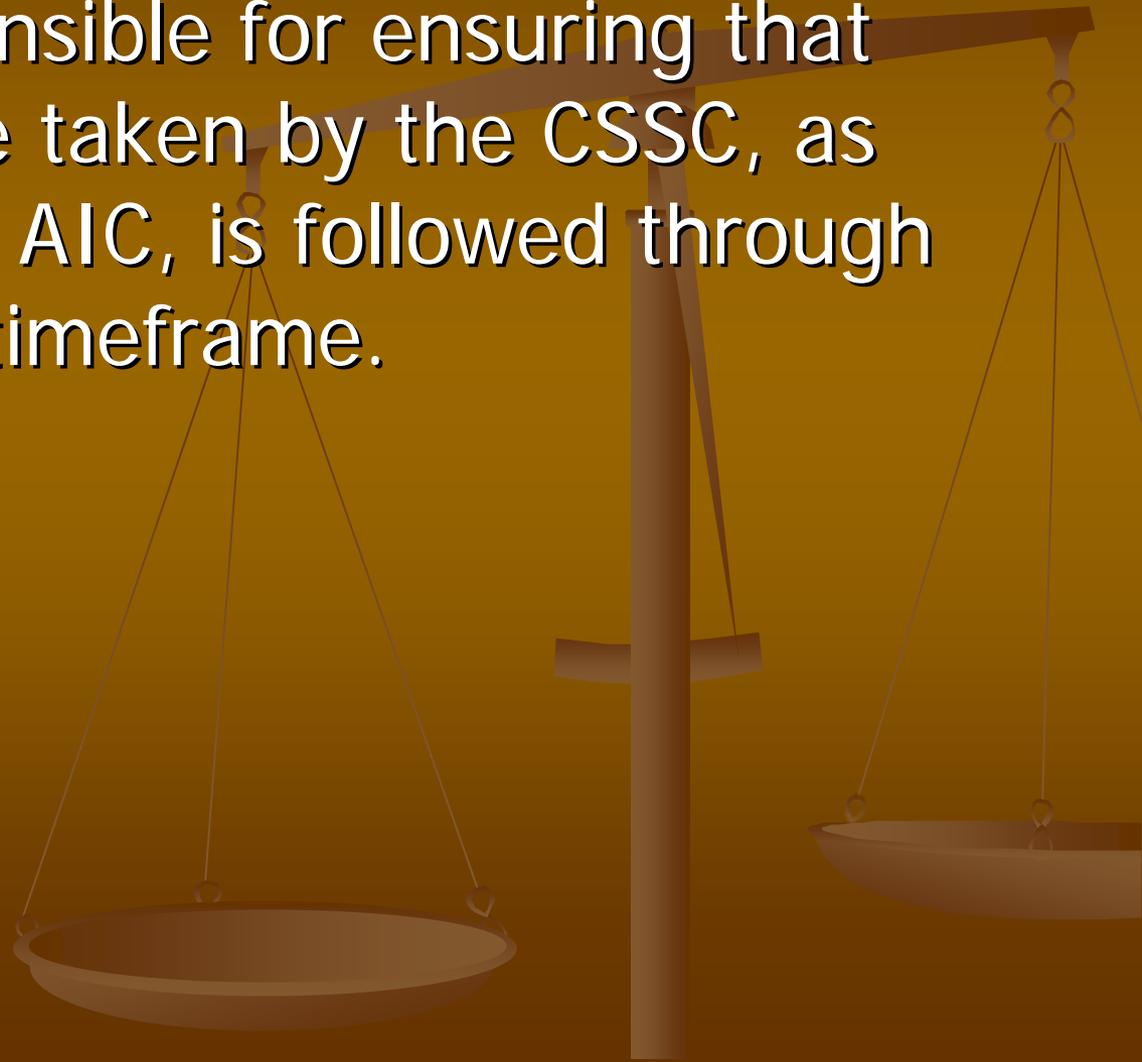


- The CC will email Court Services with a thorough summary of the case, all departmental officers involved, and all facts relevant to the appeal. Due to the time limits on lodging an appeal this must be actioned immediately.



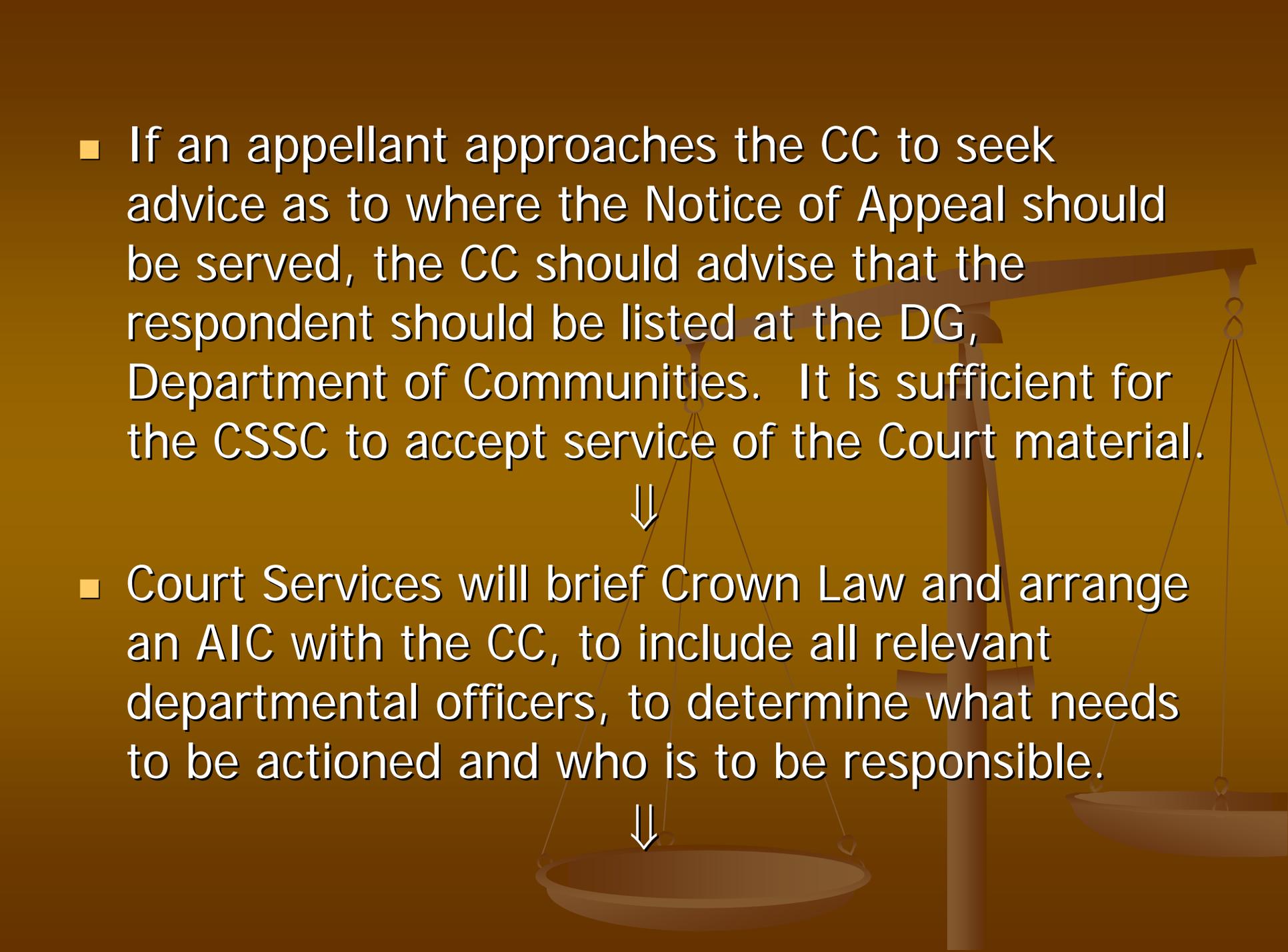
- 
- The CC will liaise with a CSA to arrange a case discussion to include all relevant departmental officers.
  - NOTE: Subject to the decision being made to pursue an appeal and the DG approving the lodging of an appeal, the appeal will be prepared and lodged by Crown Law.
  - Court Services will arrange an AIC to determine what needs to be actioned and who is to be responsible.

- The CC is responsible for ensuring that any action to be taken by the CSSC, as identified in the AIC, is followed through in the relevant timeframe.



## Appeal Process when the Department is the Respondent

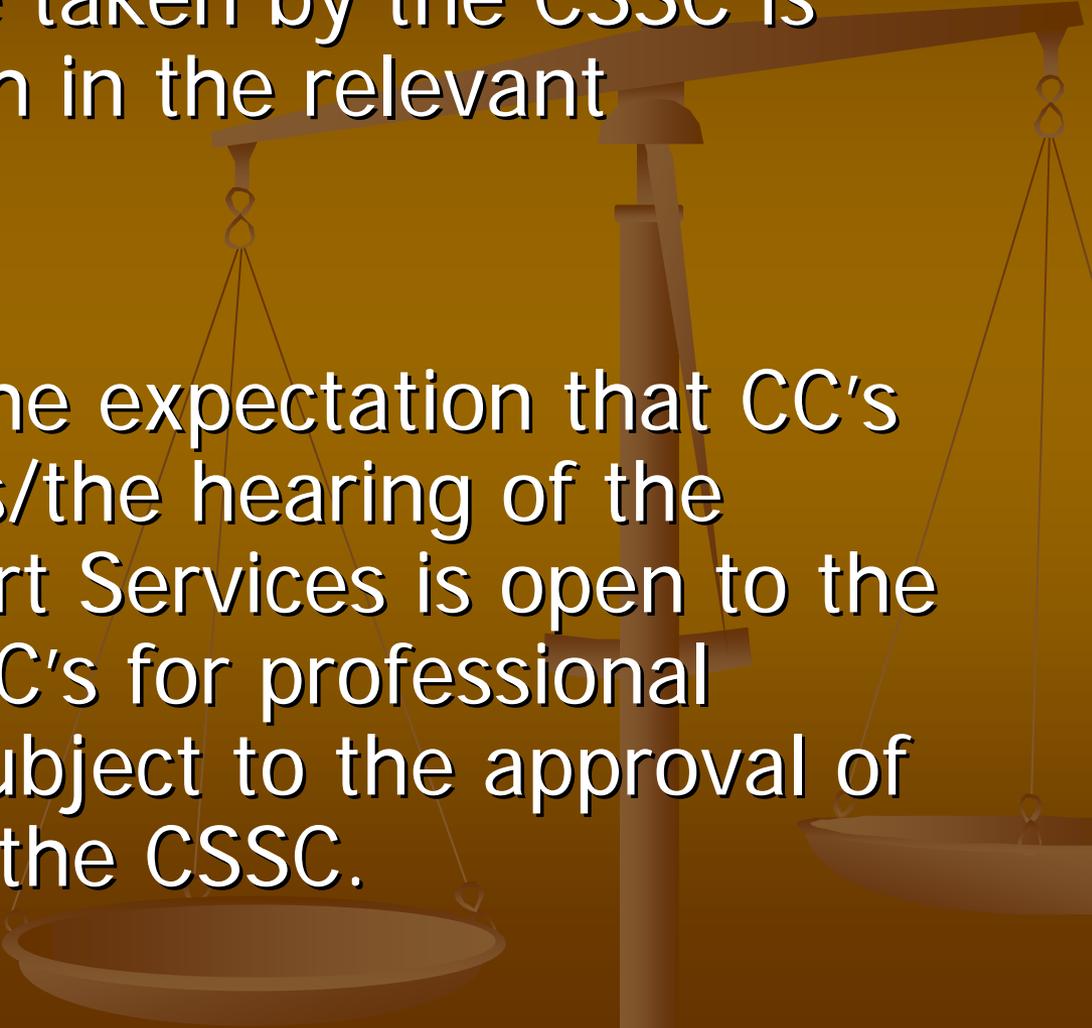
- If Crown Law were involved in the proceedings that resulted in the decision which is the subject of the appeal, the appellant should serve Crown Law directly. Crown Law will then contact Court Services and they will, in turn, contact the CC.
- Where the CSSC are served directly (for example, where the decision the subject of the appeal was a decision made at a mention in the Children's Court attended by the applicant and CC or the appellant is not aware of Crown Law's contact details), the CC must advise Court Services immediately and provide a copy of the Notice of Appeal and any other documentation which has been served.

- 
- If an appellant approaches the CC to seek advice as to where the Notice of Appeal should be served, the CC should advise that the respondent should be listed at the DG, Department of Communities. It is sufficient for the CSSC to accept service of the Court material.

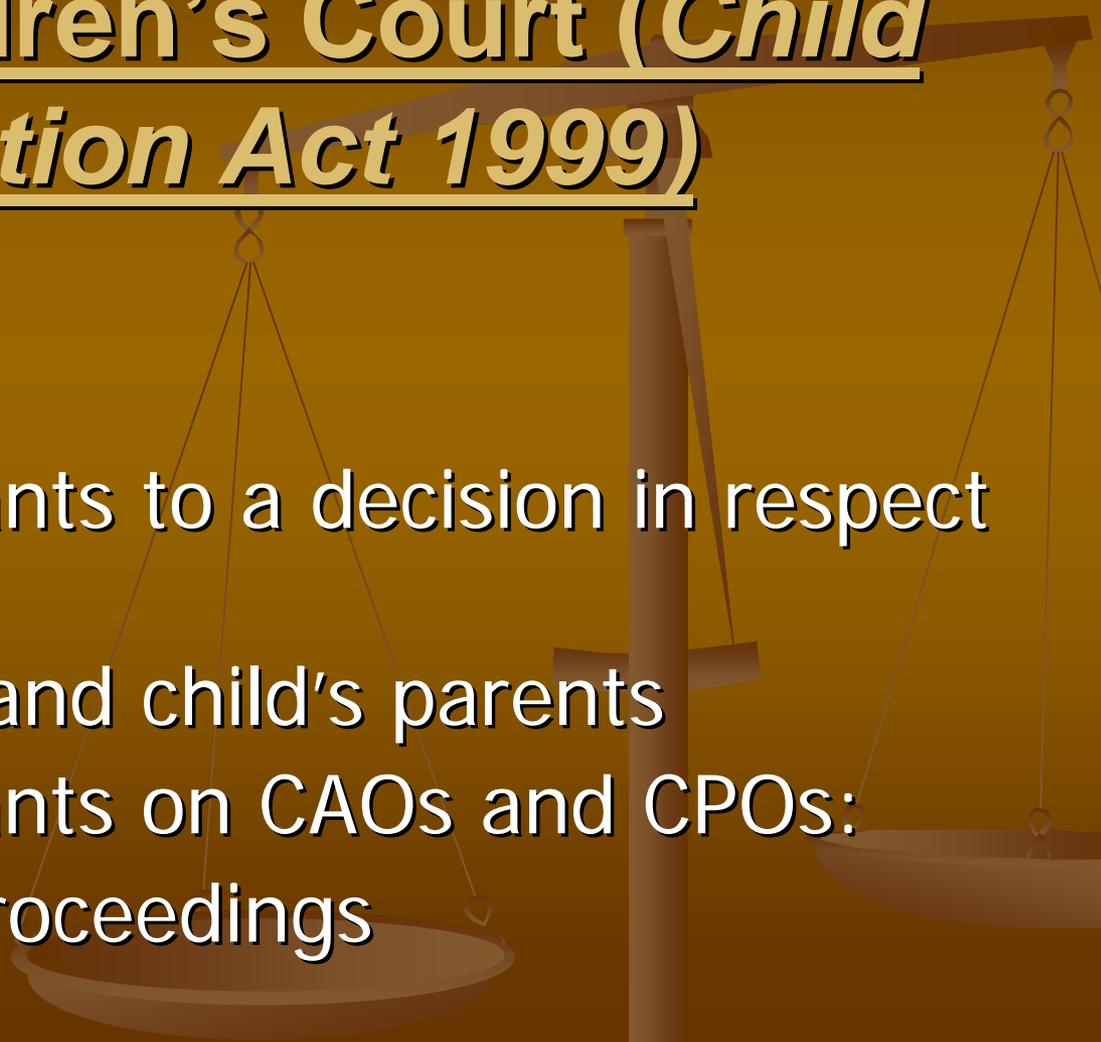


- Court Services will brief Crown Law and arrange an AIC with the CC, to include all relevant departmental officers, to determine what needs to be actioned and who is to be responsible.



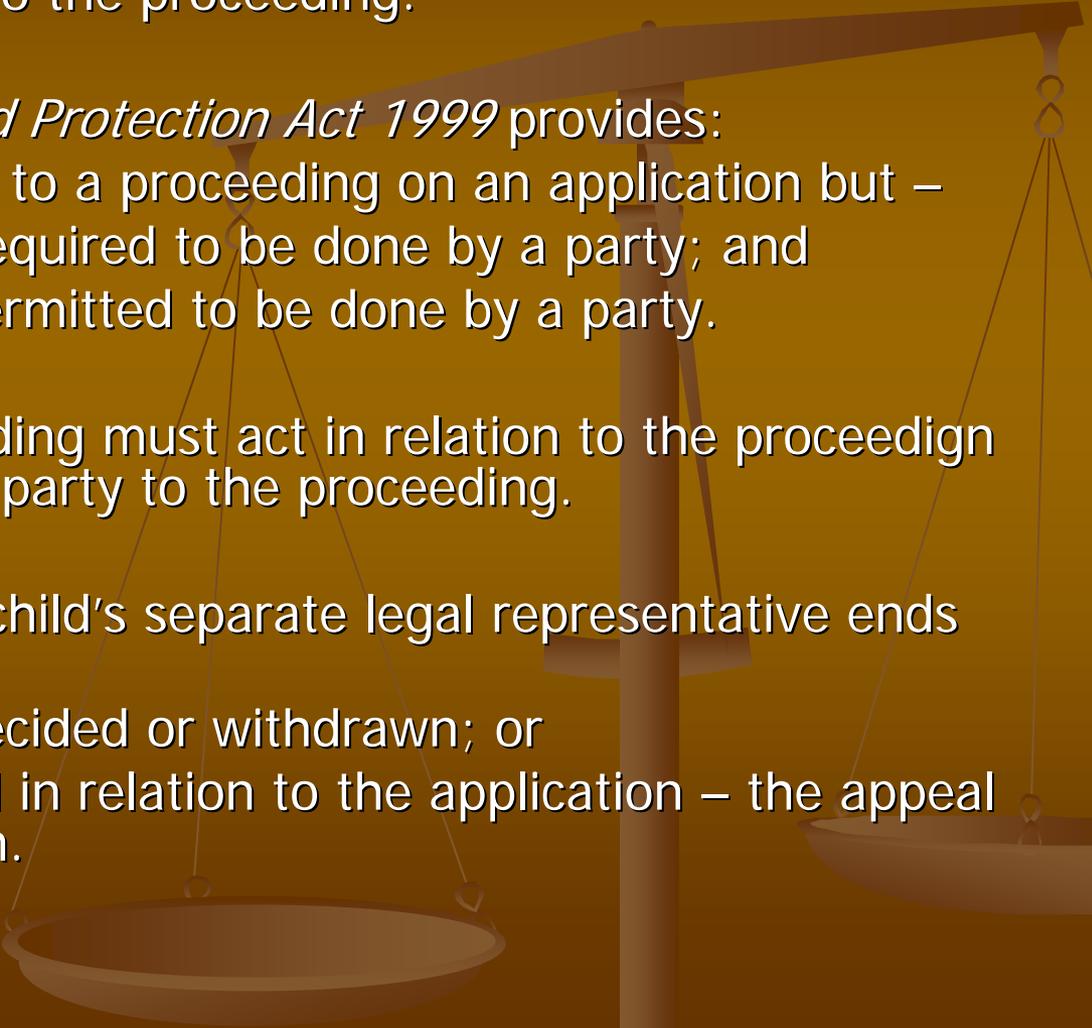
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- The CC is responsible for ensuring that any action to be taken by the CSSC is followed through in the relevant timeframe.
  - Note: It is not the expectation that CC's attend mentions/the hearing of the appeal, but Court Services is open to the attendance of CC's for professional development, subject to the approval of the Manager of the CSSC.

# Overview of the Legislation relating to appeals of decisions in the Children's Court (*Child* *Protection Act 1999*)



## Section 117 –

- Potential appellants to a decision in respect of a TAO:
- Applicant, child and child's parents
- Potential appellants on CAOs and CPOs:
- A party to the proceedings

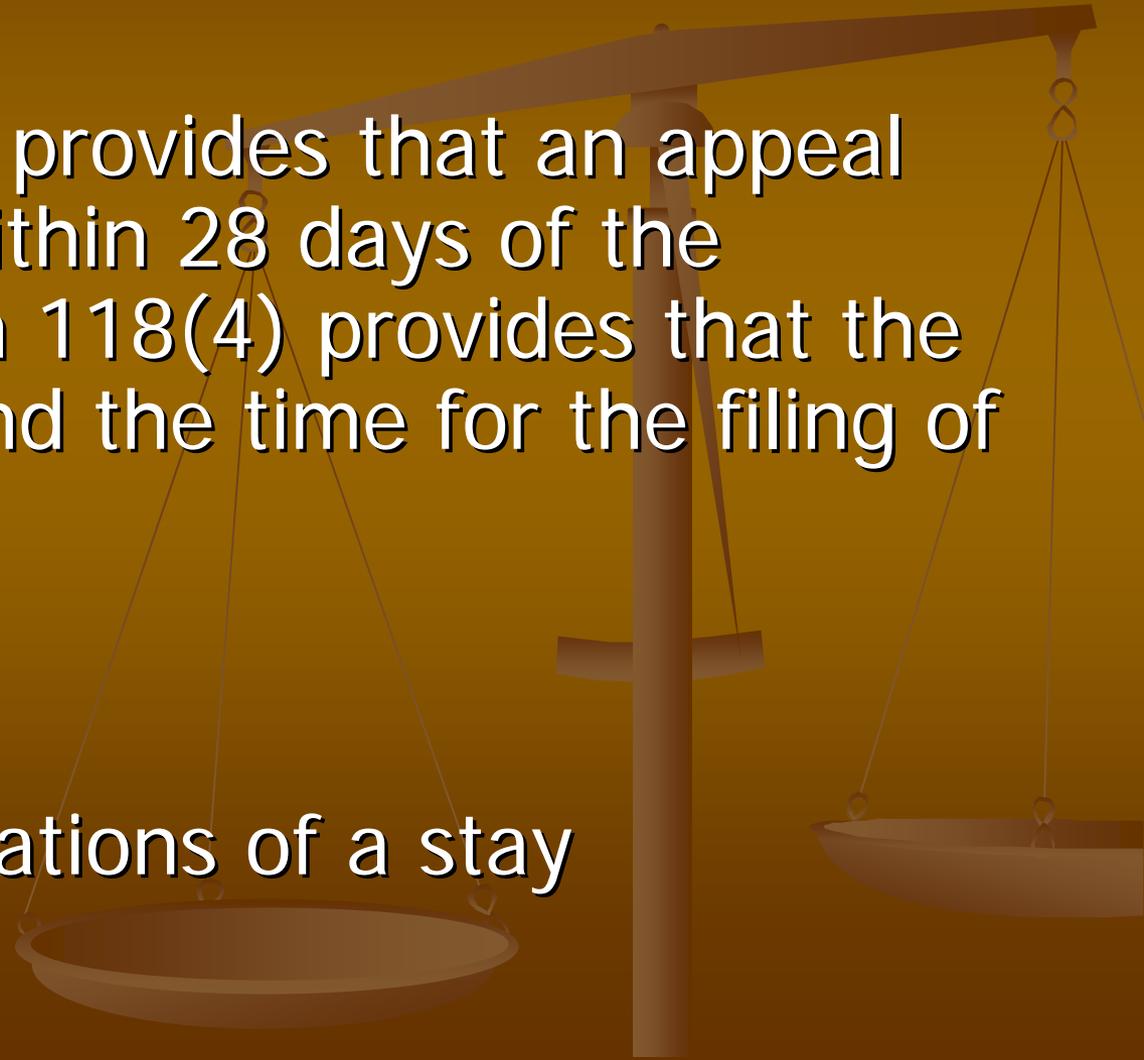
- 
- Note: Under the *Child Protection Act 1999* , the appointment of a separate representative does not make the separate representative a party to the proceeding.
  
  - Section 110 of the *Child Protection Act 1999* provides:
    - (4) The lawyer is not a party to a proceeding on an application but –
      - (a) must do anything required to be done by a party; and
      - (b) may do anything permitted to be done by a party.
  
    - (5) The parties to the proceeding must act in relation to the proceeding as if the lawyer were a party to the proceeding.
  
    - (6) The lawyer's role as the child's separate legal representative ends when –
      - (a) the application is decided or withdrawn; or
      - (b) if there is an appeal in relation to the application – the appeal is decided or withdrawn.

## Section 118 –

- Details the procedure for filing of an appeal
- Section 118 (3) provides that an appeal must be filed within 28 days of the decision Section 118(4) provides that the court may extend the time for the filing of the appeal

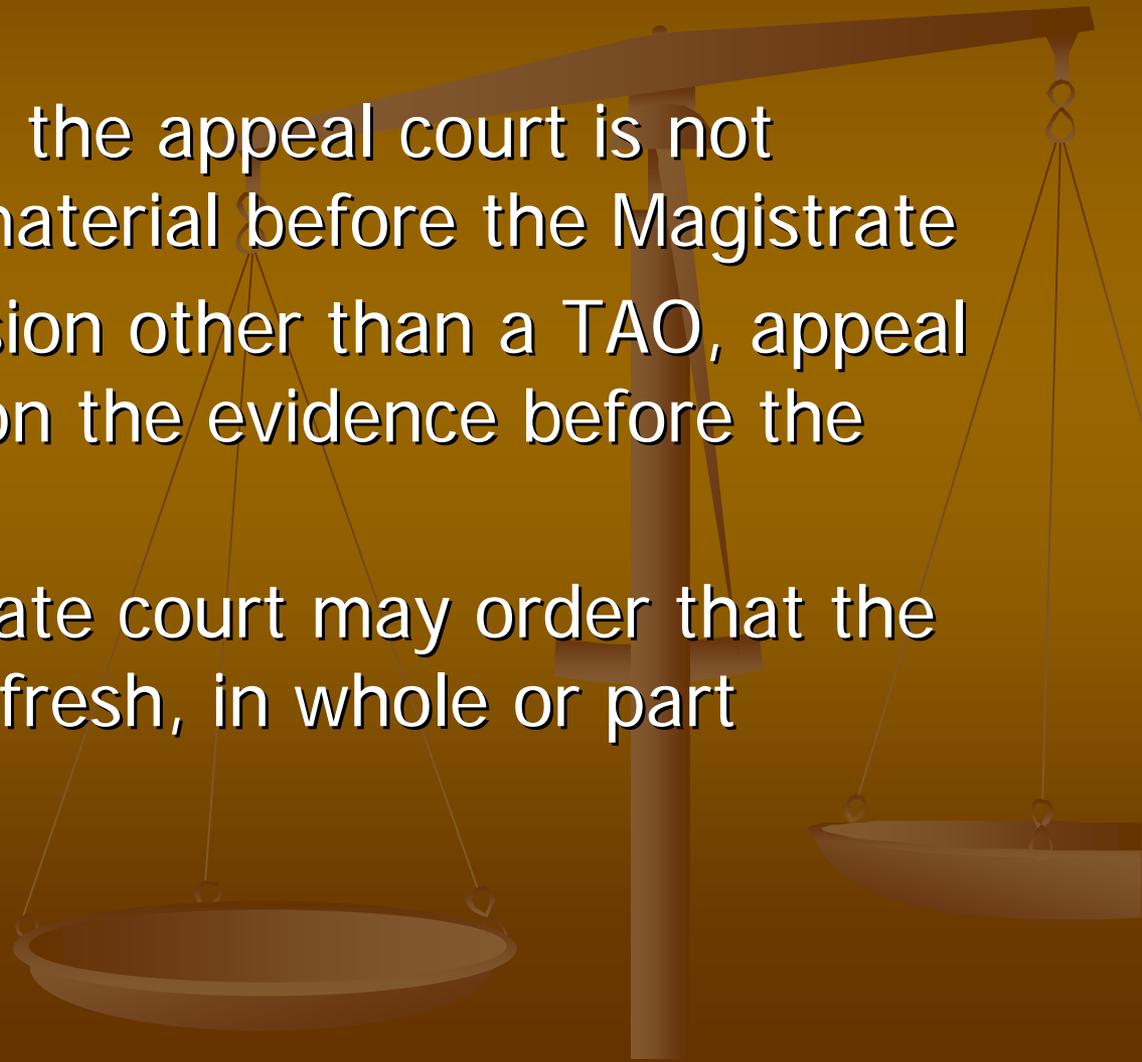
## Section 119 –

- Details the limitations of a stay



## Section 120 –

- 120(1) For a TAO, the appeal court is not restricted to the material before the Magistrate
- 120(2) For a decision other than a TAO, appeal must be decided on the evidence before the Children's Court
- 120(3) The appellate court may order that the appeal be heard afresh, in whole or part



# Hierarchy of Courts

Children's Court of Queensland



District Court



Supreme Court (Court of Appeal)



High Court of Australia



# A word on costs

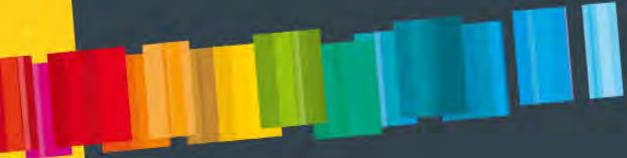
- Note: Section 116 of the *Child Protection Act 1999* provides that parties to a proceeding in the Children's Court must pay their own costs of the proceeding.
  - In appeals, the appeal court is able to order costs, in full or part, against any party.
- 

## **CAO QUIZ and ANSWERS**

1. Is a CAO used to decide whether a child is need of protection? **YES**
2. Can you apply for a CAO extension for the purpose of gathering evidence to support an application for a CPO? **NO (SECONDARY QUESTION – WHY?)**
3. The provisions for a CAO are exactly the same as a TAO? **YES**
4. A CAO can be extended for 2 weeks? **TRUE** or FALSE  
**(SECONDARY QUESTION – WHAT IS THE MAXIMUM TIMEFRAME FOR A CAO TO BE EXTENDED?)**
5. Name two sections of the CP Act 99 that relate to CAO's?  
**Sections of the *Child Protection Act, 1999* that relate to CAO's are Sections 37 – 51.**
6. When applying for a CAO you must apply for 4 weeks? **TRUE** or **FALSE**
7. Before applying for a CAO, some attempts must be made to gain consent from one parent to the assessment of the child protection concerns? **TRUE** or FALSE
8. When applying for a CAO the respondents section refers to the parent and/or other adult household member that the allegations are made against? **TRUE** or **FALSE** ( secondary question could be - define respondent)
9. If applying for a CAO extension, the application needs to be filed and heard with a determination made before the expiration of the original CAO? **TRUE** or FALSE
10. The application for a CAO must be served on the respondents and an affidavit of service sworn and filed? **TRUE** or FALSE
11. When writing the application for a CAO, it should include clear information about what further assessments the Department will be conducting? **TRUE** or FALSE
12. Can a CAO be revoked? **YES** or NO
13. Under what circumstances would you revoke a CAO? **Assessment is completed within the 4 week timeframe and it is deemed intrusive**

**and unnecessary for the order to continue and the provisions to remain in place. Child is not in need of protection.**

14. If a CAO is made for a child who is subject to a CPO, which order prevails? **CAO** or CPO. **S49 outlines this situation – CAO prevails to the extent of any inconsistency between the orders.**



# COURT COORDINATOR INDUCTION TRAINING 2011

# **WELCOME!**

- Introduction of facilitators
- House keeping
- expectations

# Introductions:

- Name
- Current CSSC and your role
- Length of time in the Department
- Qualifications
- Share an achievement from your role as Court Coordinator
- One thing you want to achieve and one thing you hope to avoid while attending the training

## Key outcomes of the training program

- Develop a clear understanding of the role of the Court Coordinator
- Impart knowledge & skills to assist Court Coordinators to professionally manage child protection court & tribunal processes
- Promote best practice in relation to all court & tribunal processes

# COURT ORDERED CONFERENCES



Childrens Court

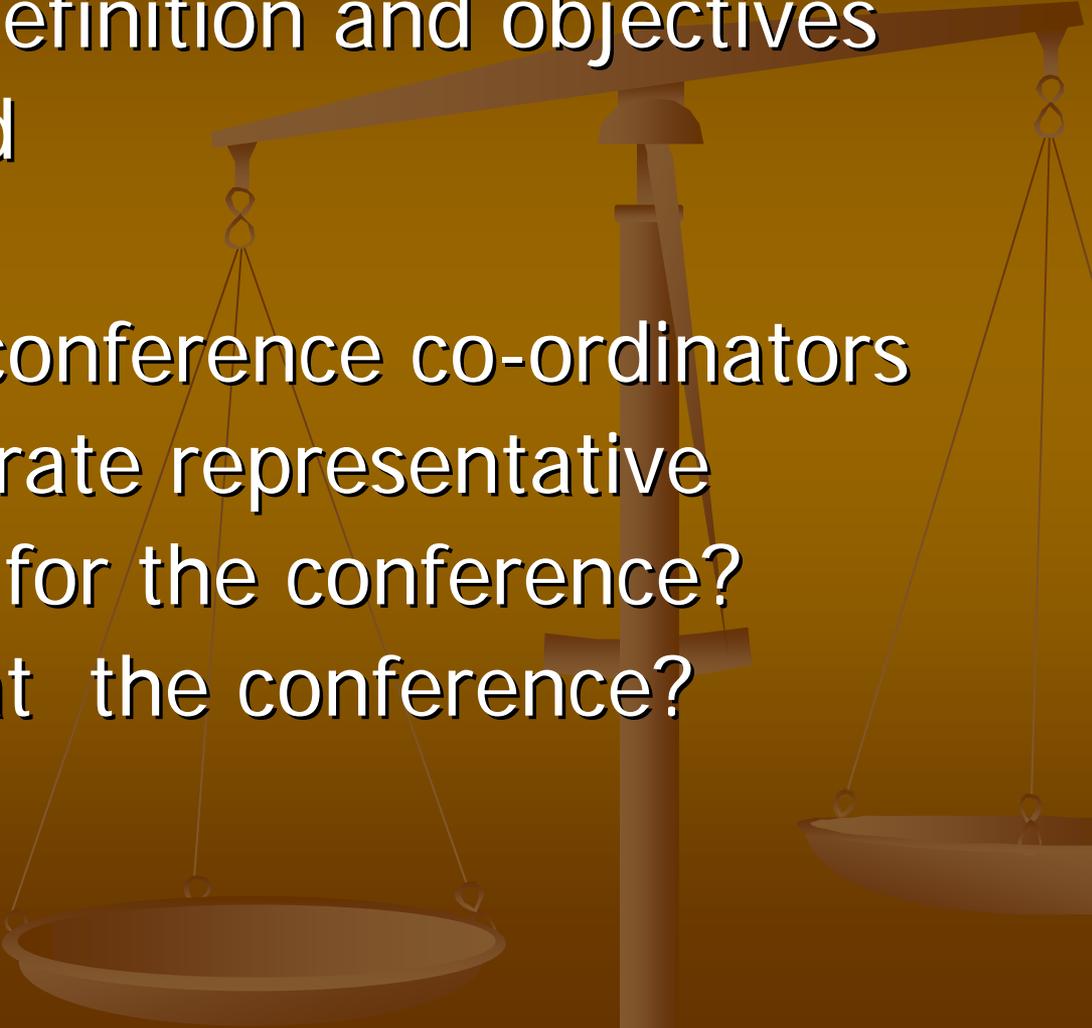
# Who are we?

- Paul Malone
- Manager, Office of Child Protection Conferencing
- Children's Court
- 30-40 Quay Street
- Brisbane Qld 4000
- 0402 457351
- 07 383 60674
- [paul.malone@justice.qld.gov.au](mailto:paul.malone@justice.qld.gov.au)

- Rob Turra
- Child Protection Conference Co-ordinator
- 0428 714344
- 07 3836 0674
- [robert.turra@justice.qld.gov.au](mailto:robert.turra@justice.qld.gov.au)

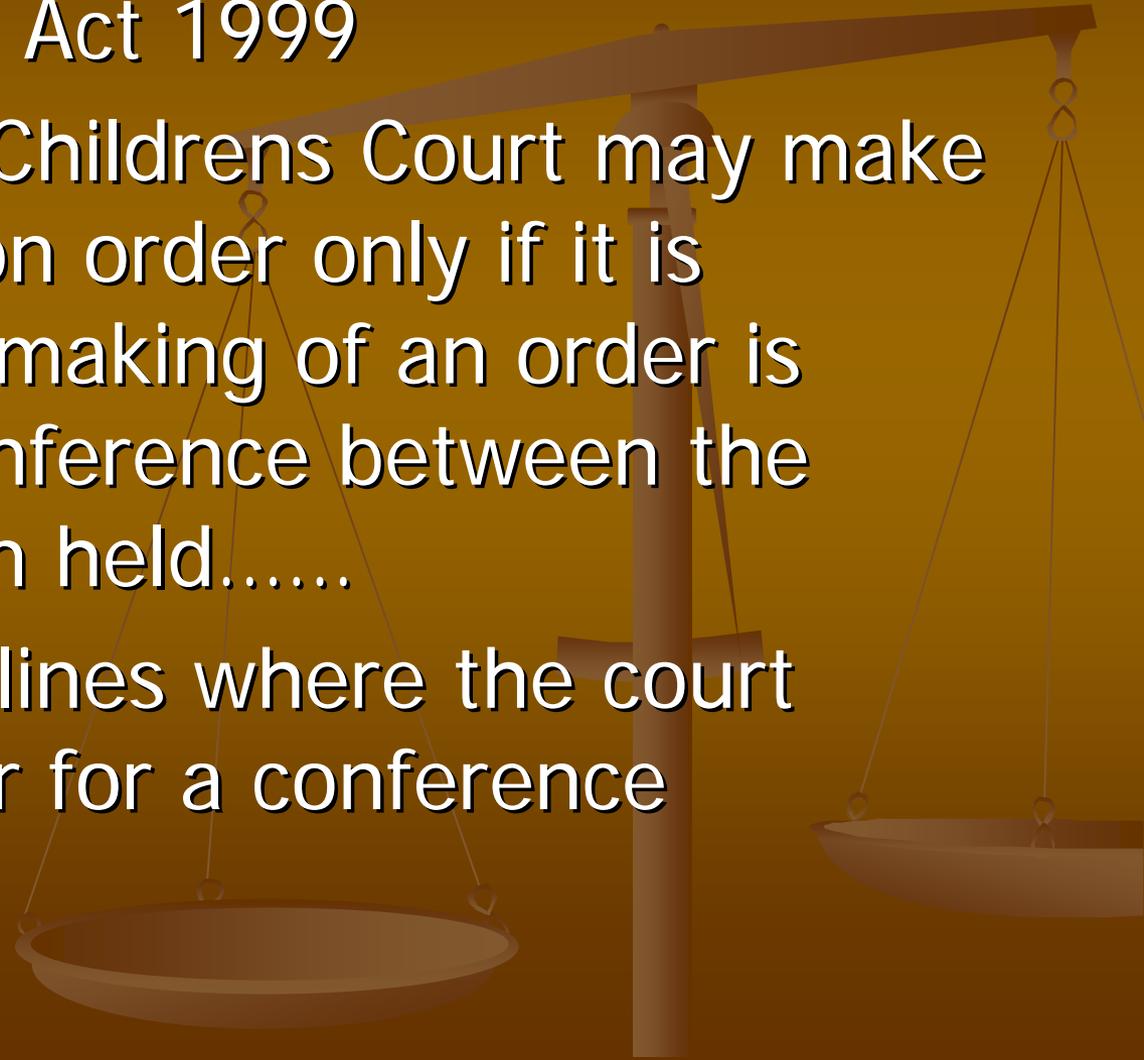
- Amanda Molomby
- Child Protection Conference Co-Ordinator
- 0427 137156
- 07 3836 0674
- [Amanda.Molomby@justice.qld.gov.au](mailto:Amanda.Molomby@justice.qld.gov.au)

# Today's Agenda

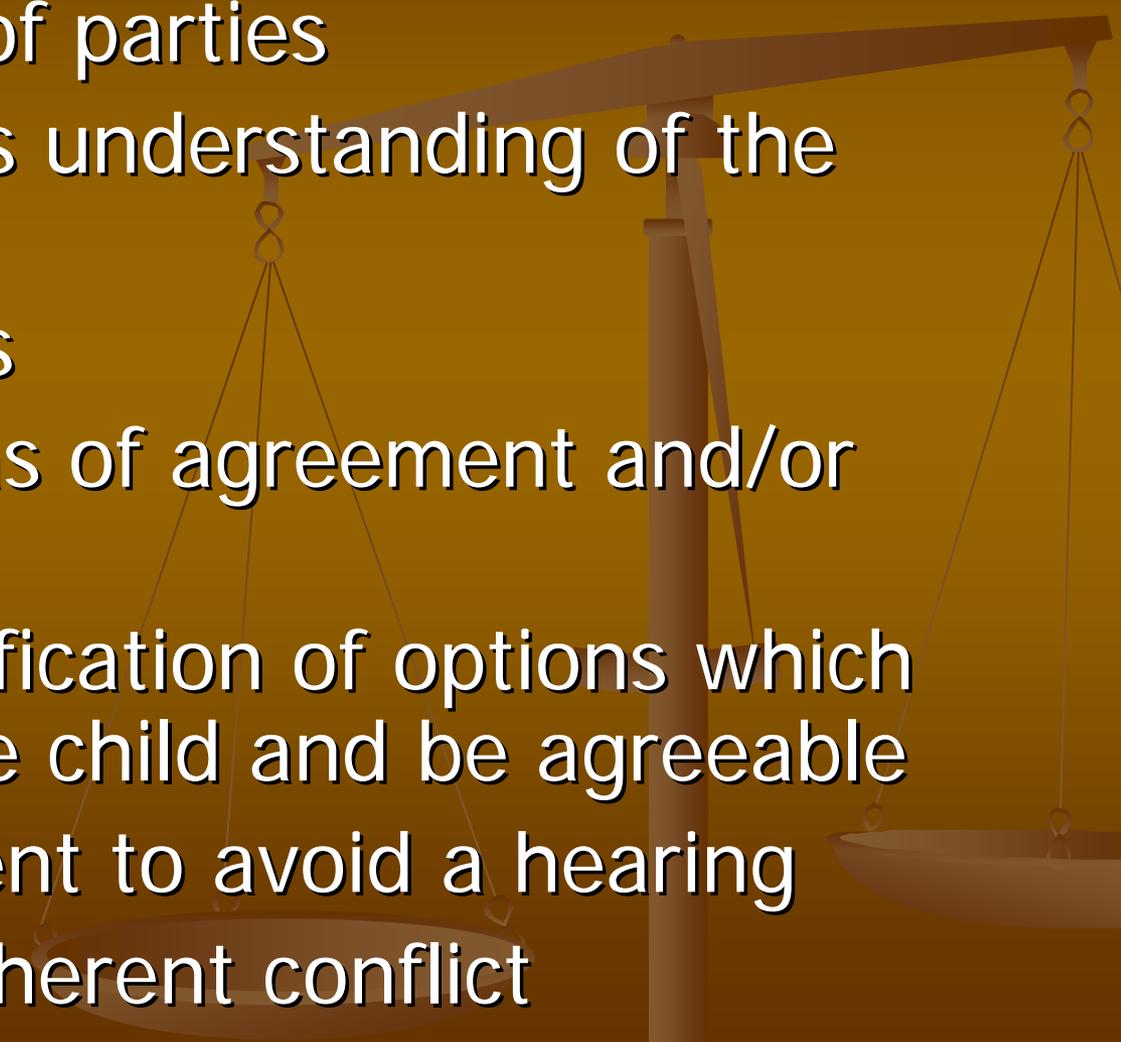
- Conferences – definition and objectives
  - Who may attend
  - Confidentiality
  - Contacting the conference co-ordinators
  - The child's separate representative
  - How to prepare for the conference?
  - What happens at the conference?
  - Questions
- 

# What is a court ordered conference?

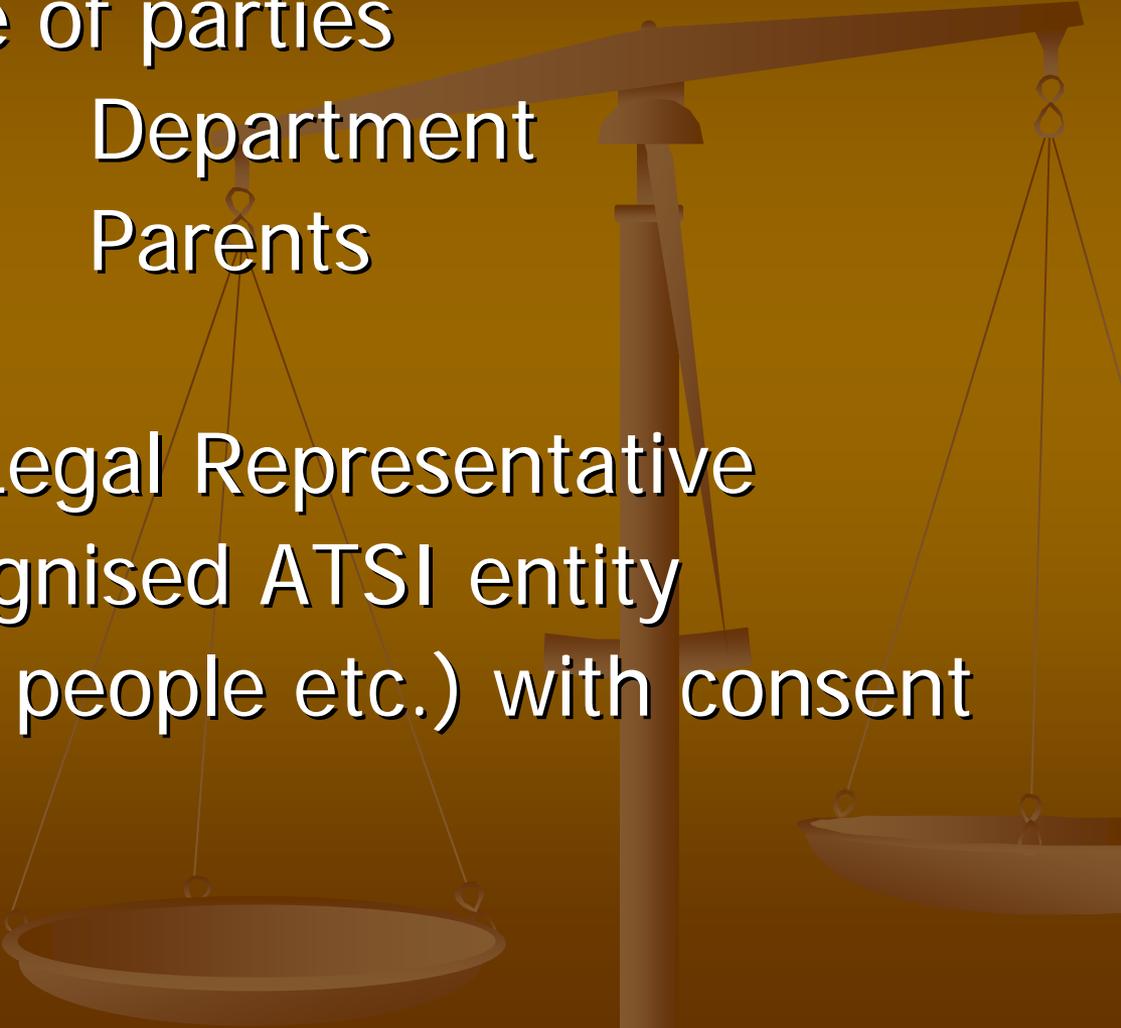
- Child Protection Act 1999
- S.59(1)(c) The Childrens Court may make a child protection order only if it is satisfied- if the making of an order is contested, a conference between the parties has been held.....
- S.68(1) ..... Outlines where the court makes the order for a conference



# Objectives of a court ordered conference?

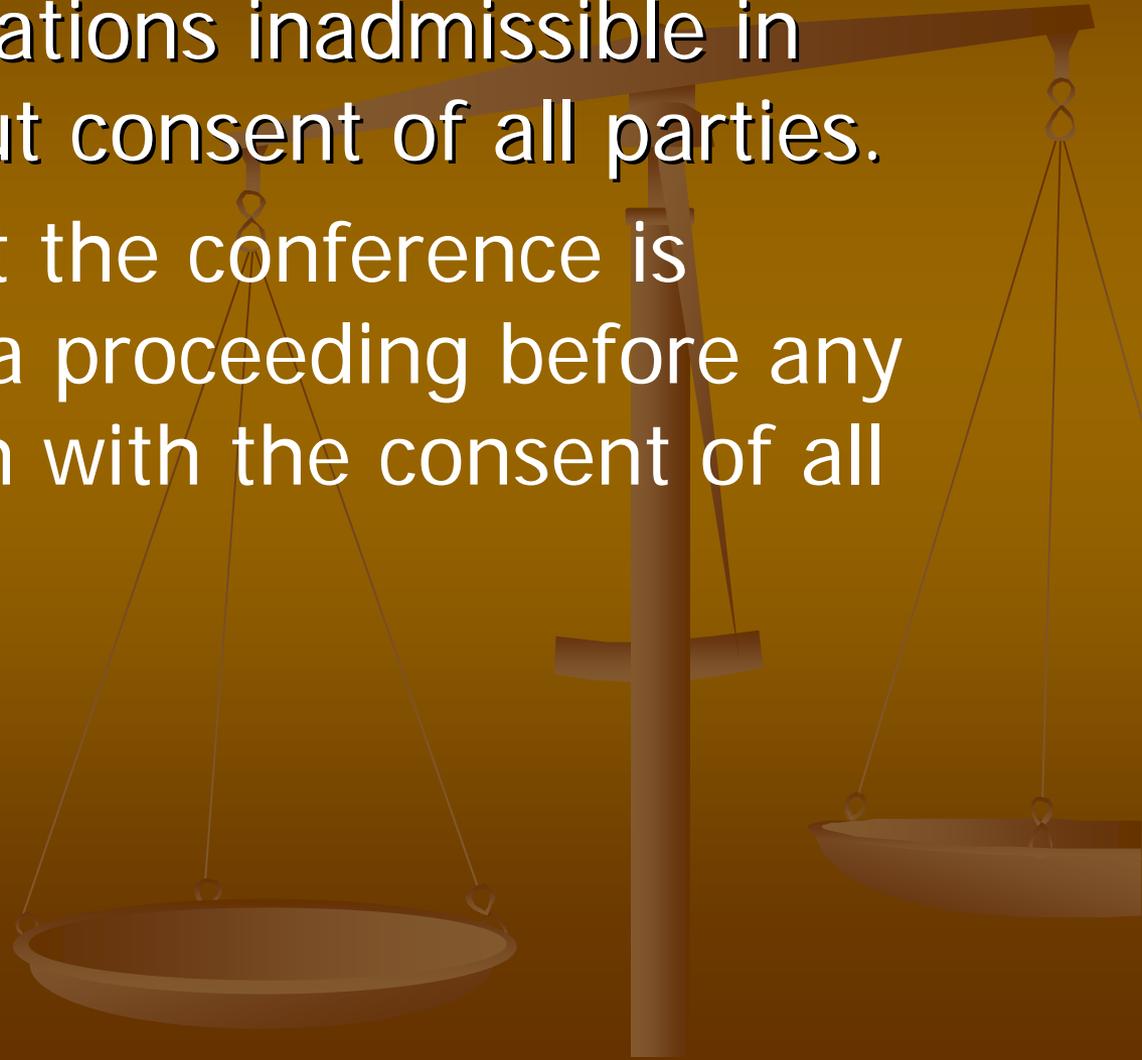
- Express views of parties
  - Improve parties understanding of the central issues
  - Clarify positions
  - Determine areas of agreement and/or disagreement
  - Facilitate identification of options which may protect the child and be agreeable
  - Reach agreement to avoid a hearing
  - Minimise the inherent conflict
- 

# Who may attend the conference?

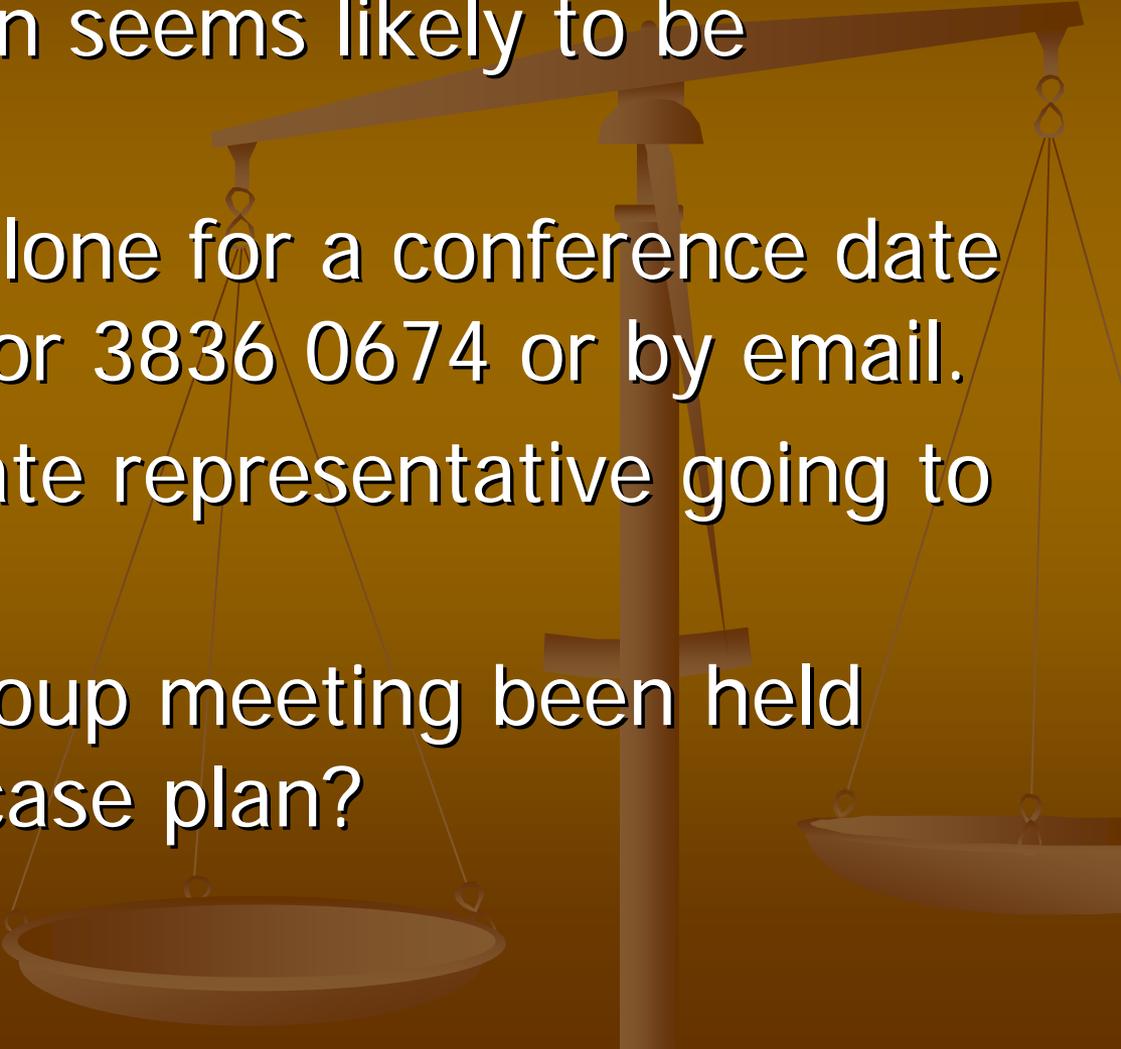
- S.70 Attendance of parties
  - The parties
    - Department
    - Parents
  - Legal Reps
  - Child Separate Legal Representative
  - Member of recognised ATSI entity
  - Others (support people etc.) with consent of convenor.
- 

# Confidentiality

- S.71 Communications inadmissible in evidence without consent of all parties.
- Anything said at the conference is inadmissible in a proceeding before any court other than with the consent of all the parties.



# Contacting Office of Child Protection Conferencing

- When application seems likely to be contested
  - Contact Paul Malone for a conference date – 0402 457351 or 3836 0674 or by email.
  - Is a child separate representative going to be requested?
  - Has a Family Group meeting been held yet? Is there a case plan?
- 

# SEPARATE REPRESENTATIVE

- **MEMO FROM:** Paul Malone, Manager Office of Child Protection Conferencing
- **SUBJECT:** Appointment of child separate representatives ('sep rep')
- **DATE:** 22 October 2008
  
- **PURPOSE**
- To develop consistent state-wide practices for the appointment of child sep reps in applications for child protection orders.
  
- **BACKGROUND**
- Current practice for the appointment of sep reps often sees their appointment coincide with an adjournment and an order for a child protection conference.
  
- **ISSUES**
- Feedback from Legal Aid suggests that appointed solicitors have difficulty in arranging for report writers to conduct social assessments prior to the court ordered conference.
- Separate Representatives may be reluctant to accept referrals where non-consultative time periods are imposed.
- Conferences often require rescheduling due to social assessment reports not being ready, causing:
  - · Delay to the court process;
  - · Wasting time for the conference convenors, solicitors and parties;
  - · Further uncertainty, anxiety and confusion for those subject children who are able to comprehend the proceedings.

## RECOMMENDATION

It is requested that, if a sep rep is ordered, a conference is not ordered in the first instance; instead the application is adjourned for mention in 4-5 weeks to:

- Make the referral to Legal Aid (Grants Division), which includes the court registry furnishing a copy of the court file;
- Enable the appointed sep rep to make inquiries with the Department of Child Safety – accessing their records to ascertain whether further processes are necessary in order to assist in forming a view;
- Enable the sep rep to make enquiries with report writers if required, to make contact with the parties and to establish time-frames for the completion of the report which can then be conveyed to the court.

It is recommended that the Department's Court Coordinator liaise with the sep rep in order to:

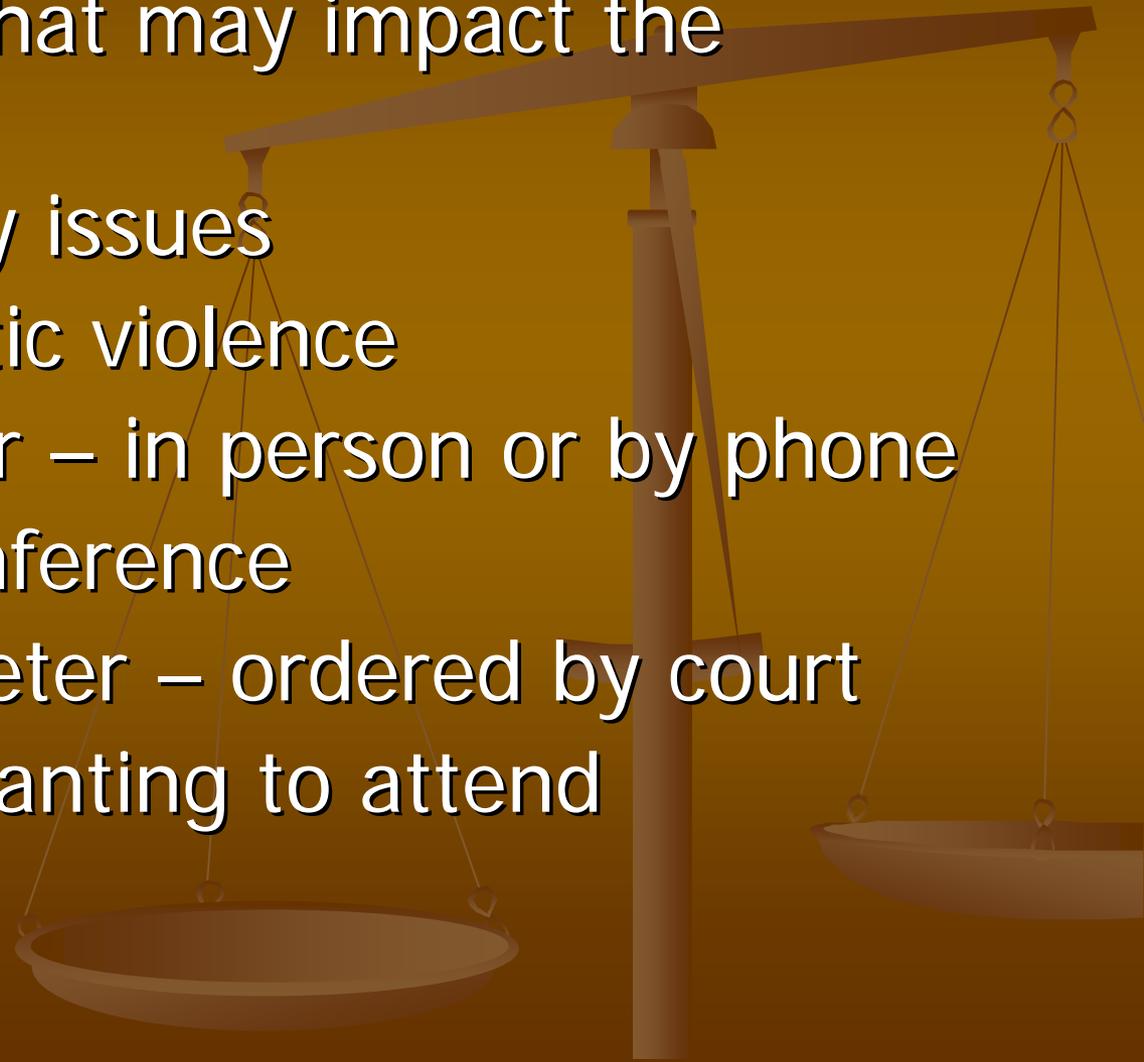
- Be advised of expected time-frames;
- Convey the expected time-frame to Paul Malone so that he can provide a conference time and date which may then be used by the court at the next mention.

## SUMMARY

1. Sep rep appointed
2. No conference ordered in first instance
3. Mention date in 4-5 weeks
4. Sep rep to establish time-frames and liaise with Department
5. Paul Malone contacted for conference date
6. Court to be advised at mention
7. Conference ordered

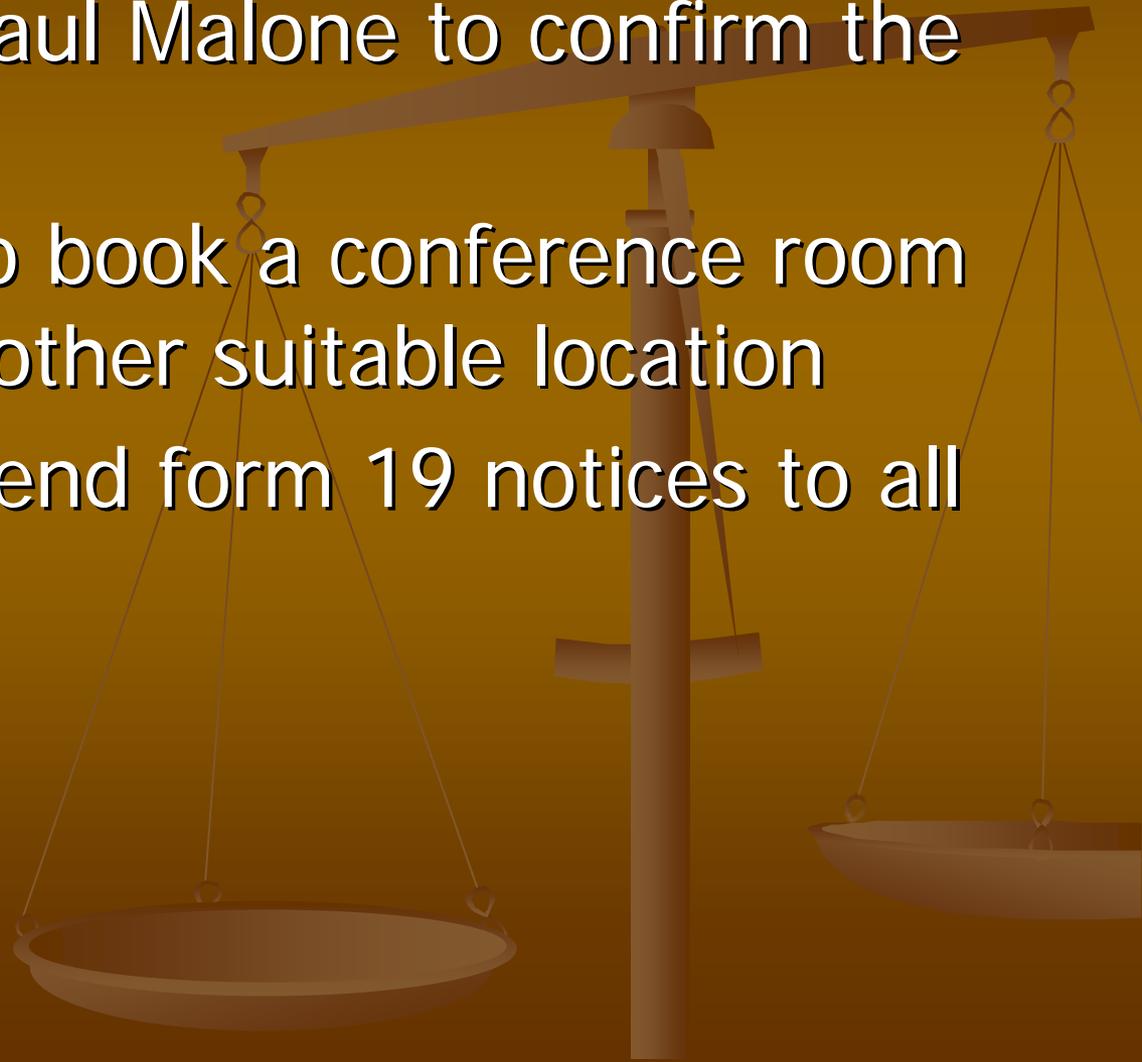
# Contacting Conference Co-ordinator

- Other matters that may impact the conference?
  - Security issues
  - Domestic violence
  - Prisoner – in person or by phone
  - Teleconference
  - Interpreter – ordered by court
  - Child wanting to attend



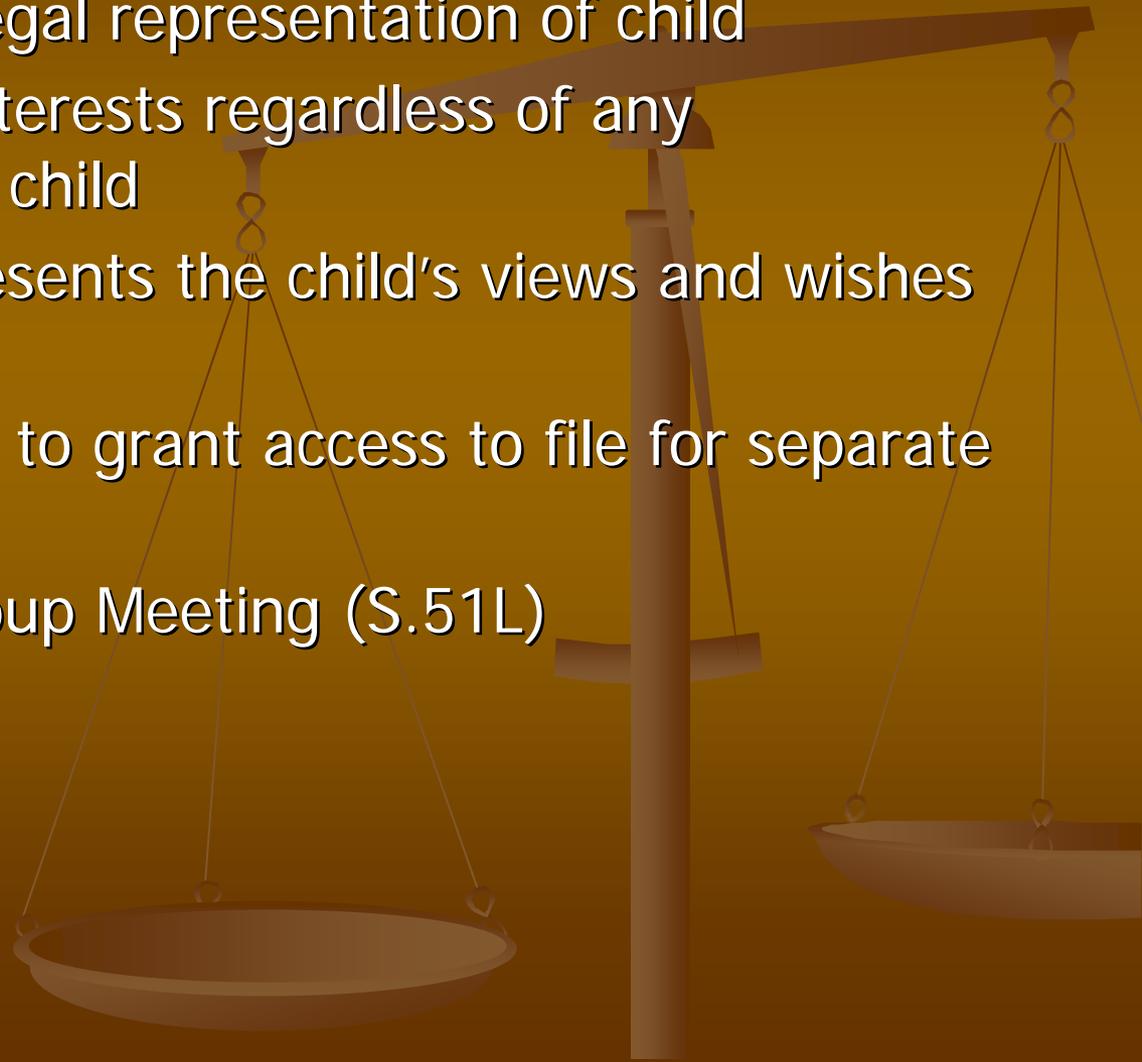
# After the Court orders the conference

- Again contact Paul Malone to confirm the date and time
- Paul arranges to book a conference room at the Court or other suitable location
- The Court will send form 19 notices to all parties



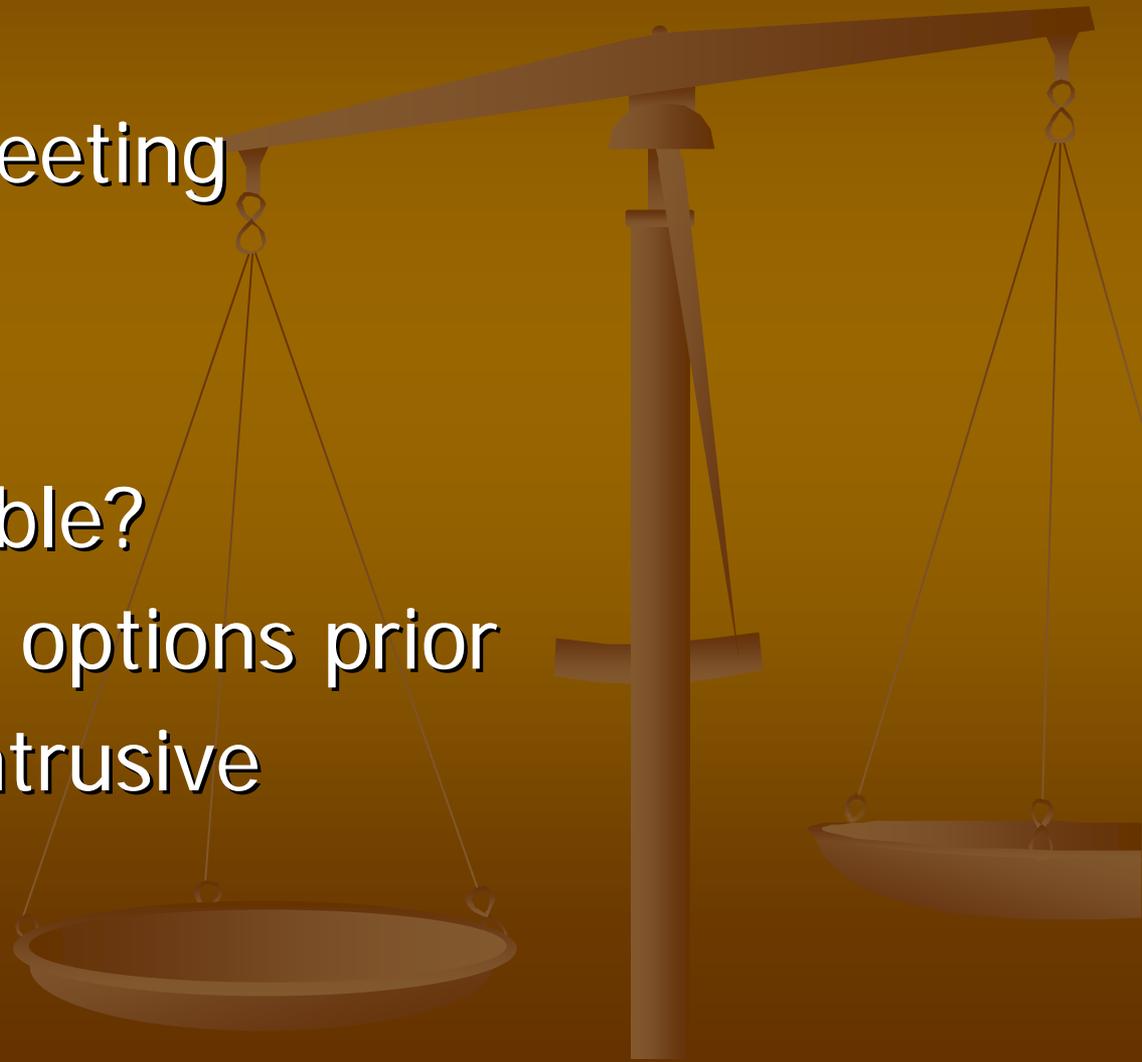
# Child Separate Representatives

- S.110 (1) Separate legal representation of child
- Acts in child's best interests regardless of any instructions from the child
- As far as possible presents the child's views and wishes to the Court
- Dept of Communities to grant access to file for separate representative
- Include in Family Group Meeting (S.51L)



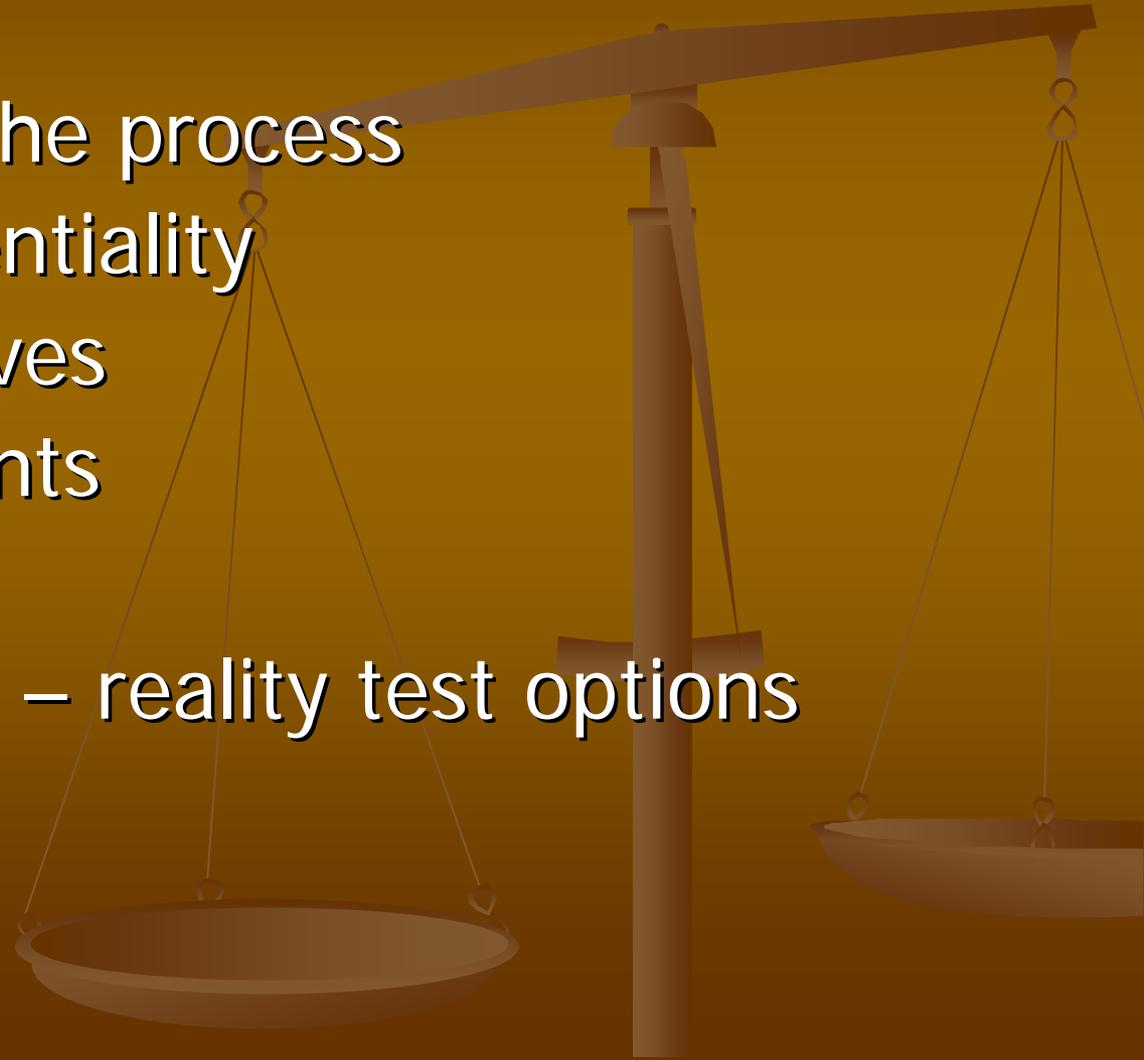
# How to prepare for conference?

- Who's talking?
- Family Group Meeting
- Know your case
- CASE PLAN
- What is negotiable?
  - Discuss options prior
  - Least intrusive



# The conference stages

- Introduction
- Explanation of the process
  - Confidentiality
  - Objectives
- Parties statements
- Discuss issues
- Identify options – reality test options
- Caucus



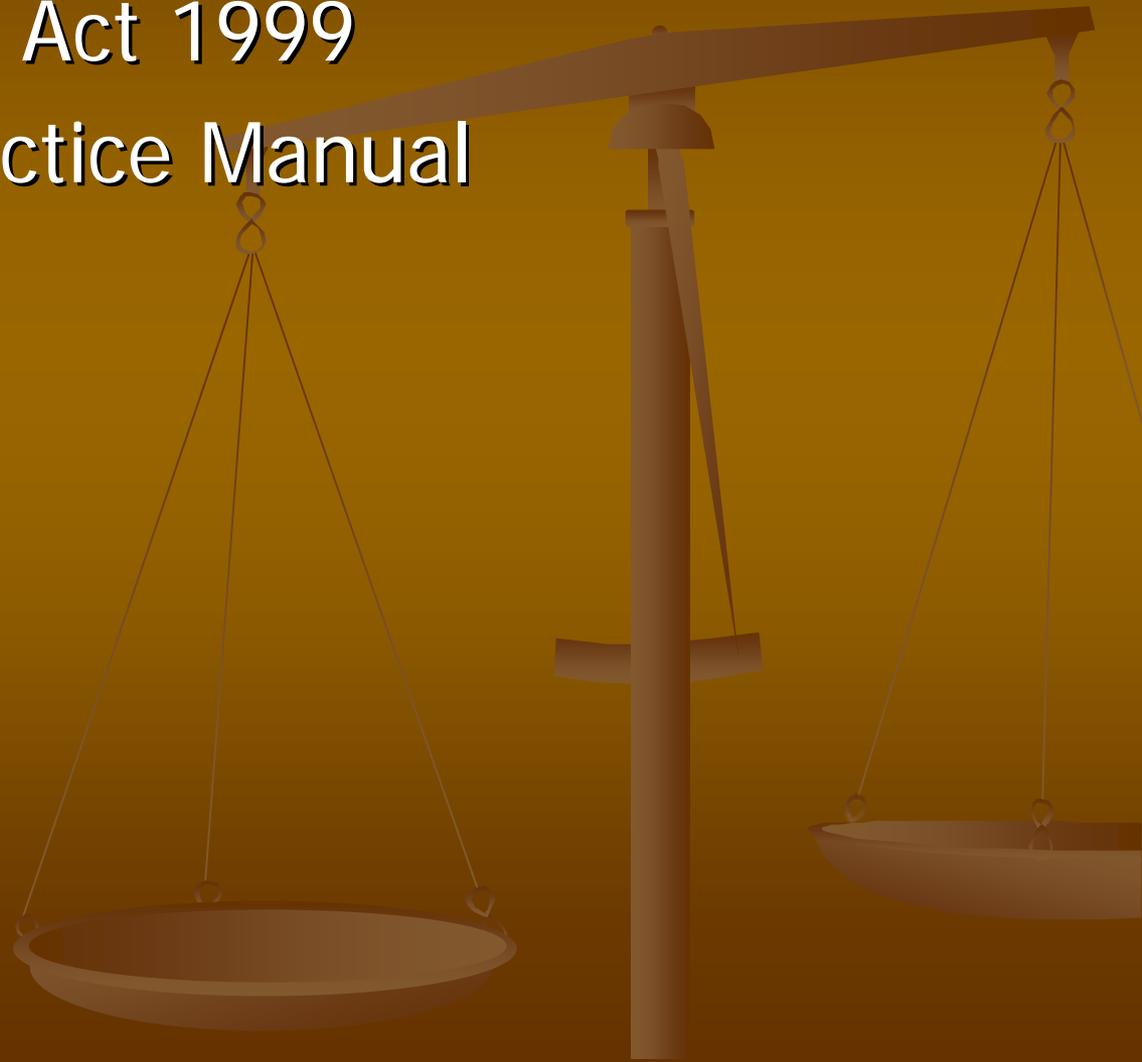
# Result of conference

- When agreement is reached
- When there is no agreement
- Is a further conference necessary?
- The co-ordinator's report



# Further information

- Child Protection Act 1999
- Child Safety Practice Manual



# FORMAL GRIEVANCE PROCEDURE

- 1. Any complaint from a Child Service Safety Centre to be in writing through Court Services.
- 2. If complaint is in relation to either of my staff, to be raised with and addressed by myself through Court Services.
- 3. If the complaint is in relation to myself or if someone felt that I had not addressed the complaint properly, then with my manager Mr Sean Harvey, Regional Services Manager, Magistrates Courts Branch, South East Region, Brisbane. Phone Number (w)3006 8161 or (m) 0407 143525 Email address: [sean.harvey@justice.qld.gov.au](mailto:sean.harvey@justice.qld.gov.au).
- 4. Similarly if there is some complaint or issue in regard to a Child Service Safety Centre that is not able to be addressed, that I would take it up with Court Services .

# Questions





# Contested Child Protection Proceedings

Facilitated by Poonam Wijesoma and Tania Waetford  
Court Services Advisors  
Court Services Child Safety

# [ Overview ]

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- Interface between Crown Law (CL), Court Services (CS) and Child Safety Service Centres (CSSCs);
- Preparing for a contested CP proceeding;
- The role of the Court Coordinator in a contested CP proceeding;
- Subpoenas;
- Witness preparation

# [ Introduction ]

---

- General – interface between Court Services (CS), Crown Law (CL) and Child Safety Service Centres (CSSC);
  - CS liaise with CL and CSSC in preparation for contested hearings;
  - Allocated CSA is responsible for the management of the contested CP file at CS and is the contact point for both CL and CSSC;



# Overview of the process for contested CP proceedings

- Matter listed for hearing;
- Review of court material;
- Brief to Crown Law;
- Advice in Conference;
- Hearing preparation;



# [ Matter listed for hearing ]

- Post the COC mention is usually when an application for a CPO is listed for hearing if a matter has not been resolved during the COC process;
- During the post COC mention, the following directions (subject to the court's diary) should be sought:
  - Subpoena return date – 6 weeks out from hearing;
  - Applicant file/serve – 4 weeks out;
  - Respondent/Sep Rep – 2 weeks out;
  - Review mention – 1 week out;
- **Within one (1) business day** of the matter being listed for hearing, email Team A Team Leader at CS (Melissa Scott) and advise
  - Name of matter;
  - Hearing and filing dates;
  - When material being sent;
- **Within five (5) business days** of the matter being listed for hearing, make two (2) copies of ALL court material filed in relation to contested application and send to CS along with a Child Protection Summary Sheet;
  - material should include all adjournment notices, notices of COC, appointment of separate representative etc

# [ Matter listed for hearing ]

- Within two (2) business days of email notification, Team A TL will allocate the matter to a CSA;
- Within two (2) business days of allocation, CSA will make contact with CSSC to advise of timeframes for the completion of the Review of Court Material and Brief to Crown Law

# [ Review of Court Material ]

- Upon receipt of the relevant court material for the contested application, the allocated CSA conducts a review of court material.
- This involves:
  - Identifying what further evidence may be required;
  - For matters that are complex and require further information, CSA may contact CC and seek a case discussion;
- Review provided to relevant staff members (TL, CC and CSO/Applicant) at CSSC for actioning.

# [ Review of Court Material ]

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- Ideally, the review of court material should be provided to the CSSC four (4) weeks prior to the Applicant/Department's file date

# [ Brief to Crown Law ]

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- The Brief to Crown Law includes:
  - Letter of instructions;
  - A copy of all material filed in the proceedings as at date of letter of instructions;
  - A copy of the review of court material prepared by the allocated CSA;
- For urgent matters, a brief is often provided prior to the review of court material being completed

# [ Case Discussions ]

---

- Where a matter is particularly complicated, or urgent, CSA may request an urgent case discussion with the TL, CSO and CC.
- Case discussions are confidential discussions within the department, which are useful when needing to discuss the merits of the current application and any concerns in relation to it (e.g. evidence required/obtained) without Crown Law involvement.

# [ Advice in Conference (AIC) ]

- What is an AIC?
  - Confidential discussion between the client and the legal representative;
  - Involves Crown Law/Private Counsel, CSA and relevant CSSC staff (CSO/Applicant, CC and TL)
- Types of AICs:
  - Pre-filing AIC – discussion re: review of court material and evidence required to be filed in support of application and preliminary discussion of merits of the application
  - General AIC – convened to discuss developments in the case and to keep allocated Crown Lawyer/Private Counsel apprised of critical information and seek relevant advice
  - Pre-trial AIC – preparation for hearing including witnesses, witness preparation with the Applicant, discussion regarding what, if any, vulnerabilities in the application

# [ Review mentions ]

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- A review mention is a mention to determine the procedure for trial where you can -
  - Seek leave for telephone evidence;
  - Advise court of Applicant/Department's readiness for trial;

# [ Subpoenas ]

- Rule 27, *Children's Court Rules 1997* →
- *On application by a party to a proceeding, the registrar may issue a subpoena requiring the attendance of a person before the court to give evidence in the **proceeding** or produce stated documents or things.*
  - Proceeding → does not mean just hearing, can issue subpoenas for return at a mention
- Must seek leave of court to inspect and copy subpoenas;
- How to issue subpoena:
  - Form 23 x 1;
  - Form 24 x 3 - Department file copy, Court copy and one for service;
  - Best practice is to ensure that a copy of each subpoena issued is provided to the parties so they are on notice as to what we have requested;

# [ Subpoenas ]

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- Types of subpoenas:
  - Subpoena to produce documents – best practice to provide 14 days prior to return date
  - Subpoena to attend and give evidence – best practice no later than 3 weeks out from hearing;
  - Conduct monies

# The Role of the Court Coordinator in a contested CP proceeding

- Prior to hearing:
  - Ascertain witness availability and prepare a witness list for hearing;
  - Coordinate filing of material for department's file date;
  - Liaise with CS regarding any developments with the matter
  - Assist in preparing witnesses for hearing

# The Role of the Court Coordinator in a contested CP proceeding

- At hearing:
  - Whilst the Applicant is giving evidence, instruct Crown Lawyer/Private Counsel;
  - Coordinate witnesses to ensure that the hearing flows by having sufficient number of witnesses available to give evidence;
  - If a matter enters negotiations, contact relevant witnesses and advise;



# COURT SERVICES UNIT

# What functions does the Court Services Unit undertake?

- Does anyone know what roles the unit undertakes?

## Purpose of the unit

- Represent the Director-General in court and Tribunal matters involving children and young people and promote high quality service delivery to courts and the Tribunal on a statewide basis through the provision of expert advice and training, contribution to policy and practice development, and monitoring of practice and trends.

# Functions

- Represent the Director-General in Childrens Courts, the Family Law courts and higher courts in child protection matters.
- Manage contested child protection matters and coordinate Crown Law representation.
- Manage the department's dealings with the Queensland Civil and Administrative Tribunal (QCAT) in relation to review applications.
- Coordinate the department's implementation of the Magellan case management model (Family Court).
- Coordinate the department's response to applications for Special Medical Procedures in the Family Court.

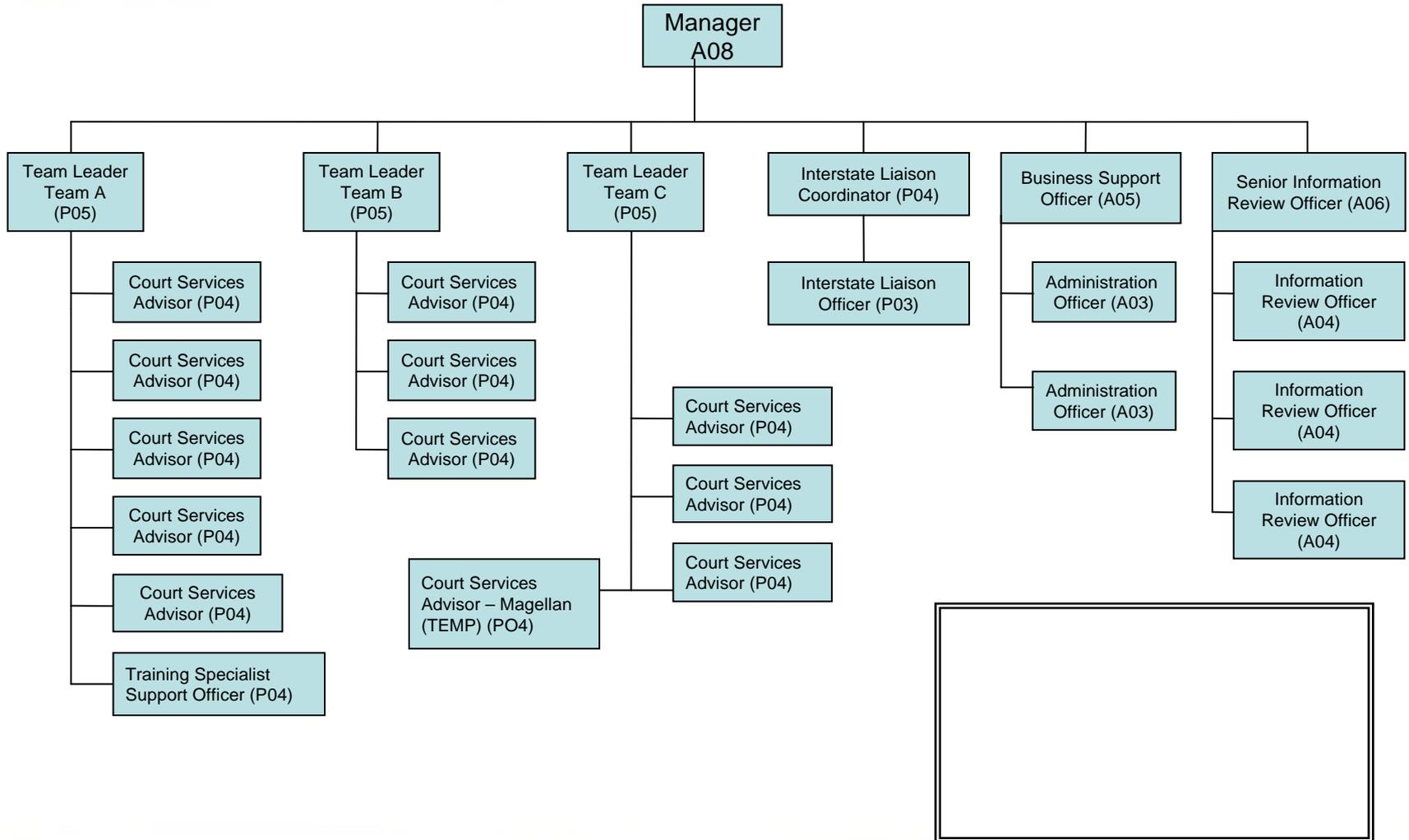
# Functions continued

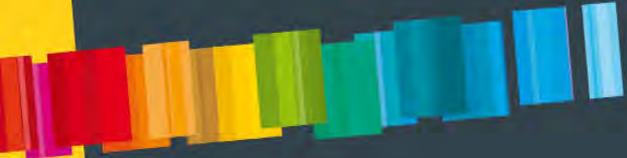
- Act as the State Central Authority under the Hague Convention on the Civil Aspects of International Child Abduction.
- Manage intercountry requests in child protection and act as the State Central Authority under the Hague 'Child Protection' Convention.
- Coordinate all requests as per the Protocol for the Transfer of Child Protection Orders and Proceedings and Interstate Assistance.
- Process subpoenas for all departmental files.
- Provide expert consultation and advice to other departmental staff on court and Tribunal practice issues.

# Functions continued

- Resource and support the statewide network of Court Coordinators.
- Assist departmental staff to develop skills in court work through provision of high quality training.
- Liaise with key stakeholders and contribute to the development of policy and practice standards.
- Monitor statewide practice standards and trends.

# COURT SERVICES (CHILD SAFETY) UNIT





# COURT COORDINATORS

# Background

- January 2004 the CMC delivered a report "Protecting Children: An Inquiry into Abuse of Children in Foster Care" which contained a number of recommendations aimed at improving services.
- One recommendation was to consider specialist Court workers. It was proposed that dedicated Court Coordinator positions be part of the staff establishment of each CSSC.

# ROLE

The role of the CC is to assist CSSC staff and the CE to meet their legal obligations in courts, tribunals and to adhere to various protocols and conventions and promote quality practice.

## How is this done?

Actively participating and assisting with:

- Childrens Court mentions
- coordination and preparation of contested child protection matters
- coordination and preparation of QCAT matters
- family law matters
- appeals & warrants
- interstate matters / judicial transfer of orders & interstate transfer of proceedings

## The role is varied ..

- case discussions with internal & external stakeholders
- considering the evidence
- providing a QA role
- "Advice in conferences"
- liaising with separate reps
- working with external witnesses
- participating in discussions with RE's
- ensuring staff are aware of requirements of an interim court orders eg social assessments
- use of ICMS

## Role continued

- monitor & contribute to the development of practice standards & operational guidelines
- participate in regional forums & meetings
- recording practice trends
- liaising with a range of internal & external stakeholders
- developing, implementing, monitoring & maintaining office systems in relation to the efficient management of court & tribunal appearances and timely recording of outcomes.

## Role continued

- providing a consultancy resource service to staff & other key local stakeholders in relation to court and tribunal matters.
- promoting best practice
- presenting in a professional manner
- being accountable
- promoting effective working relationships
- documenting all decision making processes
- having a commitment to ongoing learning
- adhering to the principles of being a model litigant

# ROLE OF LEGAL SERVICES

Presented by  
**Steve Habermann**

**Director -Legal Services – Child Safety Services & Sport**



## Who are we?

- Legal Services serves as a primary role the Executive of the department
- the branch will take care, for the executive, of all of its legal requirements
- One of the major matters that Legal Services administers is the litigation that exists, essentially with the department being nominated as defendant. In fact it is the State of Queensland that is actually named as defendant in any such proceedings

## What litigation do we do?

- Currently there are about 120 claims against the department. Of these 120 there are currently 46 that are active and current and which require the attention of Legal Services.
- The remainder are claims that have been commenced but have not been actively pursued by the claimants.
- The majority of the claims are personal injuries claims brought by former children in foster care.
- Overall there are four main types of claims

## What are the types of claims?

1. **First**, and in the **majority**, are "**abuse**" **claims** where the **statute of limitations does apply**. Claims have been brought by former residents of Queensland institutions as well as former children in foster care. The claimants will have to demonstrate to a court why they should not be barred from bringing their claims because the claims have been commenced "out of time". The claimants allege that they were abused whilst in care of the State and that the State failed in its duty of care to them. Most of the claims have been made in the last four years

Many claims by former residents in institutions have been finalised using the REDRESS SCHEME which spent an estimated \$100 Million dollars in an administrative process which created an automatic entitlement for every person that had been in an orphanage and who had met certain other criteria.

2. **Second**, there are **abuse claims** where the **statute of limitations does not apply** - that is, the claims have been commenced within the time limits provided for by the *Limitation of Actions Act 1974*. Where the alleged abuse is said to have occurred within the limitation period and the Director-General is still the guardian of the child then the State will refer the matter to the Public Trustee to act in the child's interests.

The Public Trustee would normally brief the matter to a private firm of solicitors to act for the child. This is appropriate as the State would have a conflict of interest and could not provide instructions on behalf of the child.

These matters are where a child in care has a claim against the State , usually this Department and the Director-General would, but for this referral be the litigation guardian and the proper defendant. We currently have three such matters

3. **Third**, there are claims by foster carers who have been injured by children in our care. This commonly occurs where we have placed a difficult or violent child with the carer. Or we have claims where workers in residential care services try and recover damages from the State. We currently have two highly contested matters.
4. **Fourth**, there are claims where the claimants allege that they have suffered as a result of the adoption process. Most of the claims have been made in the last four years. None have been pursued and all remain dormant at this time. We would anticipate a significant reduction in such claims due to the new *Adoption Act 2009*
5. **Fifth**, there are some claims where a person alleges that the State of Queensland failed to remove them from their parents and or care situation in breach of the duty of care owed by the Department to all children in Queensland. We currently have 8 of these types of claims.
6. **Last**, there are a small number of miscellaneous claims, such as work related stress injuries etc.

## Who represents the department in these cases?

- In relation to these matters Crown Law acts on behalf of the department, and a significant amount of the legal work is completed in partnership between Legal Services and Crown Law.
- Legal Services locates relevant evidence, considers advice provided, interprets the advice for relevant persons such as the Director General and Minister and will provide opinions on the advice given by Crown Law, suggest the most appropriate course to adopt so that the executive can provide proper instructions back to Crown Law .
- The ultimate responsibility for the litigation matters lies with QGIF ( Queensland Insurance Fund) who are our insurers for unforeseen contingencies.
- There are also cases where the chief executive of the department acts as litigation guardian for children. In these cases, the department is not being sued. The child is suing someone else for a wrong that it is alleged that other person has committed against the child. We are currently managing 12 such cases.

## What else do we do?

- As to the other duties performed by Legal Services, imagine all of the issues that can come up in any corporate entity that may have a legal component, and this is what we deal with on a daily basis. Therefore, our tasks are not limited to dealing with child protection issues. Our work is extremely wide ranging with the branch being called upon to deal with any legal issue that arises within the department.
- On a daily basis Legal Services deals with 20 to in excess of 30 of email requests for authoritative legal advice on many issues. For instance we may be dealing at one moment with a legislation question in relation to a child protection matter, be required in the next instance to draft overnight a contract for the retention of specialised services and in the next be drafting statements of reasons for judicial review purposes.

## Legal Services v Court Services

- We also deal with inquests and all matters arising from Coronial Inquiries into deaths of children. We deal with the provision of evidence, we draft and edit statements for the coroner, we conduct witness preparation for witnesses and we keep the executive informed.
- As to the interface with Court Services and Child Safety Service Centres, the difference between our dealings with Court Services and the CSSC's is that in relation to Court Services we are almost always dealing with child protection legislation issues. With the CSSC's, it can again be any one of the raft of legal questions that arises as a result of general business of the department.
- In relation to child protection legislative issues, if a CSSC has a question that has arisen as a general issue – say something that keeps arising and needs an answer with general application of the legislation, Legal Services should be approached for legal advice. Unless it is a very basic question, the request should be in writing – email – so that everyone knows precisely what is being considered. Likewise, Legal Services will then respond in writing.

- Where there is a specific issue that has arisen because of a matter currently being dealt with in the court or tribunal, such issues must be referred to Court Services in the first instance. Court Services has the experience of being able to interpret the legislation and of being able to apply it in the court and tribunal environment.
- Court Services also has the benefit of a close contact with the Brisbane Children's Court magistrate and members of the tribunal, so officers from Court Services will be far more aware than Legal Services of what sort of consideration is to be given to application of the legislation in the court situation.
- Therefore no specific matters that are before the court or tribunal should be referred to Legal services. If there is a legal issue that Court Services needs to clarify, it will be for Court Services to contact Legal Services. From the point of view of the CSSC's, they will refer the matter to, and receive a response from, Court Services.

- It is probably clear, therefore, that the interaction between Court Services and Legal Services is one where Legal Services will be requested to provide, from time to time, authoritative legal advice where specific issues arise. We will be looking at the specifics of a case and at the literal correct interpretation of the legislation, or whether there is more than one interpretation for instance, and will provide advice accordingly.
- We will also look at matters where it is perhaps hoped that a particular interpretation can be placed on legislation and determine whether an argument can be mounted that supports the interpretation. Of course we are bound by what are called model litigant principles, so we are not in a position to promote a dubious interpretation of the law.

## Judicial Review v Administrative Review

- Judicial Review looks at whether the decision was made contrary to legislation, rules of natural justice, made on no evidence or otherwise made outside of power. See section 20(2) of the *Judicial Review Act 1991*. It basically looks at whether a decision was made contrary to law. We are currently involved in three such reviews and they are generally around grant funding issues and around licensing decisions. The only result that can come from a Judicial Review is an order to make the decision again.
- Administrative review is a merits review process which looks at all the information afresh and any new information to determine if the decision made was the correct one.

In Queensland judicial review is undertaken by the Supreme Court pursuant to the *Judicial Review Act 1991* and other Tribunals in relation to specific legislation (for example QCAT deals with Child Safety (Schedule 2) and Children's Commission (blue card refusals etc)).

The Queensland *Judicial Review Act 1991* (JR Act) gives the public the right to:

request the reasons for the decisions which adversely affect them;  
or

seek a review of a decision in the Supreme Court.

As well as administrative decisions of Government departments and local authorities, the JR Act also applies to administrative decisions of semi-government agencies and statutory authorities.

'Administrative decisions' which are made under an enactment are reviewable. An enactment includes part of an Act or a statutory instrument such as regulations, rules, by-laws, ordinances, guidelines or standards.

'Decisions' include a failure to make a decision and actions and conduct leading up to the making of the decision. A decision can be an order, award or determination, certificate, direction, approval, consent or permission, licence, condition or restriction, declaration, requirement, demand or a refusal to hand over an article.

Some of the more quirky applications we have seen recently were:

- seeking a Statement of Reasons from a person that did not make the decision and
- A request for a judicial review of a decision not to answer a letter of demand, essentially seeking to have children returned to a parent.

## Grounds for seeking a review

- The decision-maker breached the rules of natural justice;
- The decision-maker did not observe the correct legal procedures;
- The decision-maker did not have the authority to make the decision;
- The decision was not authorised by the legislation it was purported to be made under;
- The decision involved an improper use of power;
- The decision involved an error of law;
- The decision is or may be tainted by fraud;
- There was no evidence or other material supporting the decision;
- or
- The decision was in some other way unlawful

## Overview Of Court Hierarchy

Although Parliament decides what the laws will be, it is the courts' role to decide how these laws will be applied to particular cases.

Some courts, such as the Family Court and the High Court, are federal courts, which means they have been established by the Federal Government. However, most cases in Queensland are decided in the State courts: the Supreme Court, the District Courts or the Magistrates Courts.

Cases are described as being either criminal or civil. A civil case is one in which a person, a company or the Government claims that another party has acted contrary to the law. A criminal case is one in which the police or the Government says that a person has broken the criminal law, for example by killing someone or stealing property.

## Role of the High Court

The High Court is the highest court in the Australian judicial system. It was established in 1901 by Section 71 of the Constitution. The functions of the High Court are to interpret and apply the law of Australia; to decide cases of special federal significance including challenges to the constitutional validity of laws and to hear appeals, by special leave, from Federal, State and Territory courts.

The seat of the High Court is in Canberra, where it is located in its own building within the Parliamentary Triangle. In addition, there are offices of the High Court Registry in Sydney and Melbourne, staffed by officers of the High Court. In Brisbane and Perth registry functions are performed on behalf of the High Court by officers of the Federal Court of Australia, and in Adelaide, Hobart and Darwin they are performed by officers of the Supreme Court of the respective State or Territory.

## Family Court of Australia

The Family Court of Australia was created by the [Family Law Act 1975 \(Cth\)](#) to interpret and apply that law to individual cases. The Family Court has registries in Brisbane and Townsville and sub-registries in Rockhampton and Cairns. This initiative was aimed not only at improving the manner in which separation and marriage dissolution were managed but also aimed at providing specialised facilities and services concerned with the welfare of children of the separating couples.

The Court also has jurisdiction in some matters under other legislation such as the *Marriage Act 1961* (Cth) and the Child Support legislation. The jurisdiction and the administration of the Court has changed over time as a result of changes to the Family Law Act, in response to recommendations of reviews both internal and external, and the creation of the Federal Magistrates Court.

The Family Law Act defines the jurisdiction of the Family Court and of the State Courts which may also exercise some jurisdiction under it.

For example, the Family Court has jurisdiction to hear matters related to divorce whereas the Federal Court does not have this power because these matters are not within its jurisdiction.

## Family Court

The Family Court's jurisdiction in relation to children includes the power to make parenting orders, which may include one or more of the following:

- the person or persons with whom a child is to live (*Family Law Act 1975*, section 64B(2)(a));
- the time the child is to spend with another person or other persons (*Family Law Act 1975*, section 64B(2)(b));
- the allocation of parental responsibility for a child for making daily and long-term decisions about a child's care, welfare and development (*Family Law Act 1975*, section 64B(2)(c));
- if two or more persons are to share parental responsibility for a child, the form of consultations those persons are to have with one another about decisions to be made in the exercise of that responsibility (*Family Law Act 1975*, section 64B(2)(d));
- the communication a child is to have with another person or other persons (*Family Law Act 1975*, section 64B(2)(e)); and
- maintenance of a child (*Family Law Act 1975*, section 64B(2)(f)).
- Consent to adoptions of children by step parents

The Family Court also has a broad welfare jurisdiction to deal with special matters such as consent to medical treatment and certain powers under international conventions.

## Other Courts with Family Law Act jurisdiction

The Federal Magistrates Service and state Magistrates Courts also have jurisdiction under the *Family Law Act 1975* to deal with children's matters. The Federal Magistrates Court, which shares registries with the Family Court in Brisbane and Townsville, can deal with contested children's matters provided the consent of all parties has been provided. For the purpose of this procedure, the Family Court also refers to the Federal Magistrates Service. The State Magistrates Court has jurisdiction to make consent orders only.

## Roles of Family Court and Department

The role of the Family Court is to determine disputes between separated parents and other persons concerned with the child's welfare or about the care of the child. In deciding whether to make a particular parenting order, the Family Court must regard the best interests of the child as the paramount consideration.

If there is suspected harm or risk of harm to a child, the department is the mandated authority to investigate the allegations. The Family Court does not have the expertise, role or resources to perform this function. Whether or not there are proceedings in the Family Court, the department has the lead responsibility to ensure the child's safety and need for protection. A child of separated parents has the same right to protection and to receive departmental services, as do other children.

## Roles of Family Court and the department

The *Family Law Act 1975* recognises the child protection role of the state in the following ways:

- Family Court personnel are mandated to report cases of suspected harm and risk of harm, and family violence, to the state welfare authority (*Family Law Act 1975*, section 67Z, 67ZA);
- the Family Court cannot make a parenting order in relation to a child in the care of a person under the *Child Protection Act 1999*, unless the order is to come into effect when the child ceases to be in that care or the chief executive consents to the application proceeding in the Family Court (*Family Law Act 1975*, section 69ZK(1));

## Roles of Family Court and the department

nothing in the *Family Law Act 1975* or any order under that Act affects:

- the jurisdiction of the Childrens Court to make an order by which a child is placed in the care of a person under the *Child Protection Act 1999*; or
  - the power of the department under the *Child Protection Act 1999* to take any action by which a child is placed in the care of a person under the Act; or
  - the operation of the *Child Protection Act 1999* in relation to a child (section 69ZK(2));
- ❖ the department has the right to intervene in Family Court proceedings and deal with child protection issues in the Family Court if it chooses (*Family Law Act 1975*, section 92A);
  - ❖ the Family Court may request the department to intervene in the proceedings (*Family Law Act 1975*, section 91B); and
  - ❖ under the *Family Law Rules 2004*, rule 6.02(2), the chief executive of the department must be served as a respondent to any application relating to a child for whom a care agreement, assessment order or child protection order under the *Child Protection Act 1999* is in place.

## What is the Supreme Court?

The Supreme Court is the highest court in the Queensland court system. It consists of the Chief Justice and two divisions, the Trial Division and the Court of Appeal.

Presiding over the court is a justice (judge) of the Supreme Court. The Supreme Court hears serious criminal offences, such as murder and certain serious drug offences. The Supreme Court hears civil disputes where the amount in dispute is more than \$750,000.

Like the District Courts, the Trial Division of the Supreme Court must use a jury to determine guilt or innocence in criminal cases. Civil cases are usually decided by a judge without a jury.

In certain circumstances, parties may dispute the decision of a court or the sentence imposed through a process called an appeal. Most appeals are heard in the Court of Appeal. It is part of the Supreme Court and handles only appeals; it does not decide cases initially. The Court of Appeal does not have a jury. Three justices of the Supreme Court make the decisions.

## What is a District Court?

Serious criminal cases, such as rape and armed robbery, are decided in a District Court. A District Court also handles civil disputes where the amount in dispute is between \$150,000 and \$750,000.

Appeals against some decisions of a Magistrates Court may also be dealt with by a District Court.

A District Court judge presides over a District Court. In criminal trials, a jury decides whether the person charged is guilty or not. If the person is found guilty, the judge then decides on the penalty.

Most civil cases are decided by a judge sitting without a jury

Some Judges of the District Court also sit in the Planning and Environment Court and in the Childrens Court.

## What is a Magistrates Court?

### **What is a Magistrates Court?**

A magistrate presides over a Magistrates Court. There is no jury.

These courts deal with less serious offences. More serious criminal matters are decided in the higher courts, that is, the District or Supreme Courts.

In less serious criminal cases, the magistrate must decide whether the accused person is guilty or not. If he or she is guilty, the magistrate also fixes the penalty.

If a criminal case is too serious to be dealt with in a Magistrates Court, it must be decided in the District or Supreme Court. However, the accused is first charged in a Magistrates Court and the magistrate must then decide whether there is enough evidence to justify sending the matter for trial in one of the higher courts. This is called a committal for trial.

Magistrates Courts deal with civil matters if the amount in dispute is \$150,000 or less.

## Childrens Court

A Childrens Court is presided over by a magistrate or two Justices of the Peace (Qualified).

The Children's Court has separate jurisdiction from the adult jurisdiction of the Magistrates, District and Supreme Courts. The Childrens Court has the jurisdiction to:

- determine certain offences against young people under 17 years who have offended
- determine child protection matters in accordance with the [Child Protection Act 1999](#).

Childrens Courts are convened in the same locations as Magistrates Courts throughout Queensland - except in central Brisbane where there is a separate Childrens Court building.

## Childrens Court

The Childrens Court is a closed court and therefore only certain persons are allowed to be present. Those who are allowed to attend court include:

- the magistrate (or judge in the Childrens Court of Queensland)  
court clerk

and representatives from the Department of Child Safety - applicant  
and court officer/legal representative

- parents and their legal representative

- the child (if old enough) and their legal representative

- the Separate Representative (lawyer) appointed by the court to represent the child's interests

a representative of a Recognised Entity if the child is an  
Aboriginal or Torres Strait Islander child or young person

- non-parties who the magistrate would like to hear from.

## Childrens Court

The child safety officer of the Department of Communities is known as the 'Applicant' in court.

Parents are referred to as the 'Respondents'.

Magistrates in the Childrens Court must be addressed as 'Your Honour'.

## Contact by email is preferred

Legal Services

GPO Box 806

Brisbane Qld 4001

Phone: 07 3234 1829

Fax: 07 3235 9788

Email: [steve.habermann@communities.qld.gov.au](mailto:steve.habermann@communities.qld.gov.au)



# APPEALS

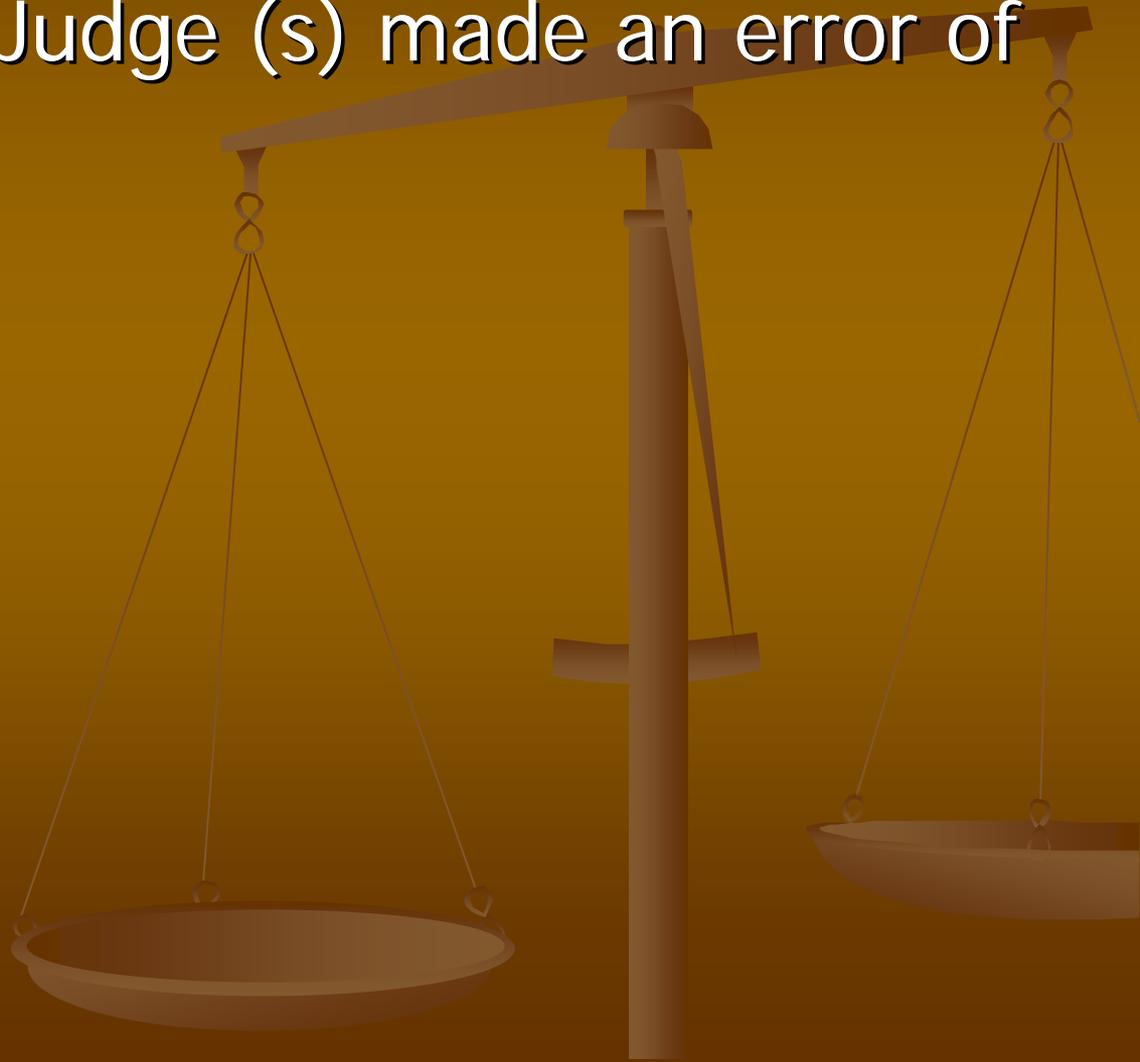
COURT COORDINATOR INDUCTION

DEVELOPED BY COURT SERVICES CHILD SAFETY

UPADTED: 3 AUGUST 2011

# What are the grounds for an appeal?

- The Magistrate/Judge (s) made an error of fact or law.



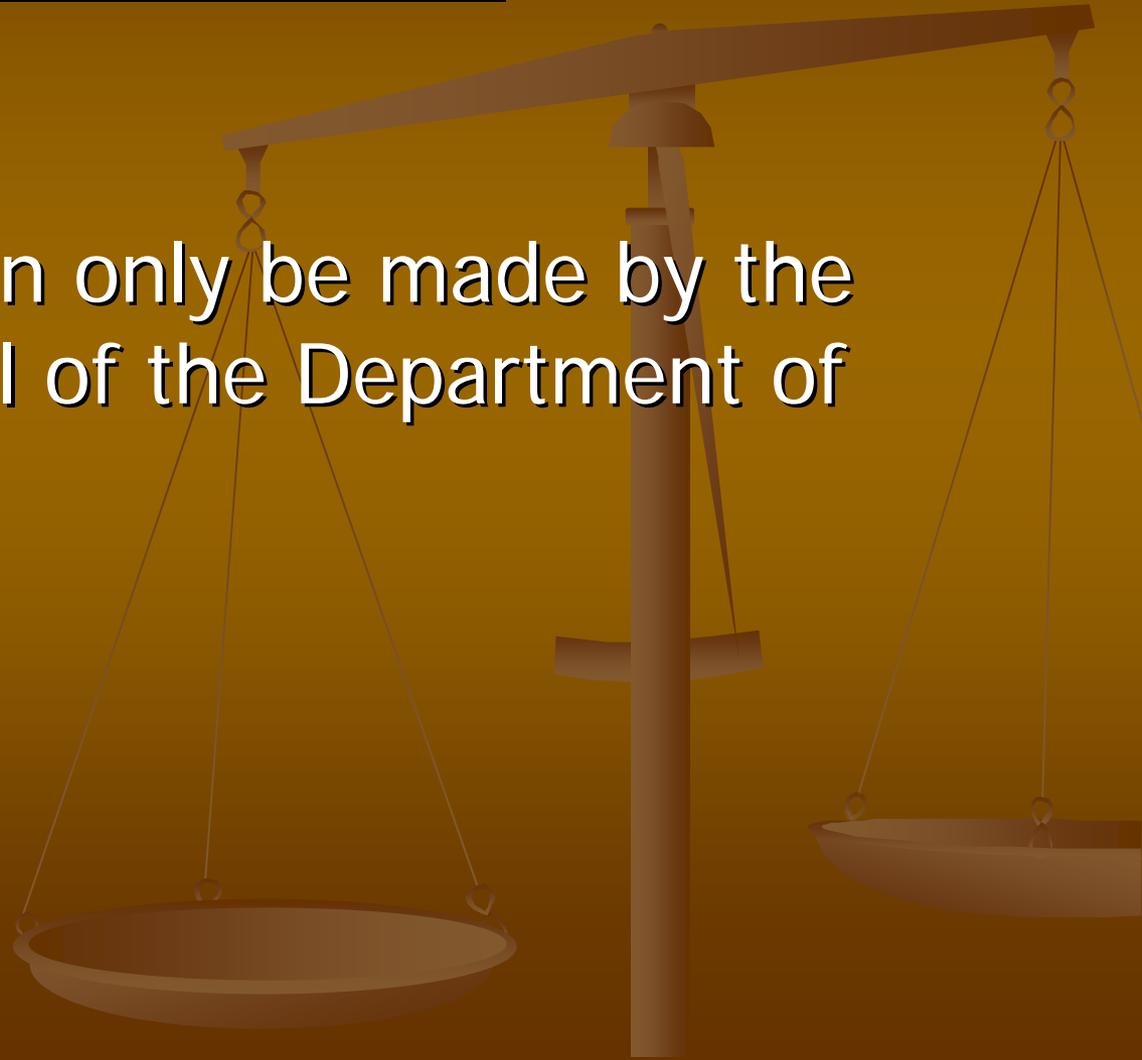
# What are the grounds for an appeal?

## Note:

- The appeal court can only consider the same material that was before the lower court at the time the decision was made. Section 120(1) of the *Child Protection Act 1999*.
- If a party seeks to introduce new material, leave is required from the appeal court to do so.
- If the Department does seek to rely on further material not filed at the time of the original decision, it may be more appropriate to file further updated material in the court that made that decision and seek that the matter be listed for further mention (this will be possible only where the decision is an interim decision).
- However, section 120(3) of the *Child Protection Act 1999* provides that the appellate court may order that the appeal be heard afresh in whole, or part.
- An appeal in respect of a TAO is not restricted to the material before the Magistrate, section 120(1) *Child Protection Act 1999*.

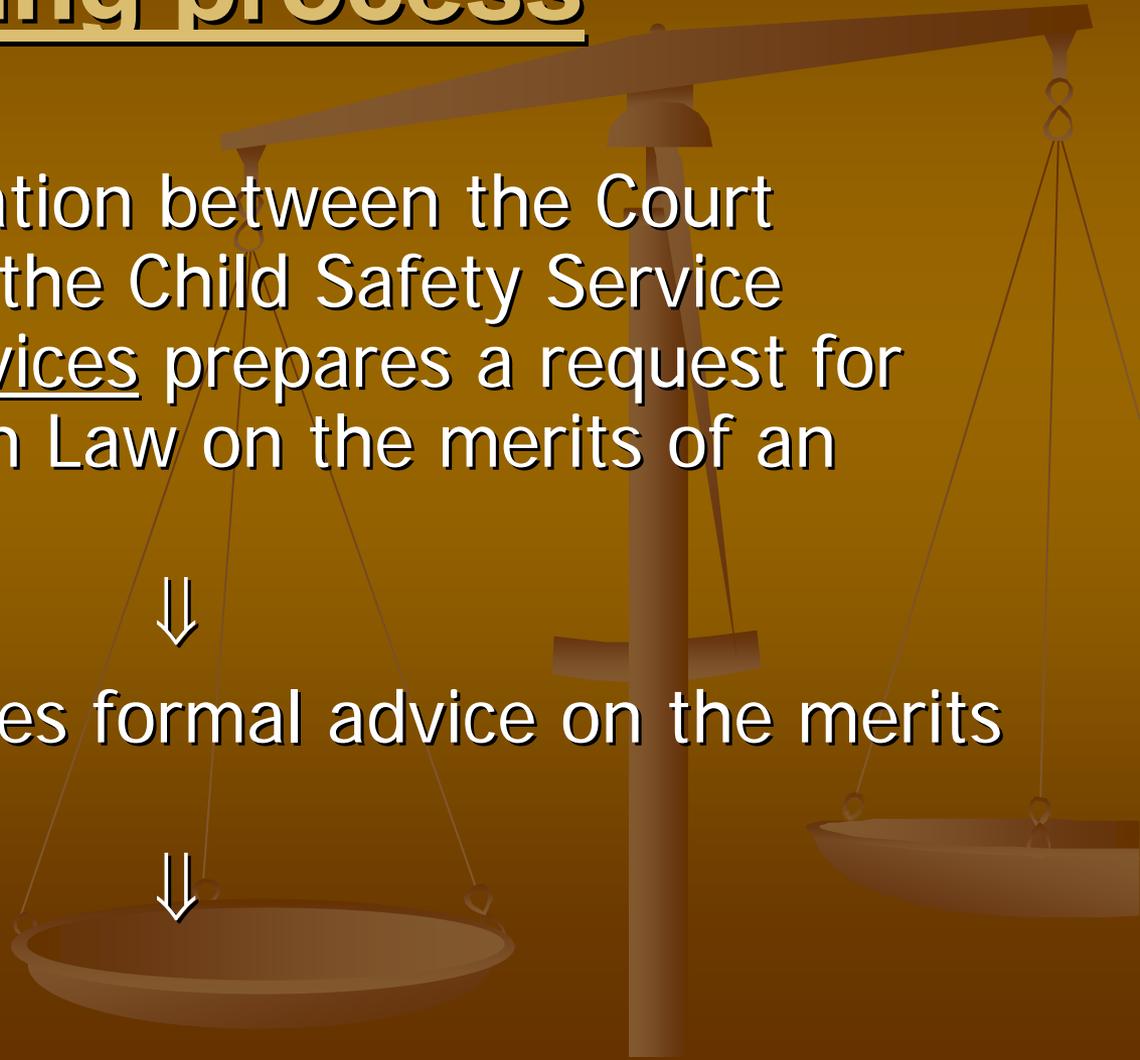
# Who makes the decision to appeal on behalf of the department?

- This decision can only be made by the Director General of the Department of Communities.



# Role of Court Services and Crown Law in the decision making process

- Following consultation between the Court Services Unit and the Child Safety Service Centre, Court Services prepares a request for advice from Crown Law on the merits of an appeal.
- Crown Law provides formal advice on the merits of an appeal.



- Subject to a favourable advice, the Manager of Court Services makes the decision as to whether to brief the DG for approval for an appeal to be lodged. This will involve consultation with the Manager of the CSSC. The brief is prepared by Court Services.

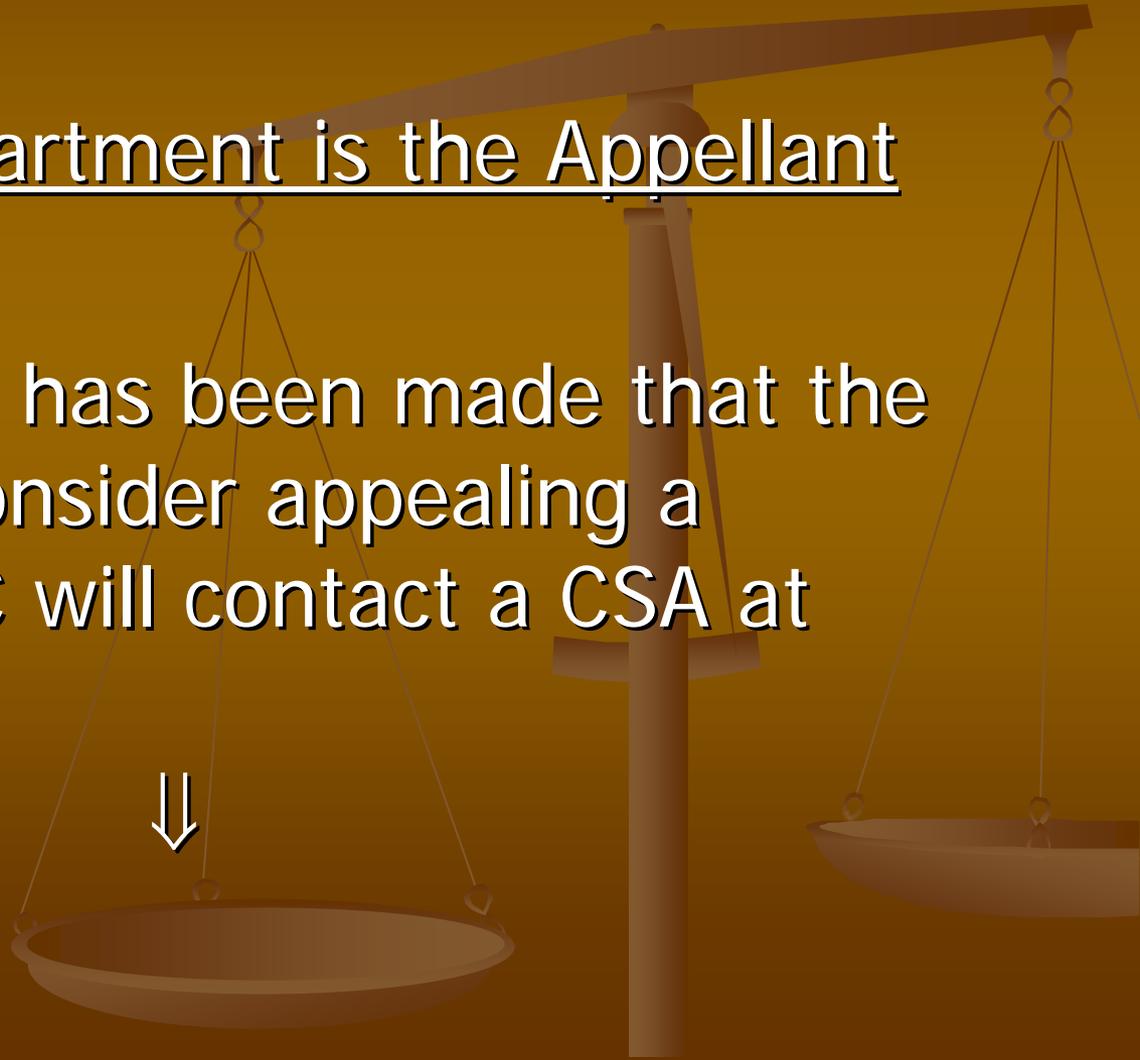


- Subject to approval being given by the DG for an appeal to be lodged, Crown Law prepares and files the Notice of Appeal which initiates proceedings in the appellate court.

# Role of the Court Coordinator in an appeal

## When the department is the Appellant

- Once a decision has been made that the CSSC wish to consider appealing a decision, the CC will contact a CSA at Court Services.



- If possible, the CC will obtain a transcript of the decision the CSSC are seeking to appeal.

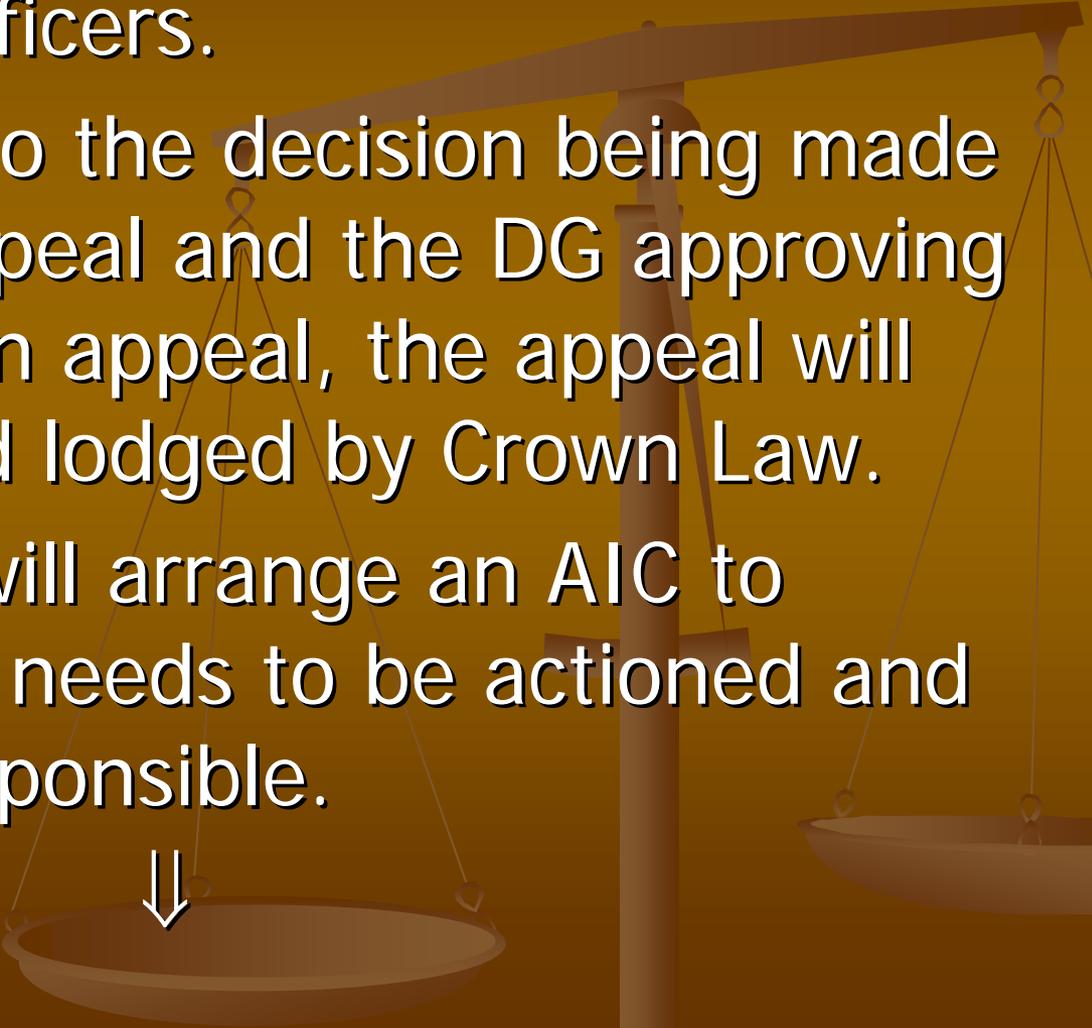
NOTE: Not all mentions are recorded, so if it is anticipated that a decision will be appealed, the CC needs to take thorough notes of the decision and request that the Magistrate provides reasons for the decision.

Section 104 (2) of the *Child Protection Act 1999* provides that 'when making a decision under this Act, the Childrens Court must state its reasons for the decision'.

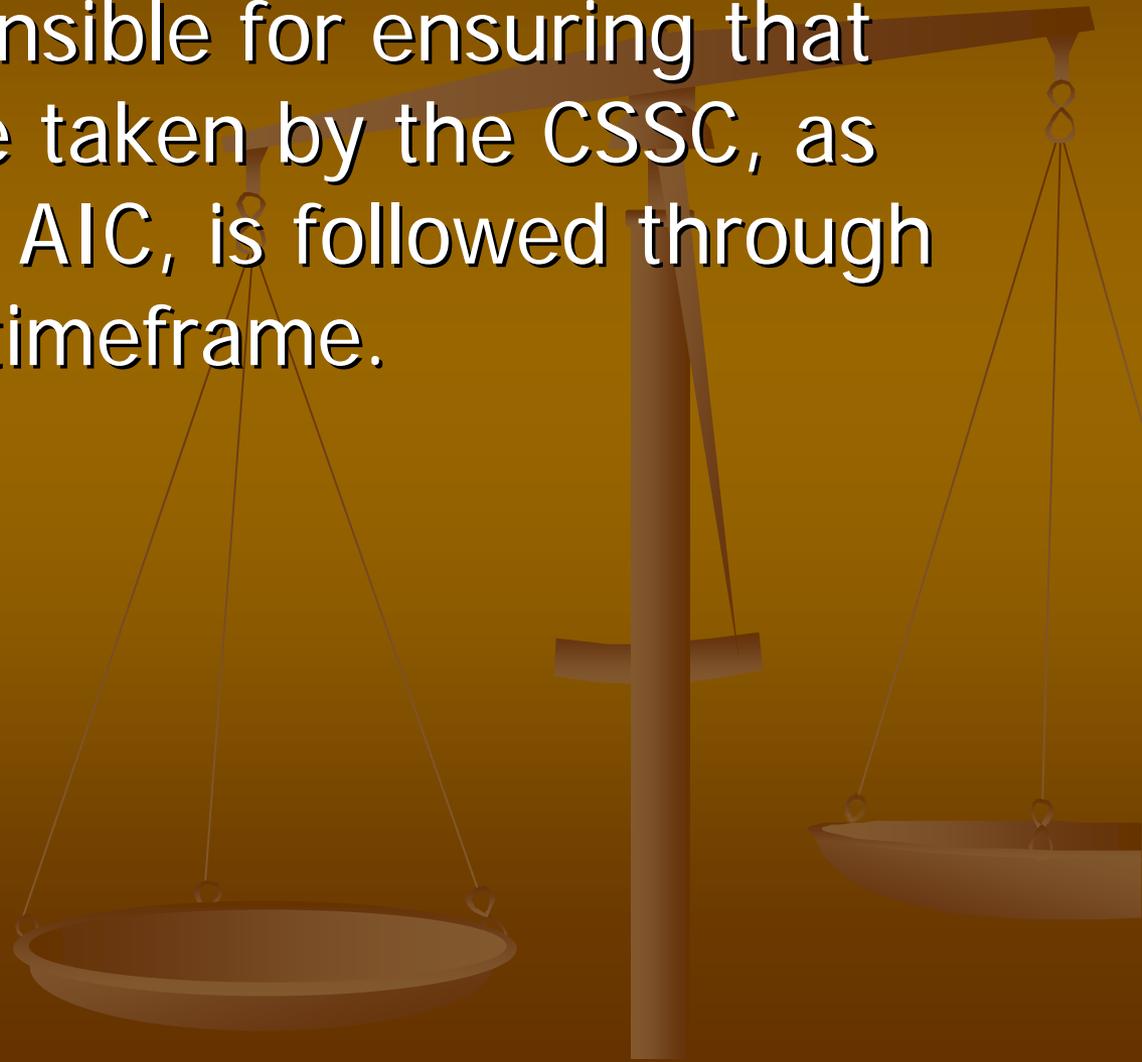


- The CC will email Court Services with a thorough summary of the case, all departmental officers involved, and all facts relevant to the appeal. Due to the time limits on lodging an appeal this must be actioned immediately.



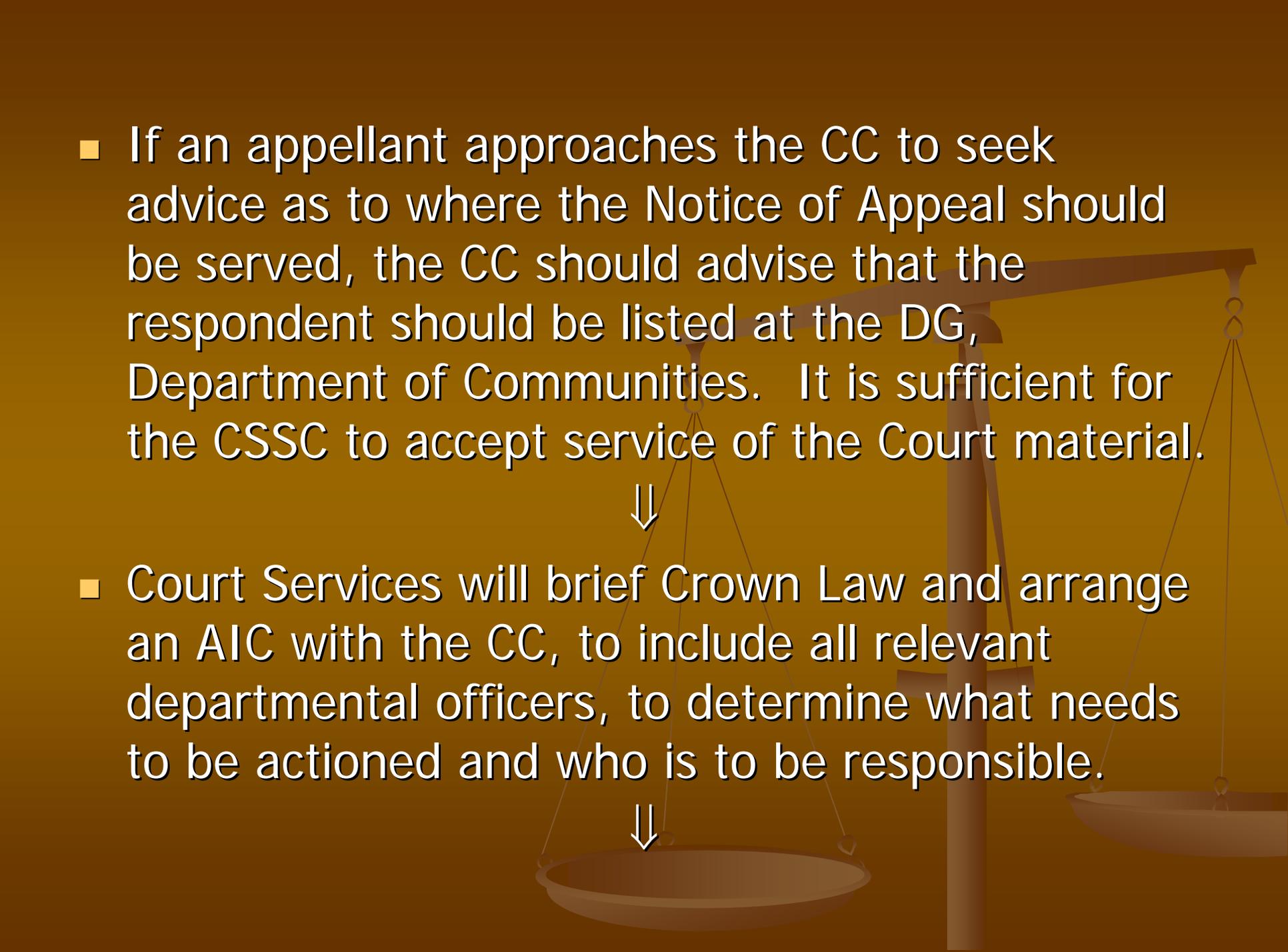
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- The CC will liaise with a CSA to arrange a case discussion to include all relevant departmental officers.
  - NOTE: Subject to the decision being made to pursue an appeal and the DG approving the lodging of an appeal, the appeal will be prepared and lodged by Crown Law.
  - Court Services will arrange an AIC to determine what needs to be actioned and who is to be responsible.

- The CC is responsible for ensuring that any action to be taken by the CSSC, as identified in the AIC, is followed through in the relevant timeframe.



## Appeal Process when the Department is the Respondent

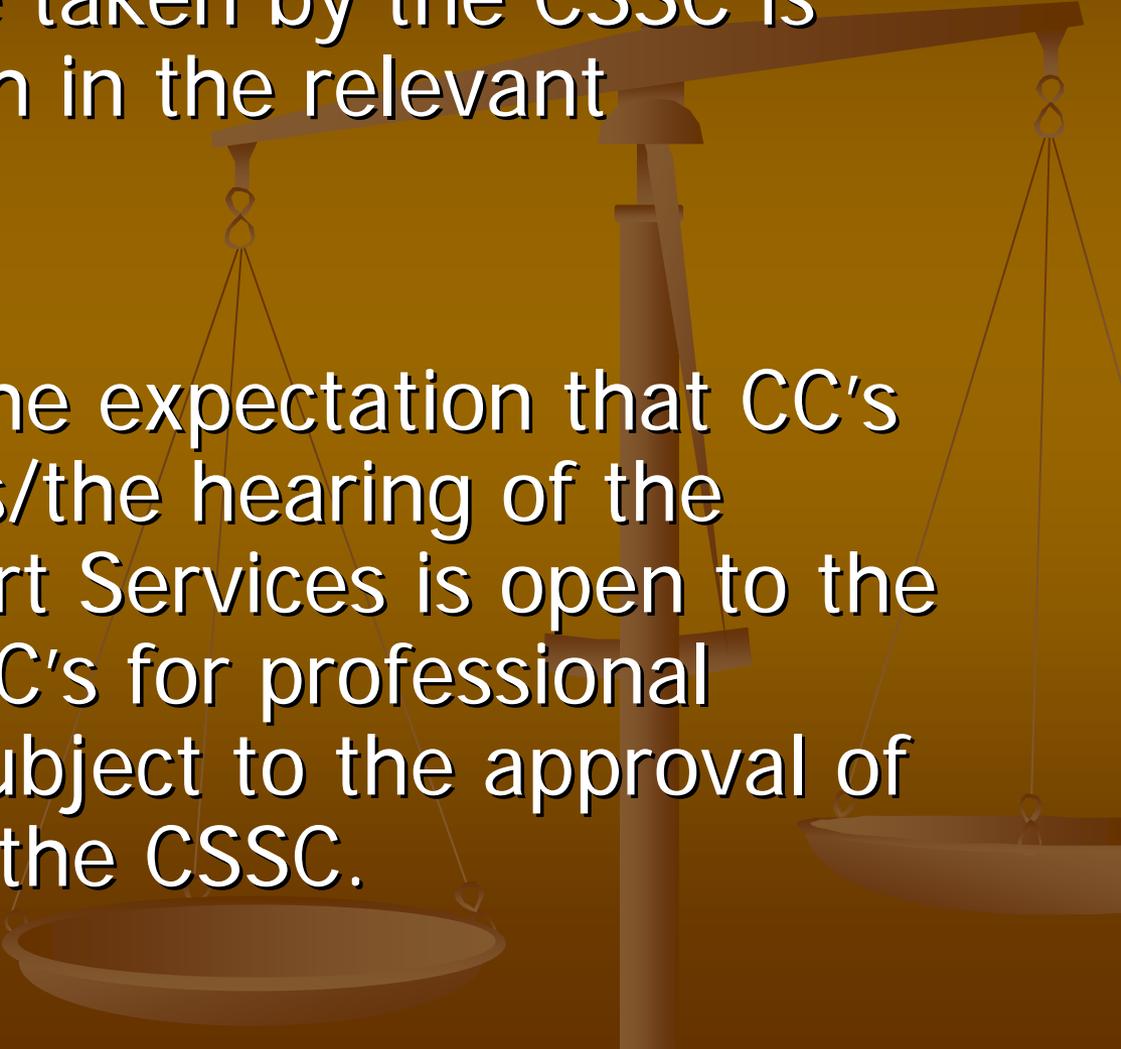
- If Crown Law were involved in the proceedings that resulted in the decision which is the subject of the appeal, the appellant should serve Crown Law directly. Crown Law will then contact Court Services and they will, in turn, contact the CC.
- Where the CSSC are served directly (for example, where the decision the subject of the appeal was a decision made at a mention in the Children's Court attended by the applicant and CC or the appellant is not aware of Crown Law's contact details), the CC must advise Court Services immediately and provide a copy of the Notice of Appeal and any other documentation which has been served.

- 
- If an appellant approaches the CC to seek advice as to where the Notice of Appeal should be served, the CC should advise that the respondent should be listed at the DG, Department of Communities. It is sufficient for the CSSC to accept service of the Court material.

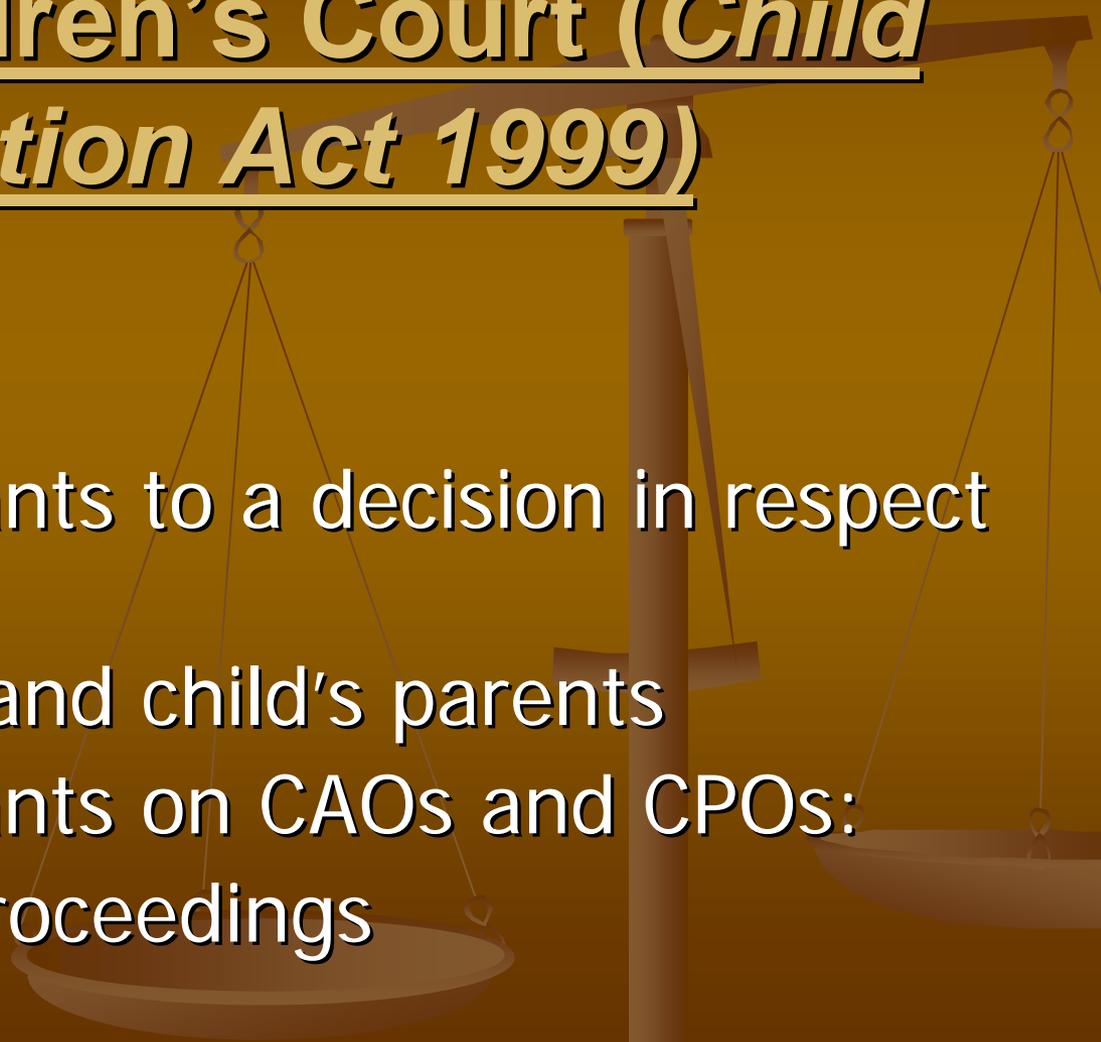


- Court Services will brief Crown Law and arrange an AIC with the CC, to include all relevant departmental officers, to determine what needs to be actioned and who is to be responsible.



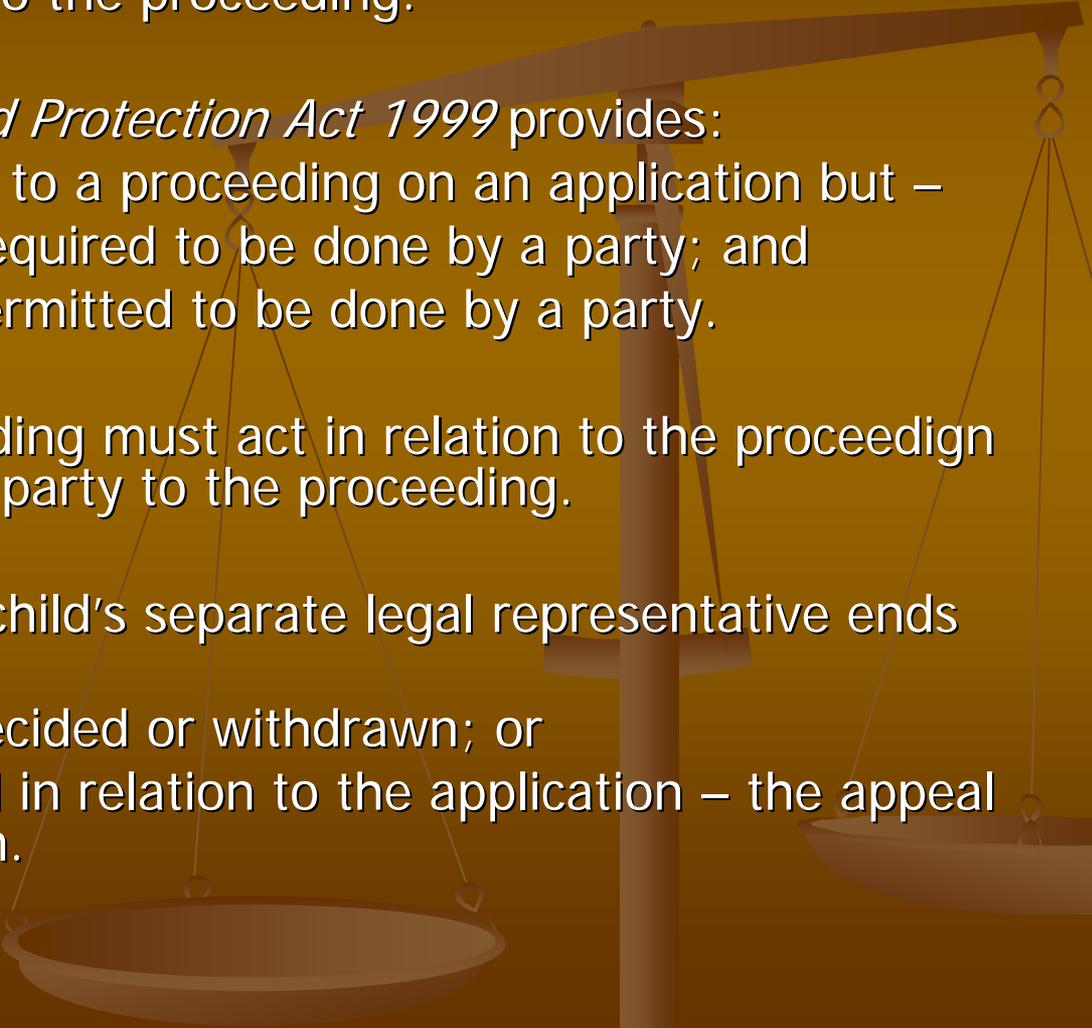
- 
- The CC is responsible for ensuring that any action to be taken by the CSSC is followed through in the relevant timeframe.
  - Note: It is not the expectation that CC's attend mentions/the hearing of the appeal, but Court Services is open to the attendance of CC's for professional development, subject to the approval of the Manager of the CSSC.

# Overview of the Legislation relating to appeals of decisions in the Children's Court (*Child* *Protection Act 1999*)



## Section 117 –

- Potential appellants to a decision in respect of a TAO:
- Applicant, child and child's parents
- Potential appellants on CAOs and CPOs:
- A party to the proceedings

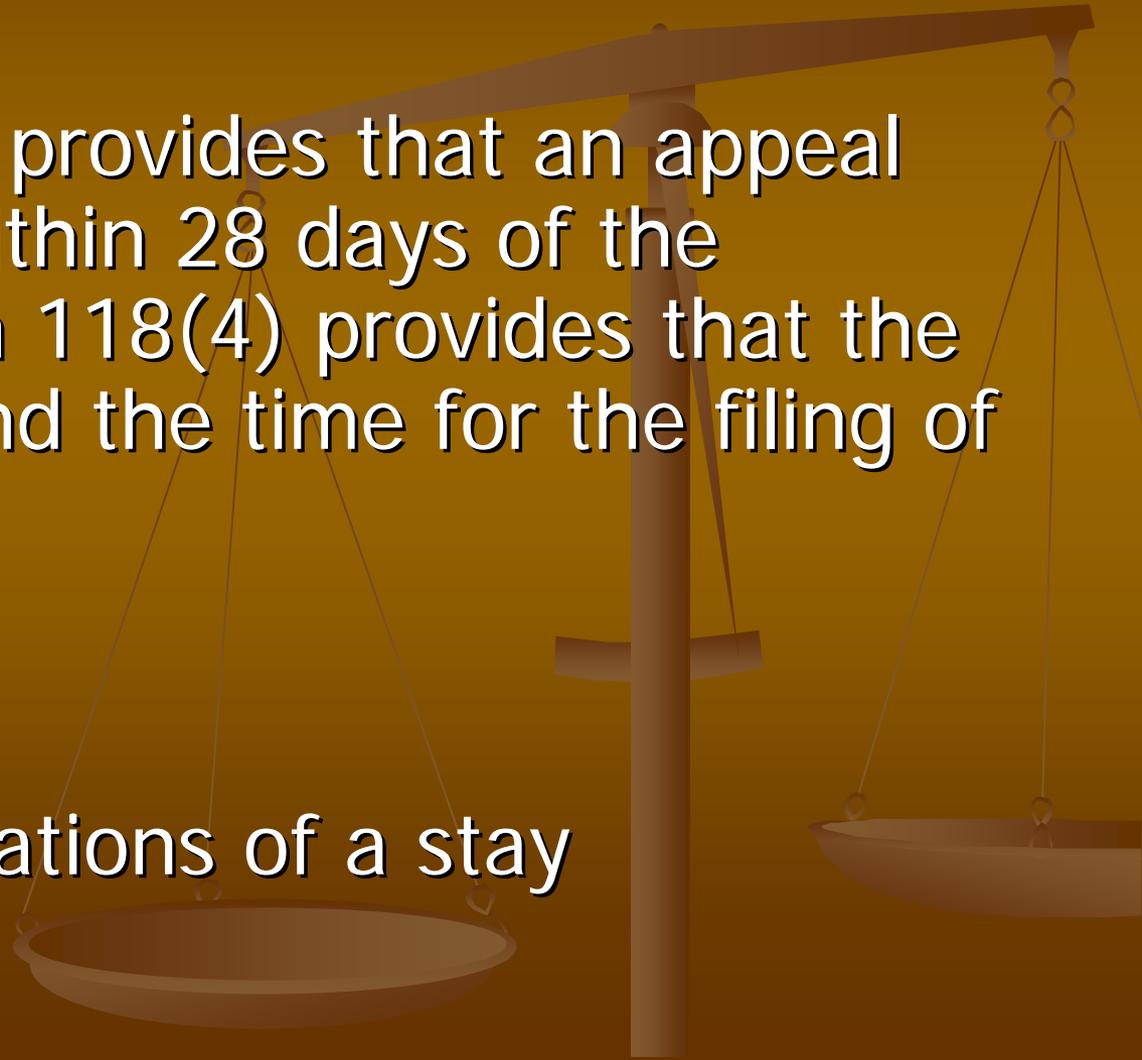
- 
- Note: Under the *Child Protection Act 1999* , the appointment of a separate representative does not make the separate representative a party to the proceeding.
  
  - Section 110 of the *Child Protection Act 1999* provides:
    - (4) The lawyer is not a party to a proceeding on an application but –
      - (a) must do anything required to be done by a party; and
      - (b) may do anything permitted to be done by a party.
  
    - (5) The parties to the proceeding must act in relation to the proceeding as if the lawyer were a party to the proceeding.
  
    - (6) The lawyer's role as the child's separate legal representative ends when –
      - (a) the application is decided or withdrawn; or
      - (b) if there is an appeal in relation to the application – the appeal is decided or withdrawn.

## Section 118 –

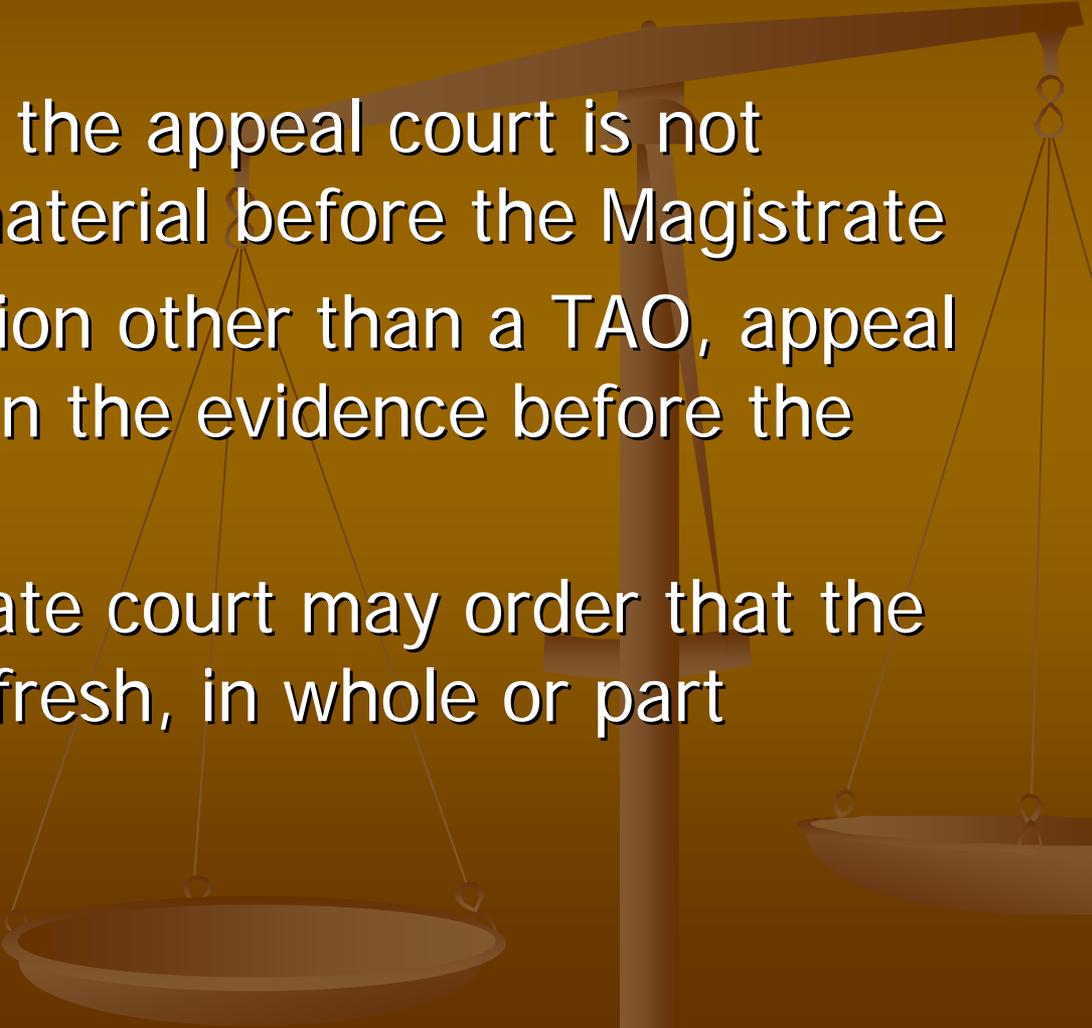
- Details the procedure for filing of an appeal
- Section 118 (3) provides that an appeal must be filed within 28 days of the decision Section 118(4) provides that the court may extend the time for the filing of the appeal

## Section 119 –

- Details the limitations of a stay



## Section 120 –

- 120(1) For a TAO, the appeal court is not restricted to the material before the Magistrate
  - 120(2) For a decision other than a TAO, appeal must be decided on the evidence before the Children's Court
  - 120(3) The appellate court may order that the appeal be heard afresh, in whole or part
- 

# Hierarchy of Courts

Children's Court of Queensland



District Court



Supreme Court (Court of Appeal)



High Court of Australia



# A word on costs

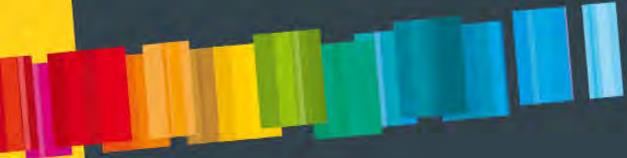
- Note: Section 116 of the *Child Protection Act 1999* provides that parties to a proceeding in the Children's Court must pay their own costs of the proceeding.
  - In appeals, the appeal court is able to order costs, in full or part, against any party.
- 

## **CAO QUIZ and ANSWERS**

1. Is a CAO used to decide whether a child is need of protection? **YES**
2. Can you apply for a CAO extension for the purpose of gathering evidence to support an application for a CPO? **NO (SECONDARY QUESTION – WHY?)**
3. The provisions for a CAO are exactly the same as a TAO? **YES**
4. A CAO can be extended for 2 weeks? **TRUE** or FALSE  
**(SECONDARY QUESTION – WHAT IS THE MAXIMUM TIMEFRAME FOR A CAO TO BE EXTENDED?)**
5. Name two sections of the CP Act 99 that relate to CAO's?  
**Sections of the *Child Protection Act, 1999* that relate to CAO's are Sections 37 – 51.**
6. When applying for a CAO you must apply for 4 weeks? **TRUE** or **FALSE**
7. Before applying for a CAO, some attempts must be made to gain consent from one parent to the assessment of the child protection concerns? **TRUE** or FALSE
8. When applying for a CAO the respondents section refers to the parent and/or other adult household member that the allegations are made against? **TRUE** or **FALSE** ( secondary question could be - define respondent)
9. If applying for a CAO extension, the application needs to be filed and heard with a determination made before the expiration of the original CAO? **TRUE** or FALSE
10. The application for a CAO must be served on the respondents and an affidavit of service sworn and filed? **TRUE** or FALSE
11. When writing the application for a CAO, it should include clear information about what further assessments the Department will be conducting? **TRUE** or FALSE
12. Can a CAO be revoked? **YES** or NO
13. Under what circumstances would you revoke a CAO? **Assessment is completed within the 4 week timeframe and it is deemed intrusive**

**and unnecessary for the order to continue and the provisions to remain in place. Child is not in need of protection.**

14. If a CAO is made for a child who is subject to a CPO, which order prevails? **CAO** or CPO. **S49 outlines this situation – CAO prevails to the extent of any inconsistency between the orders.**



# COURT COORDINATOR INDUCTION TRAINING 2011

# **WELCOME!**

- Introduction of facilitators
- House keeping
- expectations

# Introductions:

- Name
- Current CSSC and your role
- Length of time in the Department
- Qualifications
- Share an achievement from your role as Court Coordinator
- One thing you want to achieve and one thing you hope to avoid while attending the training

## Key outcomes of the training program

- Develop a clear understanding of the role of the Court Coordinator
- Impart knowledge & skills to assist Court Coordinators to professionally manage child protection court & tribunal processes
- Promote best practice in relation to all court & tribunal processes

# COURT ORDERED CONFERENCES



Childrens Court

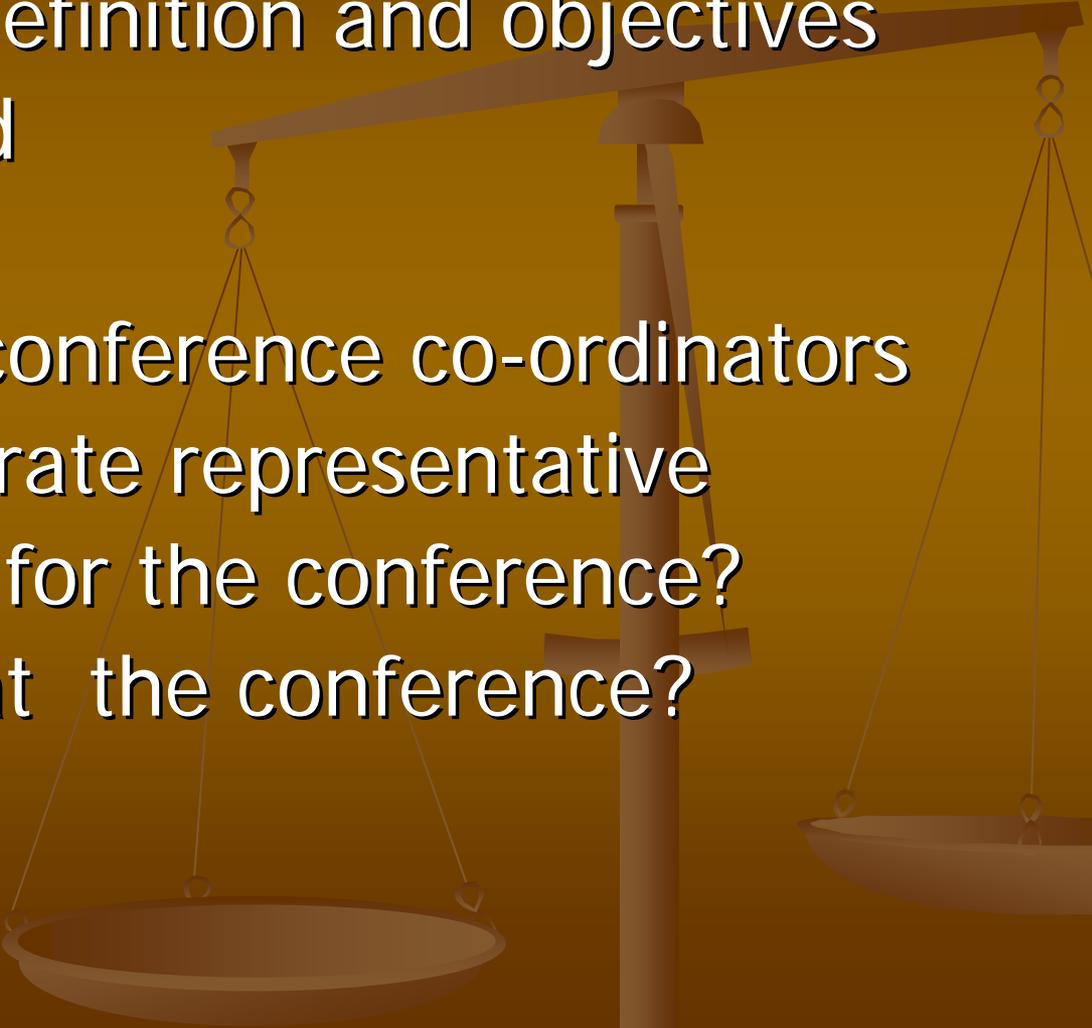
# Who are we?

- Paul Malone
- Manager, Office of Child Protection Conferencing
- Children's Court
- 30-40 Quay Street
- Brisbane Qld 4000
- 0402 457351
- 07 383 60674
- [paul.malone@justice.qld.gov.au](mailto:paul.malone@justice.qld.gov.au)

- Rob Turra
- Child Protection Conference Co-ordinator
- 0428 714344
- 07 3836 0674
- [robert.turra@justice.qld.gov.au](mailto:robert.turra@justice.qld.gov.au)

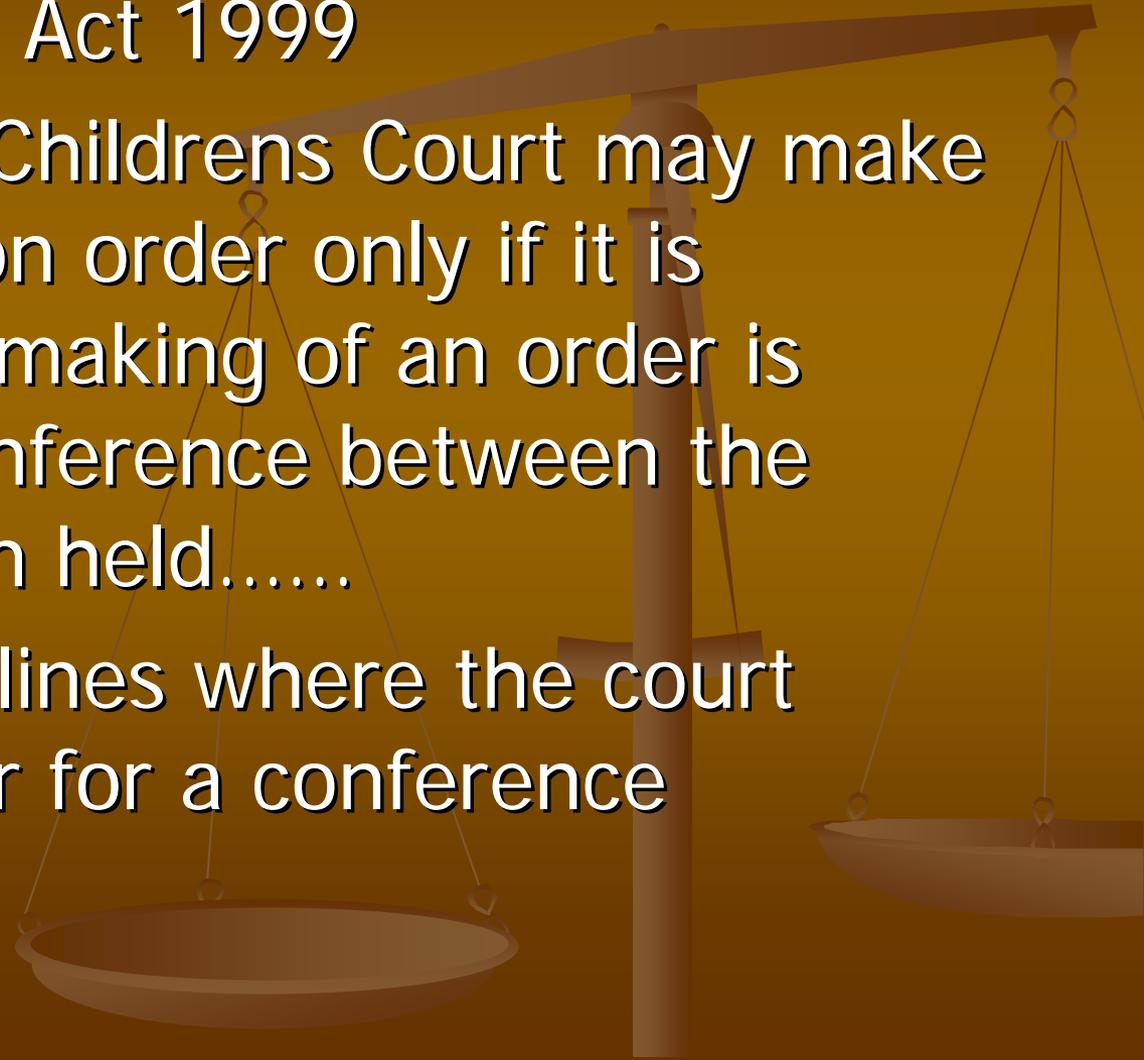
- Amanda Molomby
- Child Protection Conference Co-Ordinator
- 0427 137156
- 07 3836 0674
- [Amanda.Molomby@justice.qld.gov.au](mailto:Amanda.Molomby@justice.qld.gov.au)

# Today's Agenda

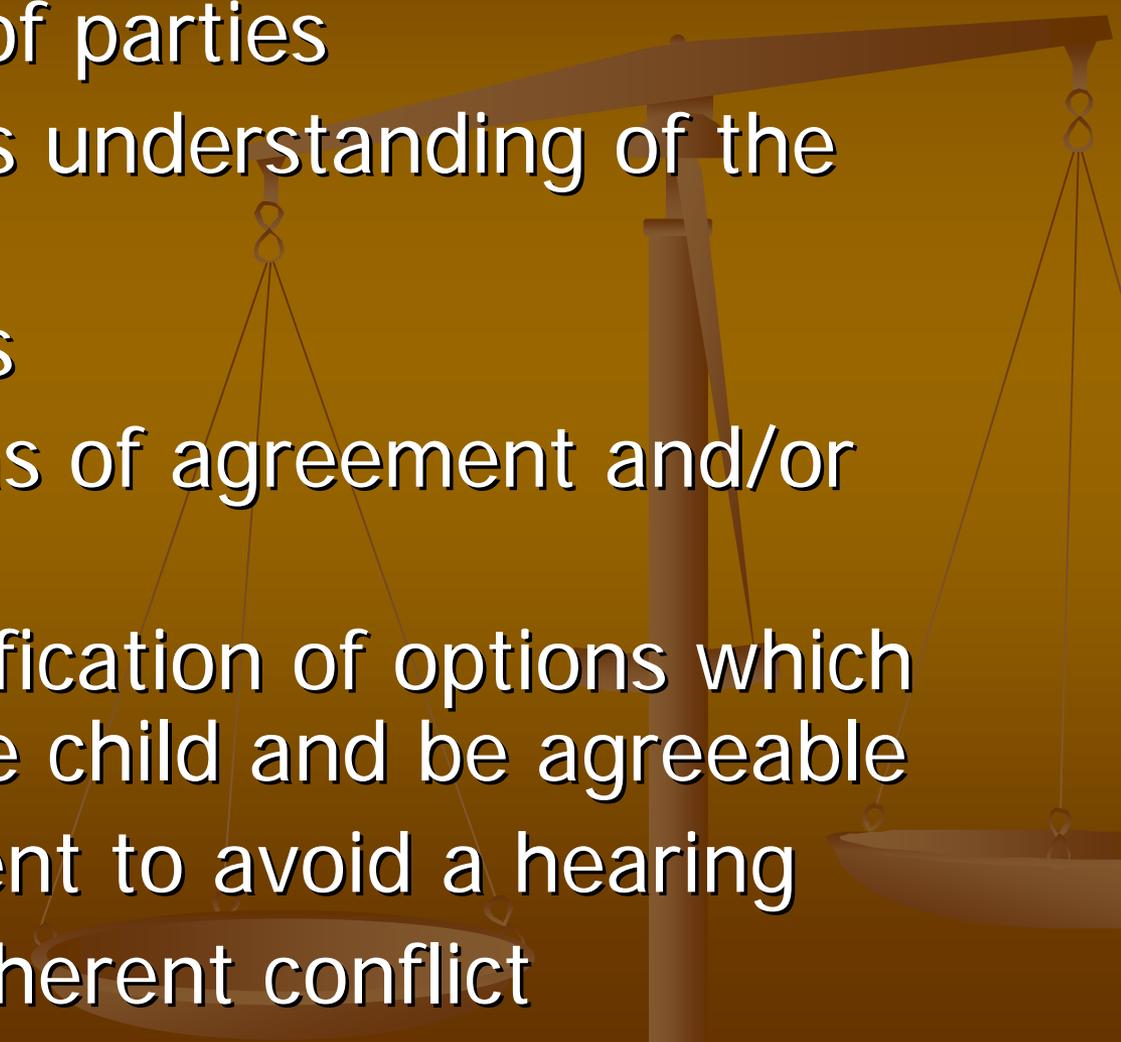
- Conferences – definition and objectives
  - Who may attend
  - Confidentiality
  - Contacting the conference co-ordinators
  - The child's separate representative
  - How to prepare for the conference?
  - What happens at the conference?
  - Questions
- 

# What is a court ordered conference?

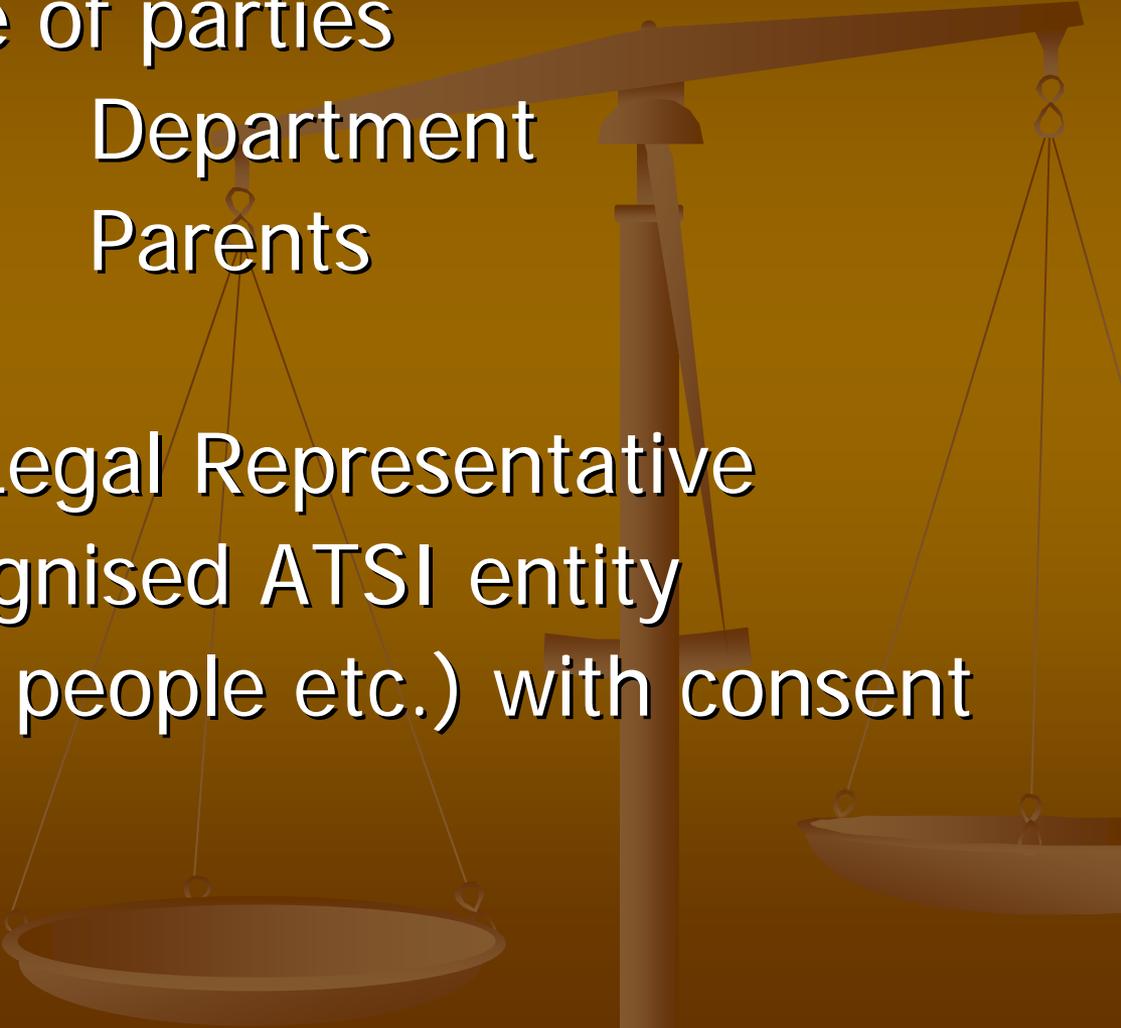
- Child Protection Act 1999
- S.59(1)(c) The Childrens Court may make a child protection order only if it is satisfied- if the making of an order is contested, a conference between the parties has been held.....
- S.68(1) ..... Outlines where the court makes the order for a conference



# Objectives of a court ordered conference?

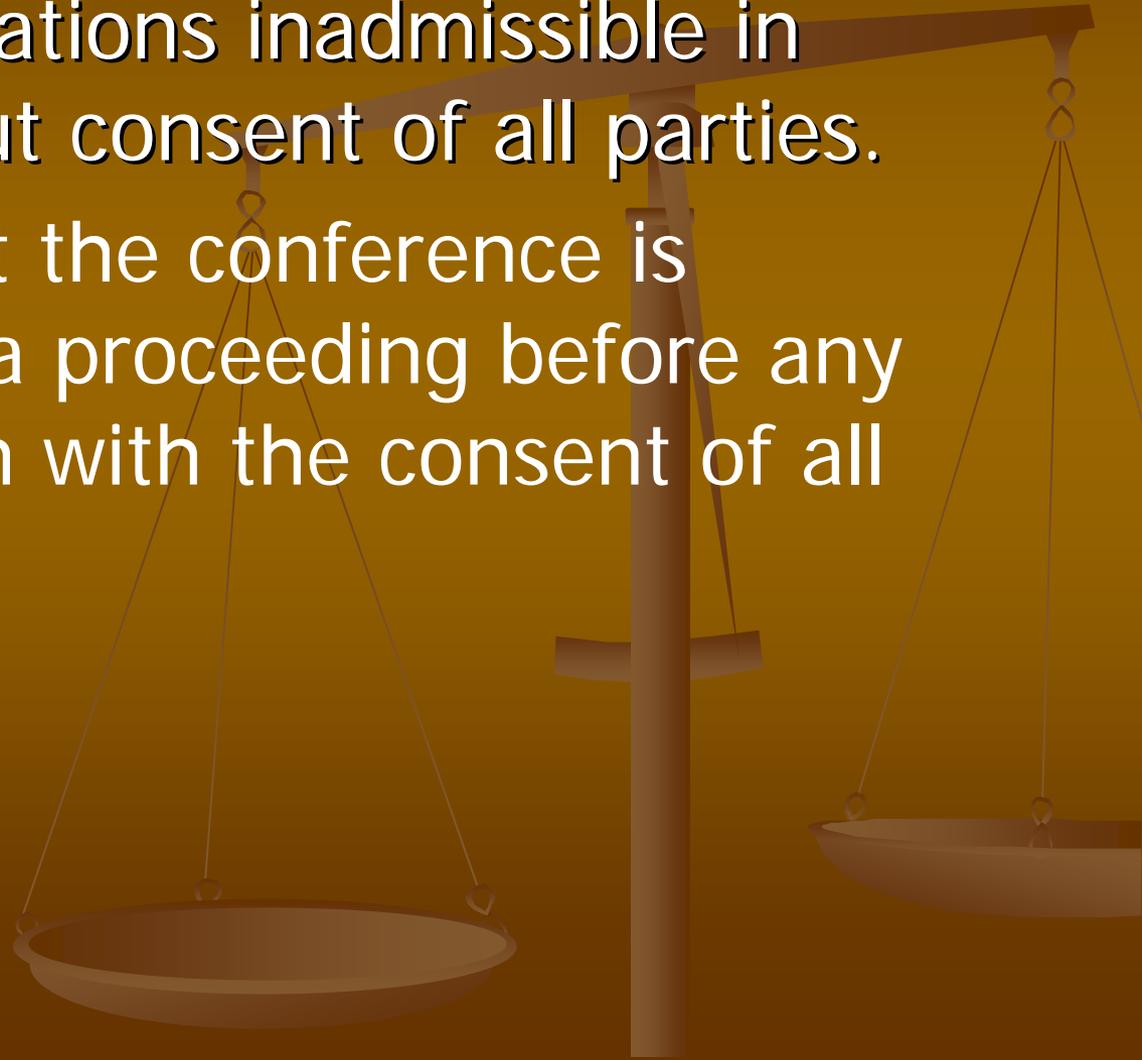
- Express views of parties
  - Improve parties understanding of the central issues
  - Clarify positions
  - Determine areas of agreement and/or disagreement
  - Facilitate identification of options which may protect the child and be agreeable
  - Reach agreement to avoid a hearing
  - Minimise the inherent conflict
- 

# Who may attend the conference?

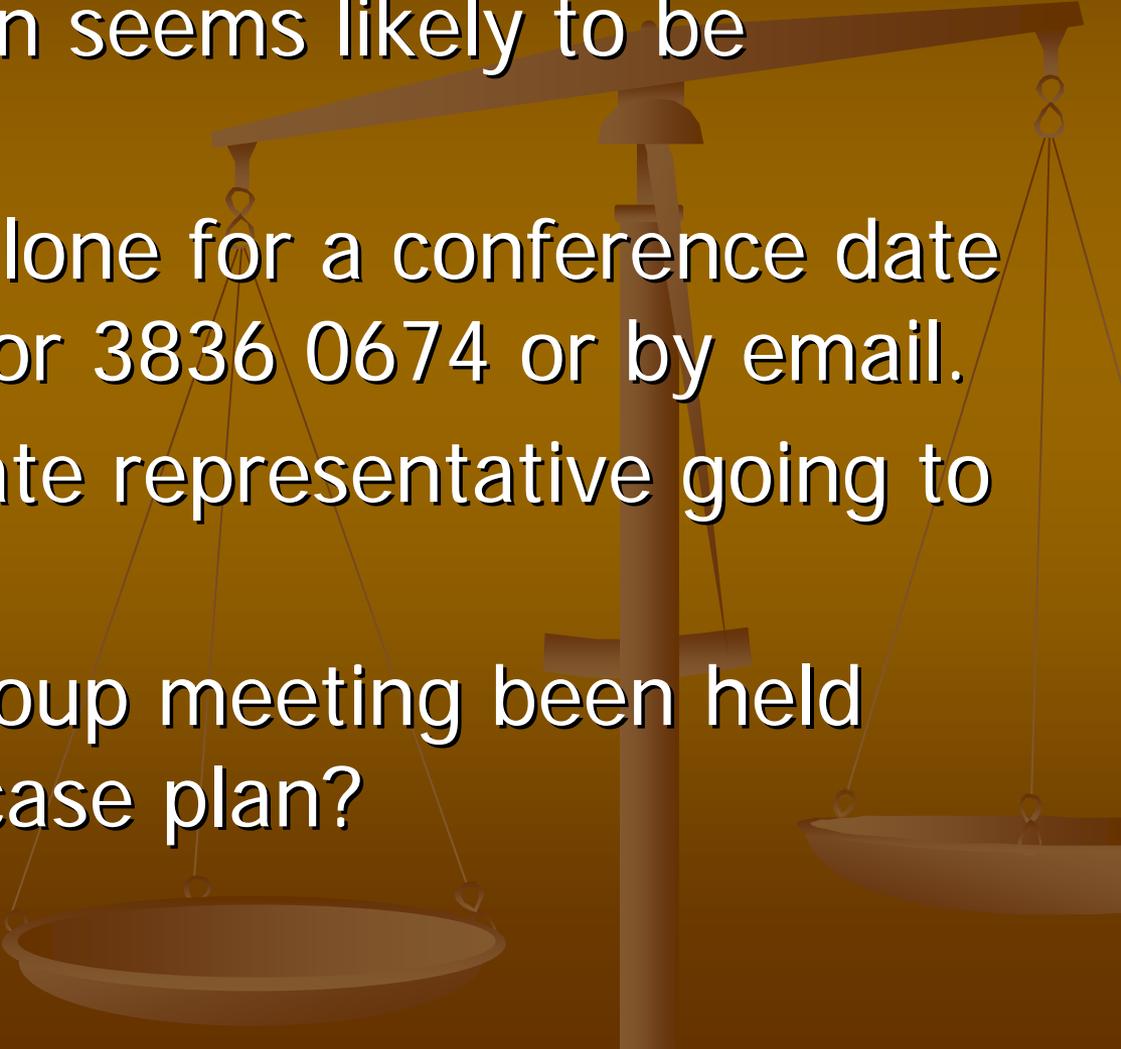
- S.70 Attendance of parties
  - The parties
    - Department
    - Parents
  - Legal Reps
  - Child Separate Legal Representative
  - Member of recognised ATSI entity
  - Others (support people etc.) with consent of convenor.
- 

# Confidentiality

- S.71 Communications inadmissible in evidence without consent of all parties.
- Anything said at the conference is inadmissible in a proceeding before any court other than with the consent of all the parties.



# Contacting Office of Child Protection Conferencing

- When application seems likely to be contested
  - Contact Paul Malone for a conference date – 0402 457351 or 3836 0674 or by email.
  - Is a child separate representative going to be requested?
  - Has a Family Group meeting been held yet? Is there a case plan?
- 

# SEPARATE REPRESENTATIVE

- **MEMO FROM:** Paul Malone, Manager Office of Child Protection Conferencing
- **SUBJECT:** Appointment of child separate representatives ('sep rep')
- **DATE:** 22 October 2008
  
- **PURPOSE**
- To develop consistent state-wide practices for the appointment of child sep reps in applications for child protection orders.
  
- **BACKGROUND**
- Current practice for the appointment of sep reps often sees their appointment coincide with an adjournment and an order for a child protection conference.
  
- **ISSUES**
- Feedback from Legal Aid suggests that appointed solicitors have difficulty in arranging for report writers to conduct social assessments prior to the court ordered conference.
- Separate Representatives may be reluctant to accept referrals where non-consultative time periods are imposed.
- Conferences often require rescheduling due to social assessment reports not being ready, causing:
  - · Delay to the court process;
  - · Wasting time for the conference convenors, solicitors and parties;
  - · Further uncertainty, anxiety and confusion for those subject children who are able to comprehend the proceedings.

## RECOMMENDATION

It is requested that, if a sep rep is ordered, a conference is not ordered in the first instance; instead the application is adjourned for mention in 4-5 weeks to:

- · Make the referral to Legal Aid (Grants Division), which includes the court registry furnishing a copy of the court file;
- · Enable the appointed sep rep to make inquiries with the Department of Child Safety – accessing their records to ascertain whether further processes are necessary in order to assist in forming a view;
- · Enable the sep rep to make enquiries with report writers if required, to make contact with the parties and to establish time-frames for the completion of the report which can then be conveyed to the court.

It is recommended that the Department's Court Coordinator liaise with the sep rep in order to:

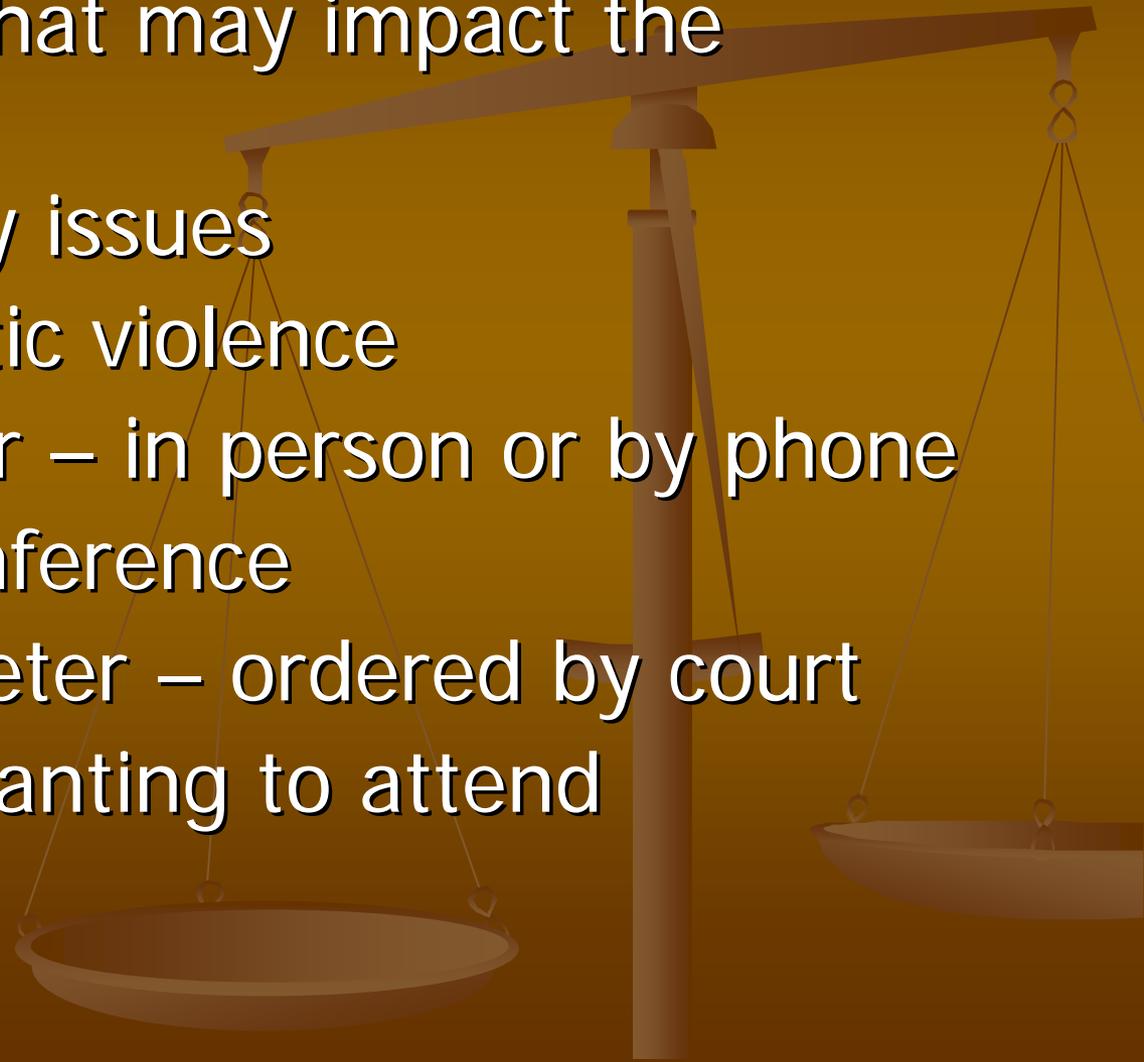
- · Be advised of expected time-frames;
- · Convey the expected time-frame to Paul Malone so that he can provide a conference time and date which may then be used by the court at the next mention.

## SUMMARY

1. Sep rep appointed
2. No conference ordered in first instance
3. Mention date in 4-5 weeks
4. Sep rep to establish time-frames and liaise with Department
5. Paul Malone contacted for conference date
6. Court to be advised at mention
7. Conference ordered

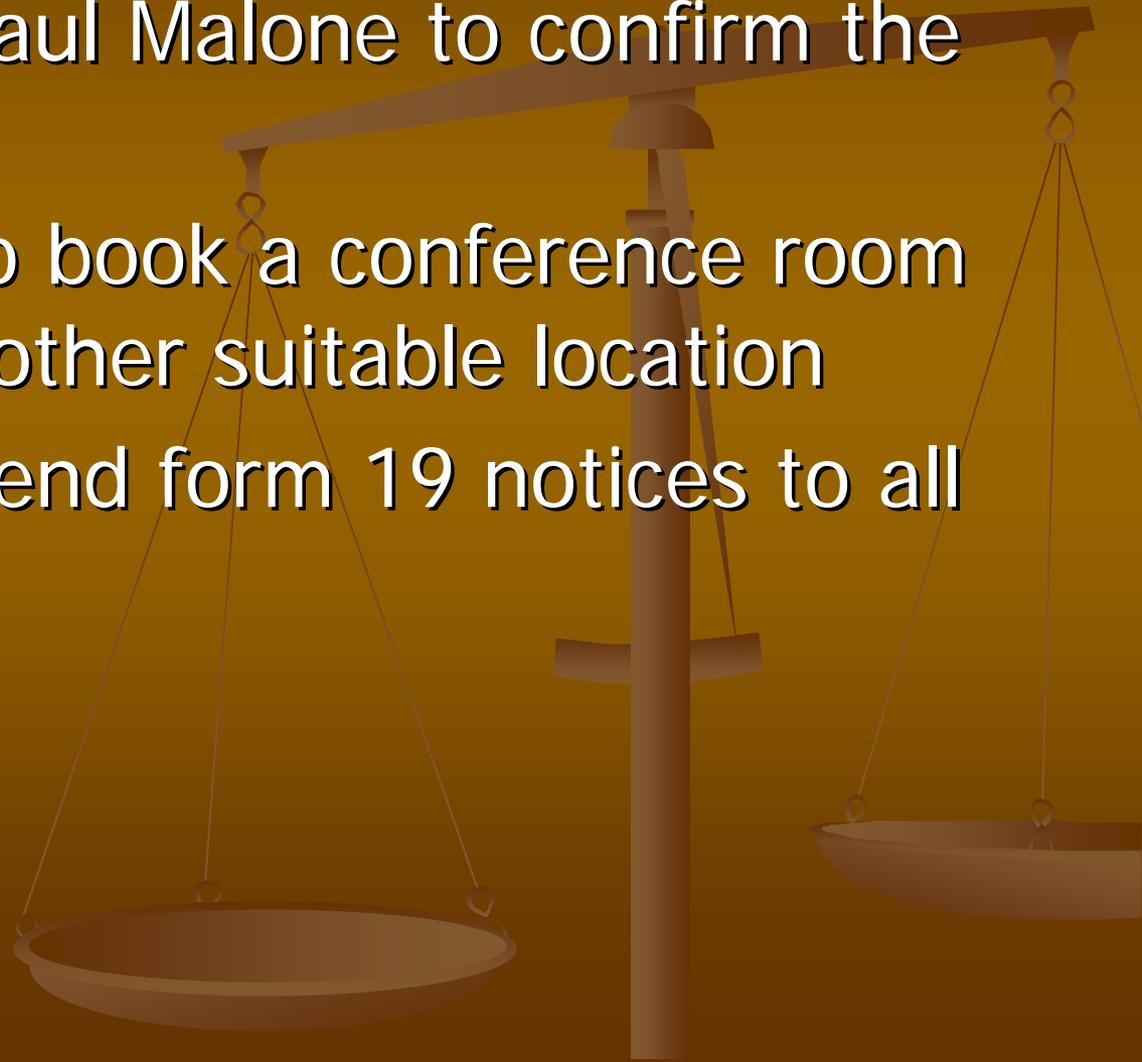
# Contacting Conference Co-ordinator

- Other matters that may impact the conference?
  - Security issues
  - Domestic violence
  - Prisoner – in person or by phone
  - Teleconference
  - Interpreter – ordered by court
  - Child wanting to attend



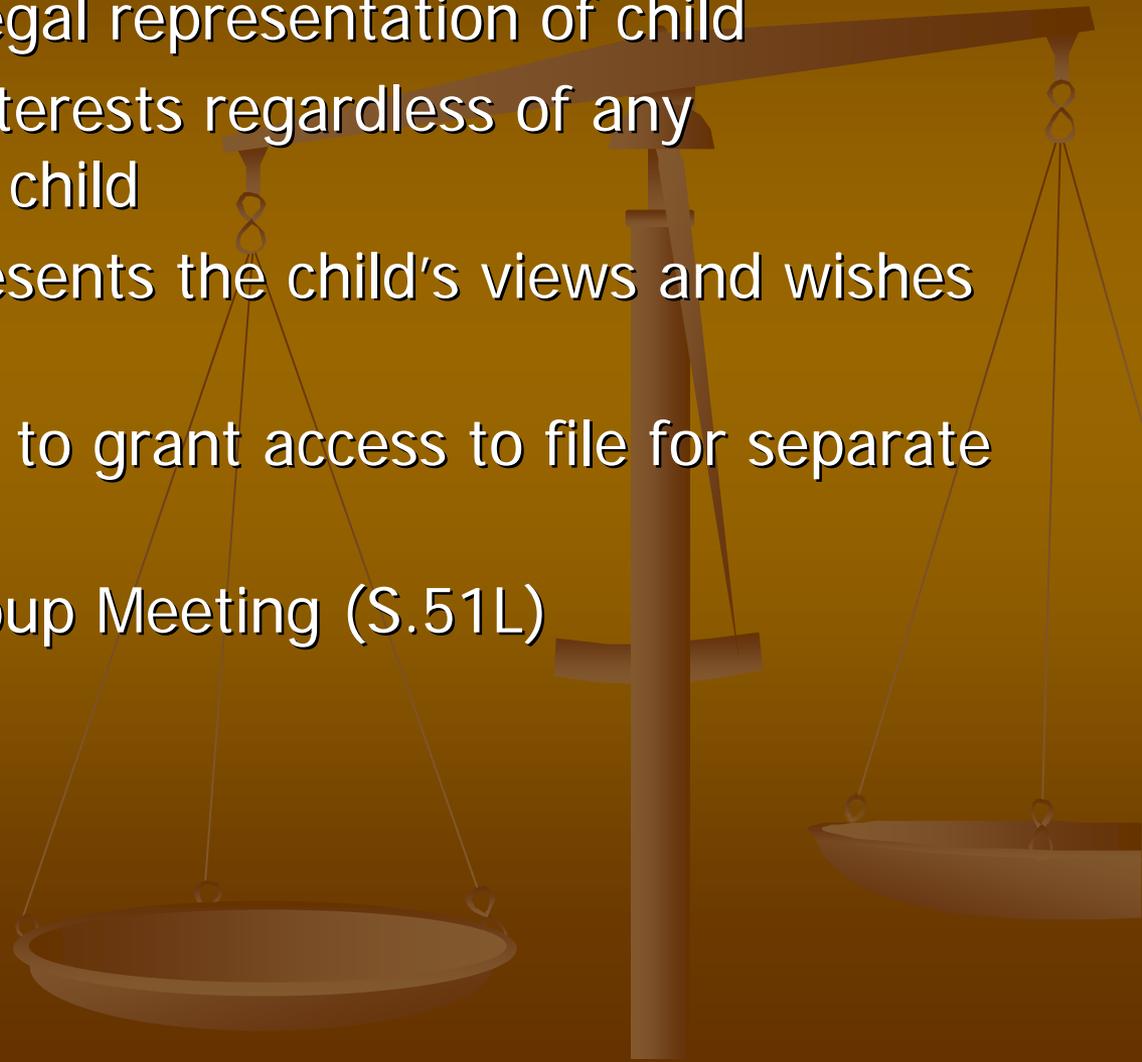
# After the Court orders the conference

- Again contact Paul Malone to confirm the date and time
- Paul arranges to book a conference room at the Court or other suitable location
- The Court will send form 19 notices to all parties



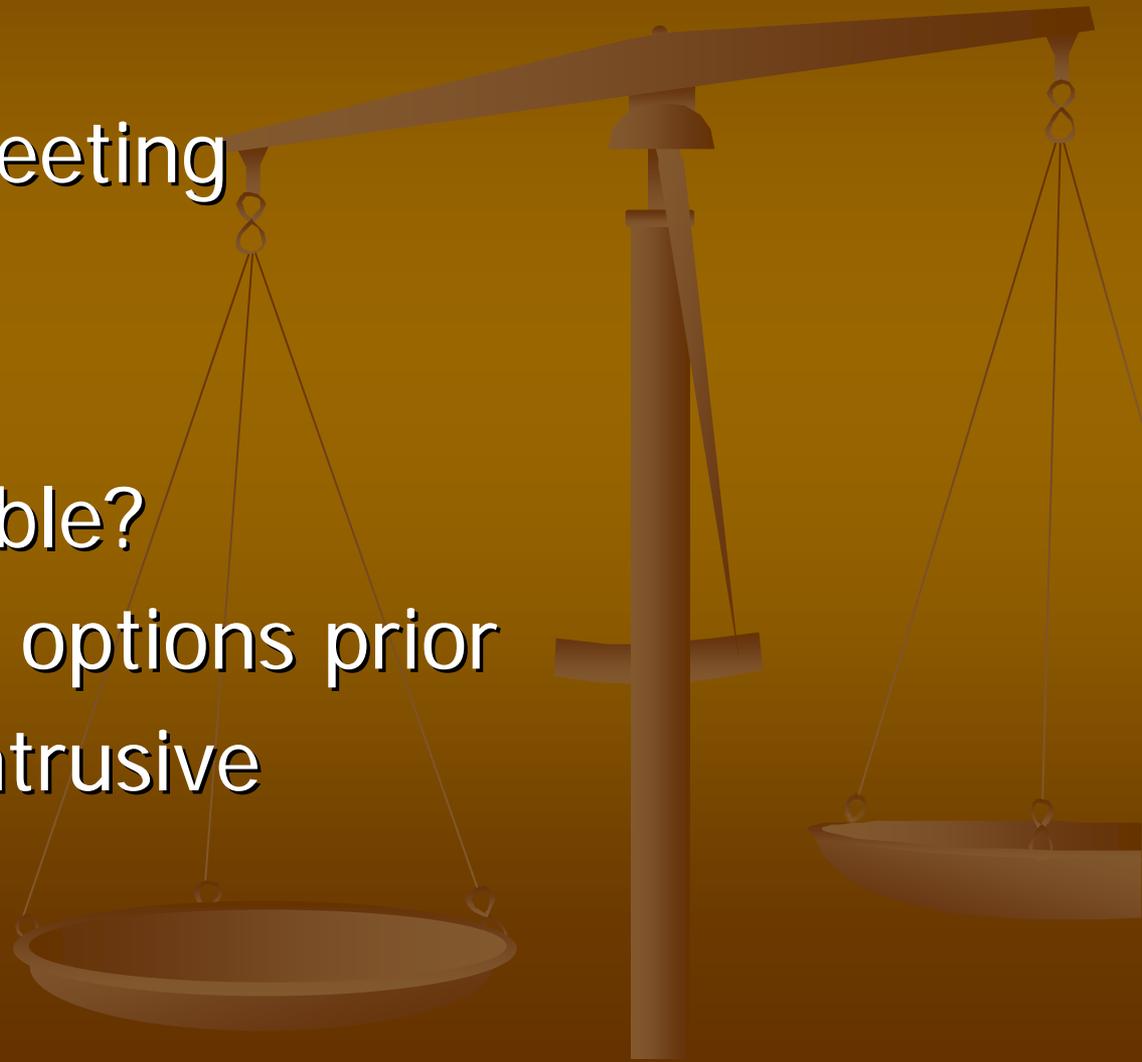
# Child Separate Representatives

- S.110 (1) Separate legal representation of child
- Acts in child's best interests regardless of any instructions from the child
- As far as possible presents the child's views and wishes to the Court
- Dept of Communities to grant access to file for separate representative
- Include in Family Group Meeting (S.51L)



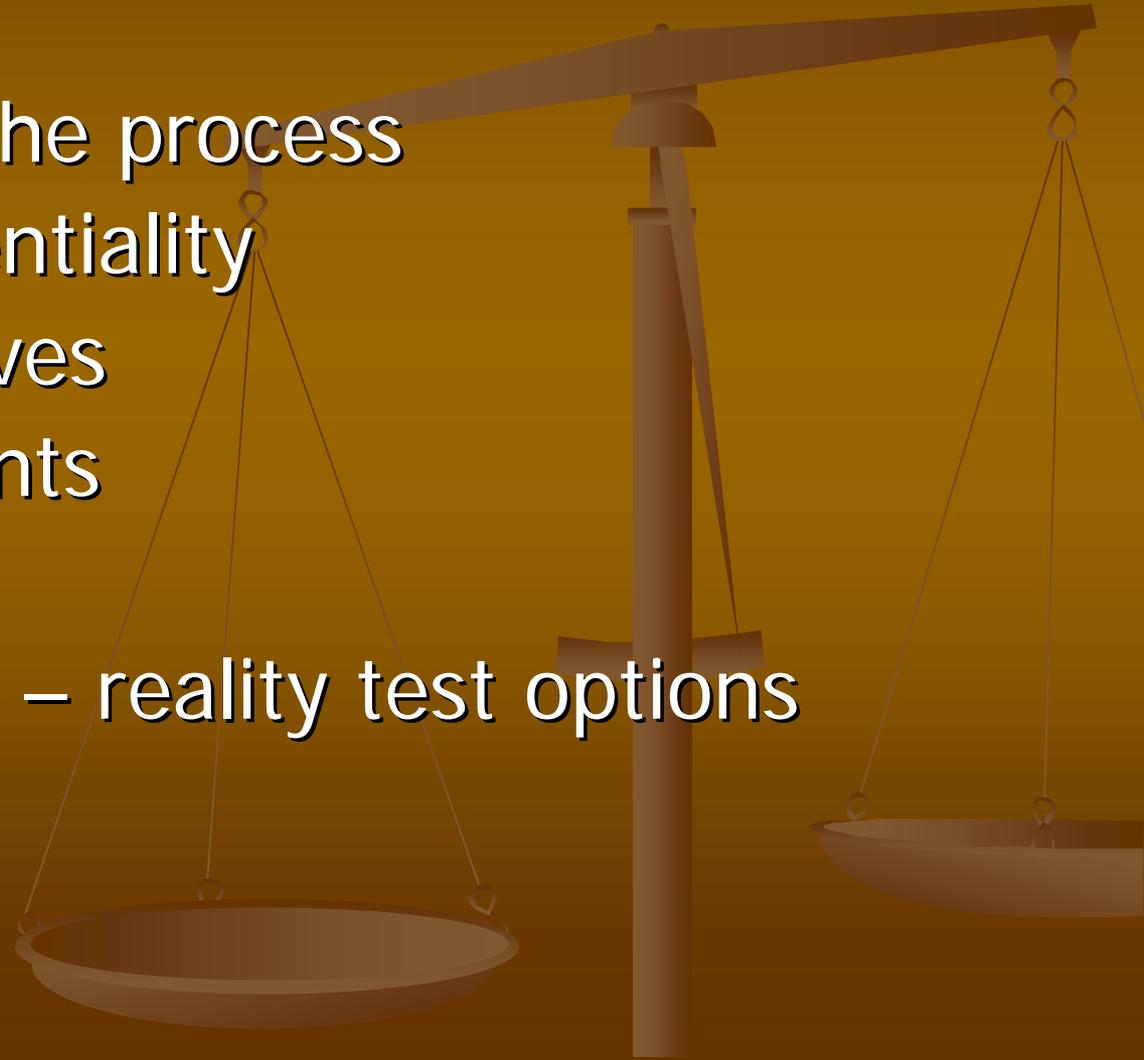
# How to prepare for conference?

- Who's talking?
- Family Group Meeting
- Know your case
- CASE PLAN
- What is negotiable?
  - Discuss options prior
  - Least intrusive



# The conference stages

- Introduction
- Explanation of the process
  - Confidentiality
  - Objectives
- Parties statements
- Discuss issues
- Identify options – reality test options
- Caucus



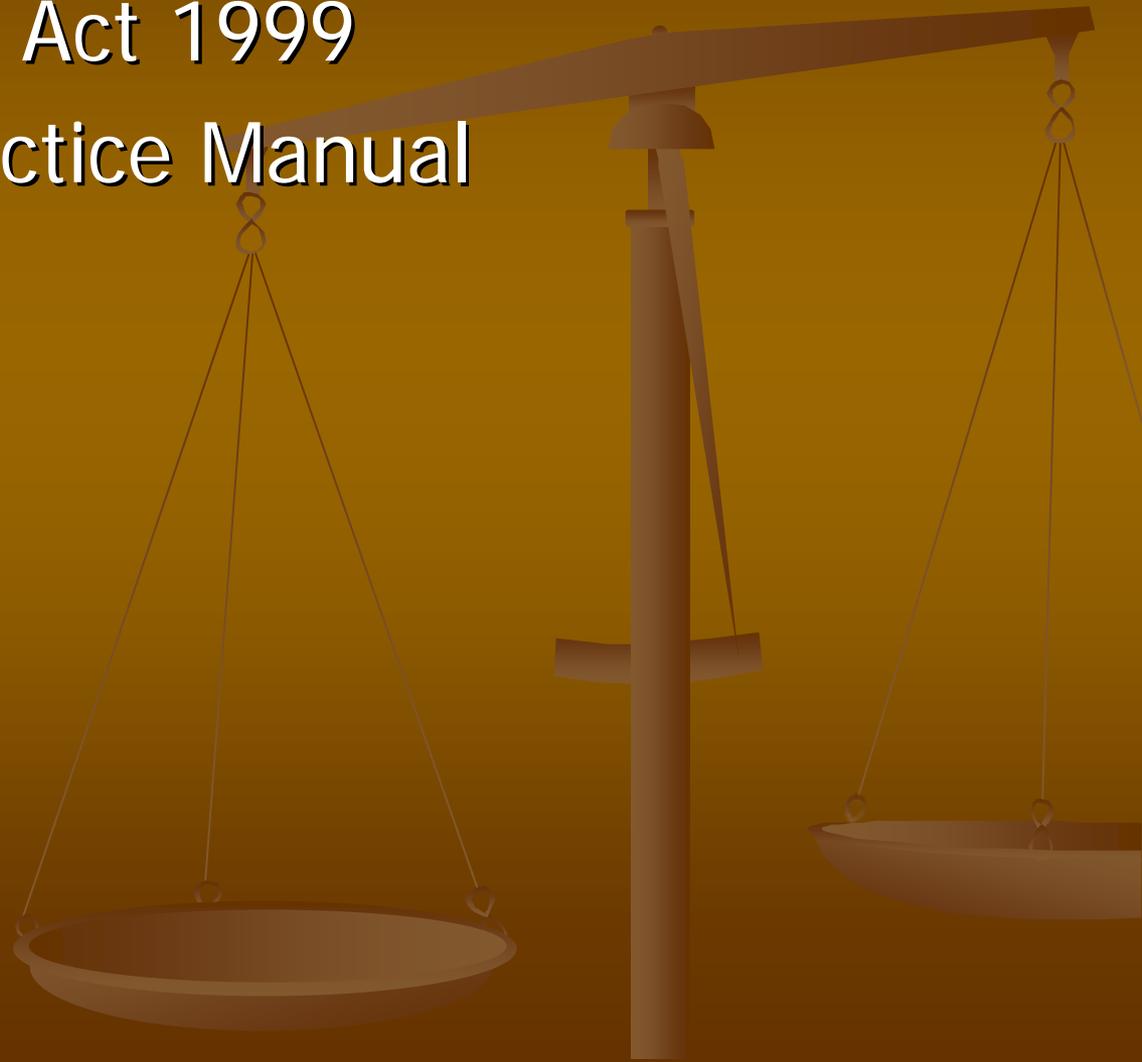
# Result of conference

- When agreement is reached
- When there is no agreement
- Is a further conference necessary?
- The co-ordinator's report



# Further information

- Child Protection Act 1999
- Child Safety Practice Manual



# FORMAL GRIEVANCE PROCEDURE

- 1. Any complaint from a Child Service Safety Centre to be in writing through Court Services.
- 2. If complaint is in relation to either of my staff, to be raised with and addressed by myself through Court Services.
- 3. If the complaint is in relation to myself or if someone felt that I had not addressed the complaint properly, then with my manager Mr Sean Harvey, Regional Services Manager, Magistrates Courts Branch, South East Region, Brisbane. Phone Number (w)3006 8161 or (m) 0407 143525 Email address: [sean.harvey@justice.qld.gov.au](mailto:sean.harvey@justice.qld.gov.au).
- 4. Similarly if there is some complaint or issue in regard to a Child Service Safety Centre that is not able to be addressed, that I would take it up with Court Services .

# Questions





# Contested Child Protection Proceedings

Facilitated by Poonam Wijesoma and Tania Waetford  
Court Services Advisors  
Court Services Child Safety

# [ Overview ]

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- Interface between Crown Law (CL), Court Services (CS) and Child Safety Service Centres (CSSCs);
- Preparing for a contested CP proceeding;
- The role of the Court Coordinator in a contested CP proceeding;
- Subpoenas;
- Witness preparation

# [ Introduction ]

- General – interface between Court Services (CS), Crown Law (CL) and Child Safety Service Centres (CSSC);
  - CS liaise with CL and CSSC in preparation for contested hearings;
  - Allocated CSA is responsible for the management of the contested CP file at CS and is the contact point for both CL and CSSC;



# Overview of the process for contested CP proceedings

- Matter listed for hearing;
- Review of court material;
- Brief to Crown Law;
- Advice in Conference;
- Hearing preparation;



# [ Matter listed for hearing ]

- Post the COC mention is usually when an application for a CPO is listed for hearing if a matter has not been resolved during the COC process;
- During the post COC mention, the following directions (subject to the court's diary) should be sought:
  - Subpoena return date – 6 weeks out from hearing;
  - Applicant file/serve – 4 weeks out;
  - Respondent/Sep Rep – 2 weeks out;
  - Review mention – 1 week out;
- **Within one (1) business day** of the matter being listed for hearing, email Team A Team Leader at CS (Melissa Scott) and advise
  - Name of matter;
  - Hearing and filing dates;
  - When material being sent;
- **Within five (5) business days** of the matter being listed for hearing, make two (2) copies of ALL court material filed in relation to contested application and send to CS along with a Child Protection Summary Sheet;
  - material should include all adjournment notices, notices of COC, appointment of separate representative etc

# [ Matter listed for hearing ]

- Within two (2) business days of email notification, Team A TL will allocate the matter to a CSA;
- Within two (2) business days of allocation, CSA will make contact with CSSC to advise of timeframes for the completion of the Review of Court Material and Brief to Crown Law

# [ Review of Court Material ]

- Upon receipt of the relevant court material for the contested application, the allocated CSA conducts a review of court material.
- This involves:
  - Identifying what further evidence may be required;
  - For matters that are complex and require further information, CSA may contact CC and seek a case discussion;
- Review provided to relevant staff members (TL, CC and CSO/Applicant) at CSSC for actioning.

# [ Review of Court Material ]

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- Ideally, the review of court material should be provided to the CSSC four (4) weeks prior to the Applicant/Department's file date

# [ Brief to Crown Law ]

- The Brief to Crown Law includes:
  - Letter of instructions;
  - A copy of all material filed in the proceedings as at date of letter of instructions;
  - A copy of the review of court material prepared by the allocated CSA;
- For urgent matters, a brief is often provided prior to the review of court material being completed

# [ Case Discussions ]

---

- Where a matter is particularly complicated, or urgent, CSA may request an urgent case discussion with the TL, CSO and CC.
- Case discussions are confidential discussions within the department, which are useful when needing to discuss the merits of the current application and any concerns in relation to it (e.g. evidence required/obtained) without Crown Law involvement.

# [ Advice in Conference (AIC) ]

- What is an AIC?
  - Confidential discussion between the client and the legal representative;
  - Involves Crown Law/Private Counsel, CSA and relevant CSSC staff (CSO/Applicant, CC and TL)
- Types of AICs:
  - Pre-filing AIC – discussion re: review of court material and evidence required to be filed in support of application and preliminary discussion of merits of the application
  - General AIC – convened to discuss developments in the case and to keep allocated Crown Lawyer/Private Counsel apprised of critical information and seek relevant advice
  - Pre-trial AIC – preparation for hearing including witnesses, witness preparation with the Applicant, discussion regarding what, if any, vulnerabilities in the application

# [ Review mentions ]

---

- A review mention is a mention to determine the procedure for trial where you can -
  - Seek leave for telephone evidence;
  - Advise court of Applicant/Department's readiness for trial;

# [ Subpoenas ]

- Rule 27, *Children's Court Rules 1997* →
- *On application by a party to a proceeding, the registrar may issue a subpoena requiring the attendance of a person before the court to give evidence in the **proceeding** or produce stated documents or things.*
  - Proceeding → does not mean just hearing, can issue subpoenas for return at a mention
- Must seek leave of court to inspect and copy subpoenas;
- How to issue subpoena:
  - Form 23 x 1;
  - Form 24 x 3 - Department file copy, Court copy and one for service;
  - Best practice is to ensure that a copy of each subpoena issued is provided to the parties so they are on notice as to what we have requested;

# [ Subpoenas ]

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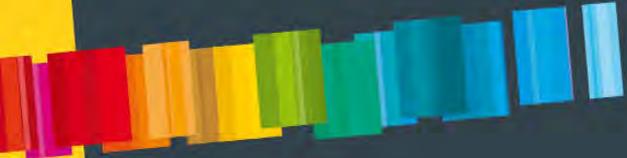
- Types of subpoenas:
  - Subpoena to produce documents – best practice to provide 14 days prior to return date
  - Subpoena to attend and give evidence – best practice no later than 3 weeks out from hearing;
  - Conduct monies

# The Role of the Court Coordinator in a contested CP proceeding

- Prior to hearing:
  - Ascertain witness availability and prepare a witness list for hearing;
  - Coordinate filing of material for department's file date;
  - Liaise with CS regarding any developments with the matter
  - Assist in preparing witnesses for hearing

# The Role of the Court Coordinator in a contested CP proceeding

- At hearing:
  - Whilst the Applicant is giving evidence, instruct Crown Lawyer/Private Counsel;
  - Coordinate witnesses to ensure that the hearing flows by having sufficient number of witnesses available to give evidence;
  - If a matter enters negotiations, contact relevant witnesses and advise;



# COURT SERVICES UNIT

# What functions does the Court Services Unit undertake?

- Does anyone know what roles the unit undertakes?

## Purpose of the unit

- Represent the Director-General in court and Tribunal matters involving children and young people and promote high quality service delivery to courts and the Tribunal on a statewide basis through the provision of expert advice and training, contribution to policy and practice development, and monitoring of practice and trends.

# Functions

- Represent the Director-General in Childrens Courts, the Family Law courts and higher courts in child protection matters.
- Manage contested child protection matters and coordinate Crown Law representation.
- Manage the department's dealings with the Queensland Civil and Administrative Tribunal (QCAT) in relation to review applications.
- Coordinate the department's implementation of the Magellan case management model (Family Court).
- Coordinate the department's response to applications for Special Medical Procedures in the Family Court.

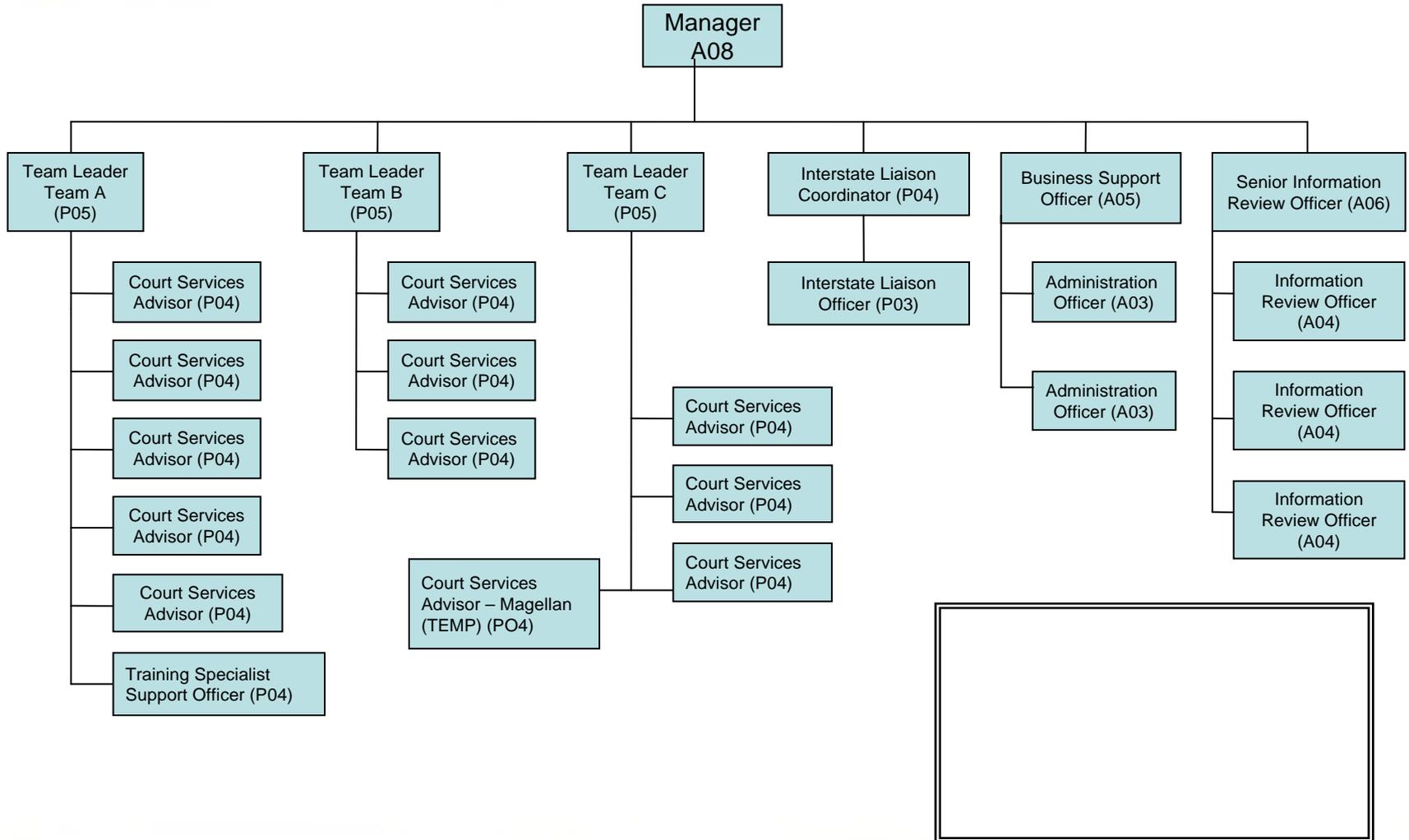
# Functions continued

- Act as the State Central Authority under the Hague Convention on the Civil Aspects of International Child Abduction.
- Manage intercountry requests in child protection and act as the State Central Authority under the Hague 'Child Protection' Convention.
- Coordinate all requests as per the Protocol for the Transfer of Child Protection Orders and Proceedings and Interstate Assistance.
- Process subpoenas for all departmental files.
- Provide expert consultation and advice to other departmental staff on court and Tribunal practice issues.

# Functions continued

- Resource and support the statewide network of Court Coordinators.
- Assist departmental staff to develop skills in court work through provision of high quality training.
- Liaise with key stakeholders and contribute to the development of policy and practice standards.
- Monitor statewide practice standards and trends.

# COURT SERVICES (CHILD SAFETY) UNIT





# COURT COORDINATORS

# Background

- January 2004 the CMC delivered a report "Protecting Children: An Inquiry into Abuse of Children in Foster Care" which contained a number of recommendations aimed at improving services.
- One recommendation was to consider specialist Court workers. It was proposed that dedicated Court Coordinator positions be part of the staff establishment of each CSSC.

# ROLE

The role of the CC is to assist CSSC staff and the CE to meet their legal obligations in courts, tribunals and to adhere to various protocols and conventions and promote quality practice.

## How is this done?

Actively participating and assisting with:

- Childrens Court mentions
- coordination and preparation of contested child protection matters
- coordination and preparation of QCAT matters
- family law matters
- appeals & warrants
- interstate matters / judicial transfer of orders & interstate transfer of proceedings

## The role is varied ..

- case discussions with internal & external stakeholders
- considering the evidence
- providing a QA role
- "Advice in conferences"
- liaising with separate reps
- working with external witnesses
- participating in discussions with RE's
- ensuring staff are aware of requirements of an interim court orders eg social assessments
- use of ICMS

## Role continued

- monitor & contribute to the development of practice standards & operational guidelines
- participate in regional forums & meetings
- recording practice trends
- liaising with a range of internal & external stakeholders
- developing, implementing, monitoring & maintaining office systems in relation to the efficient management of court & tribunal appearances and timely recording of outcomes.

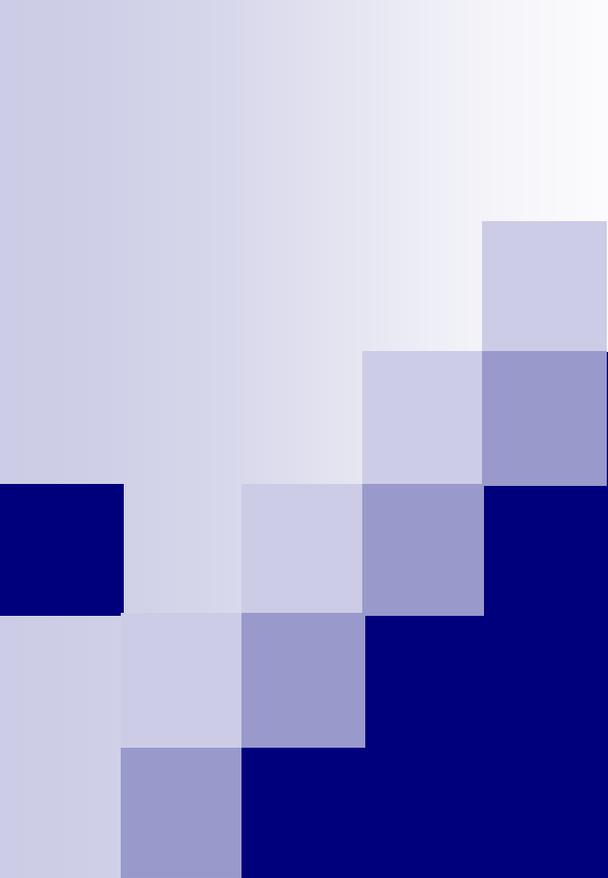
## Role continued

- providing a consultancy resource service to staff & other key local stakeholders in relation to court and tribunal matters.
- promoting best practice
- presenting in a professional manner
- being accountable
- promoting effective working relationships
- documenting all decision making processes
- having a commitment to ongoing learning
- adhering to the principles of being a model litigant

## **CPO QUIZ and ANSWERS**

1. Name the section of the Act that outlines the meaning of a parent for a CPO application? **S52**
2. Name the section of the Act that outlines the types of child protection orders that can be applied for? **S61**
3. Name the three non-custodial child protection orders?
  - **Directive Orders Re: actions by the parents**
  - **Directive Orders Re: contact by the parents**
  - **Supervision Orders**
4. Name the two custodial child protection orders?
  - **Custody to the chief executive**
  - **Custody to a relative**
5. Name the four guardianship child protection orders?
  - **Short term guardianship to the Chief Executive**
  - **Long term guardianship to the Chief Executive**
  - **Long term guardianship to a relative**
  - **Long term guardianship to another suitable person**
6. Only an authorised officer of the Department of Child Safety can make application for a child protection order? **TRUE** or FALSE
7. Form 10 - Child protection applications are sworn documents? **TRUE** or **FALSE**
8. There is no ability to dispense with service for court material on a parent? **TRUE** or FALSE
9. An affidavit of service needs to include the time in which court material was served on the respondent? **TRUE** or FALSE
10. Are the Statement of Standards applicable to a child who is subject to a Long-term guardianship order to another suitable person? **YES** or **NO**
11. Can the Department apply for a Child Protection Order granting custody to the Chief Executive for a period of 13 months? **YES** or **NO**
12. Section 59 asks the Department to identify the most appropriate child protection when a child is deemed "in need of protection"? **TRUE** or **FALSE**

13. Which section of the CPA 99 can an order be sought for a court ordered conference to occur between the parties? **S68 (e)**
14. What title do you use to address a Magistrate in Children's Court?  
**Your Honour**
15. Which section of the Act stipulates that the caseplan developed for a child needs to be endorsed within 7 days? **S51Q**
16. Name two interim child protection orders that can be made on adjournment of proceedings under S67 of the CPA 99?
- **Granting temporary custody of the child to the CE**
  - **Granting temporary custody of the child to a suitable member of the child's family**
  - **Directing a parent not to have contact with a child**
  - **Directing a parent to have only supervised contact with a child**
17. Under which section of the CPA 99, does the Department need to provide the court with the child's views and wishes, if able to be ascertained, before a child protection order can be made? **S59 (1) (d)**



# Crown Law



# Crown Law

- The aim of Crown Law is to provide competent, high quality, efficient, cost-effective advice and or representation by experienced legal officers before the Courts and Tribunals of Queensland.

# Role of Crown Law

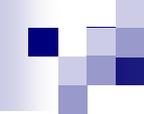
- The role of Crown Law is to:-
  - Act upon instructions received from Court Services.
  - Upon receipt of instructions, to advise Court Services of the allocated Crown Law officer who will have carriage of that particular matter.
  - The Crown Law officer with the carriage of the matter will review the instructions and provide, if possible, a brief initial response (issues, problems, evidence to be adduced, strategy for case management) on the matter prior to the Advice in Conference (AIC).
  - At the AIC, Crown Law will advise in detail in relation to:- relevant legal issues; evidentiary issues; strategies for the conduct of the case; prospects of success; timetable for various witnesses; etc.

# Role of Crown Law CONT'D

- At the AIC, Crown Law will set a timetable for the completion of tasks discussed, such as, preparation of evidence.
- After the AIC, Crown Law may confirm in writing, either by e-mail or in the form of a letter, the relevant issues discussed, for example, evidentiary material to be obtained by the Child Safety Service Centre, prospects of success.
- **At all stages prior to the Hearing, unless otherwise agreed by Court Services, Crown Law will maintain contact on a specific matter only through Court Services.**

# Court Services as the “Point of Contact”

- As indicated, contact with Crown Law will only be made through Court Services (unless otherwise agreed).
- Rationale:-
  - At the request of Crown Law, Court Services is the point of contact to ensure consistency in the receipt of instructions.
  - Court Services is responsible for the billing in relation to Crown Law and therefore, must be aware of all contact, discussions, requests, etc, made to Crown Law to ensure accuracy in this.
- On rare occasions, it may be necessary for Crown Law and the CSSC to contact each other directly. This should only occur with prior approval from Court Services.

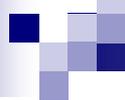


# Crown Law

- Crown Law undertakes to provide an efficient and cost effective legal service in that:
  - Crown Law will only seek the evidence necessary to establish a case (e.g. Crown Law will not seek to have three or more witnesses establish the same factual point, unless the circumstances of the case require it).
  - Crown Law will only seek to issue subpoenas for the purposes of having specified documents available to be tendered before the Court (that is, Crown Law will not seek to use subpoenas as a method of establishing or creating a case to be made before the Court, or seeking to search for information to be used before the Court).

# Role of Court Services in respect of Crown Law

- The role of Court Services is to:-
  - To coordinate the provision of the legal services of Crown Law, to advise and represent the Child Safety Service Centres in connection with contested matters before the Courts.
  - To obtain as early as possible from the Child Safety Service Centres the Court dates for contested matters at which Crown Law will be required, and instruct Crown Law accordingly.
  - To arrange/schedule AICs between Crown Law and Child Safety Service Centres and at the AIC, to record and clarify where necessary the use of various evidence, timeframes for the preparation of evidence, raise any other difficulties that may be noteworthy either in obtaining the evidence or in the conduct of the Hearing, and to provide alternative sources of information relevant to the Hearing.
  - After the AIC, to confirm the material sought and the timeframes for the supply of the material via e-mail.



# Role of Court Services in respect of Crown Law CONT'D

- To liaise with the Child Safety Service Centres to ensure that material is prepared on time as per the schedule agreed in the AIC.
- To liaise with the Child Safety Service Centres and Crown Law in the event that the evidence sought is late or with regard to any other issues which may arise.
- To liaise with the Child Safety Service Centres for the purposes of settling any affidavit material and where necessary seeking Crown Law assistance in same.
- To liaise with the Child Safety Service Centres and Crown Law in arranging witnesses for the Hearing together with dates and times for specific witnesses.
- To liaise with witnesses in relation to their entitlements or assist Child Safety Service Centres to do this.
- To advise Crown Law of any changes in Court dates or relevant information pertaining to the matter.

# Role of the Child Safety Service Centres

- The role of the Child Safety Service Centres is to:-
  - Provide all relevant information to Court Services for the purposes of the conduct of contested hearings.
  - To attend at AICs and to provide the information referred to above together with alternative sources of information including expert information where that is required.
  - To coordinate the preparation of updated material/evidence as agreed at the AIC including witnesses in respect of preparation and filing of affidavits.
  - To coordinate the preparation and service of subpoenas on witnesses to be had for the Hearing and discussion with them regarding entitlements.
  - To ensure Court Services is kept up to date with regard to relevant information, dates, etc.

# *EVIDENCE*

Court Coordinator  
Induction Training

## ***Child Protection Act 1999 (Qld)***

### **105 Evidence**

- (1) In a proceeding, the Childrens Court is not bound by the rules of evidence, but may inform itself in any way it thinks appropriate.
- (2) If, on an application for an order, the Childrens Court is to be satisfied of a matter, the court need only be satisfied of the matter on the balance of probabilities.

# Childrens Services Tribunal Act 2000 (Qld)

## 51 Procedure generally

- (1) To the extent a matter relating to the tribunal's procedure is not provided for by this Act, tribunal rules or directions given under section 54, the tribunal may decide its own procedure.
- (2) In conducting its proceedings, the tribunal—
  - (a) must observe procedural fairness; and
  - (b) must act quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before it; and
  - (c) is not bound by the rules of evidence; and
  - (d) may inquire into, and inform itself, of anything in the way it considers appropriate.

## *Domestic and Family Violence Protection Act 1989 (Qld)*

### 84 Evidentiary provision

(...)

---

(2) In any proceeding with the view to—

(a) making a protection order or a temporary protection order;

(...)

the court or magistrate may inform itself, himself or herself in such manner as it or the magistrate thinks fit and is not bound by the rules or practice as to evidence.

## ***Children and Young Persons (Care and Protection) Act 1998 (NSW)***

### **93 General nature of proceedings**

(...)

(3) The Children's Court is not bound by the rules of evidence unless, in relation to particular proceedings or particular parts of proceedings before it, the Children's Court determines that the rules of evidence, or such of those rules as are specified by the Children's Court, are to apply to those proceedings or parts.

(4) In any proceedings before the Children's Court, the standard of proof is proof on the balance of probabilities.

(...)

## ***Children, Youth and Families Act 2005 (VIC)***

### **215 Conduct of proceedings in Family Division**

(1) The Family Division—

- (a) must conduct proceedings before it in an informal manner; and
- (b) must proceed without regard to legal forms; and
- (c) must consider evidence on the balance of probabilities; and
- (d) may inform itself on a matter in such manner as it thinks fit, despite any rules of evidence to the contrary.

## ***Children's Protection Act 1993 (SA)***

### **45 Evidence etc**

- (1) In any proceedings under this Act—
  - (a) the Court is not bound by the rules of evidence but may inform itself as it thinks fit; and
  - (b) the Court must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.
- (2) A fact to be proved in proceedings under this Act is sufficiently proved if proved on the balance of probabilities.

## ***Children and Community Services Act 2004 (WA)***

### **146. Court not bound by rules of evidence**

- (1) In this section —  
***representation*** includes an express or implied representation, whether oral or in writing, and a representation inferred from conduct.
- (2) In protection proceedings the Court is not bound by the rules of evidence, but may inform itself on any matter in any manner it considers appropriate.
- (3) Without limiting subsection (2), evidence of a representation about a matter that is relevant to the protection proceedings is admissible despite the rule against hearsay.
- (4) The Court may give such weight as it thinks fit to evidence admitted under subsection (3).

### **151. Standard of proof**

The standard of proof in protection proceedings is proof on the balance of probabilities.

## Community Welfare Act 2008 (NT)

### 39. Powers of Court at hearing of application

- (1) At the hearing of an application under this Part, the Court may, in addition to any other powers it has –
  - (a) **require the person having the custody of the child at the time to account for the cause of an injury** which is a ground for the application; and
  - (b) **admit as evidence the finding that any other child in the care of the person having the custody of the child in relation to whom the application is made has suffered maltreatment.**
- (2) In hearing an application under this Part the Court is not bound by the rules of evidence but may inform itself on any matters it thinks fit.
- (...)

### 42. Proof of need of care

The **burden** of proving that a child is in need of care in an application under this Part lies on the Minister and the standard of proof is on the balance of probabilities.

## ***Children, Young Persons and Their Children Act 1989 (NZ)***

### **195 Evidence**

Subject to sections 65 and 198 of this Act, in any proceedings under Part 2 or Part 3A of this Act the Court may receive any evidence that it thinks fit, whether it is otherwise admissible in a Court of law or not.

### **197 Standard of proof**

Subject to section 198 of this Act, the standard of proof applying in any proceedings under Part 2 or Part 3A of this Act shall be the standard of proof applying in civil proceedings.

## ***Child Protection Act 1999 (Qld)***

### **105 Evidence**

- (1) In a proceeding, the Childrens Court is not bound by the rules of evidence, but may inform itself in any way it thinks appropriate.
- (2) If, on an application for an order, the Childrens Court is to be satisfied of a matter, the court need only be satisfied of the matter on the balance of probabilities.

## ***Child Protection Act 1999 (Qld)***

### **105 Evidence**

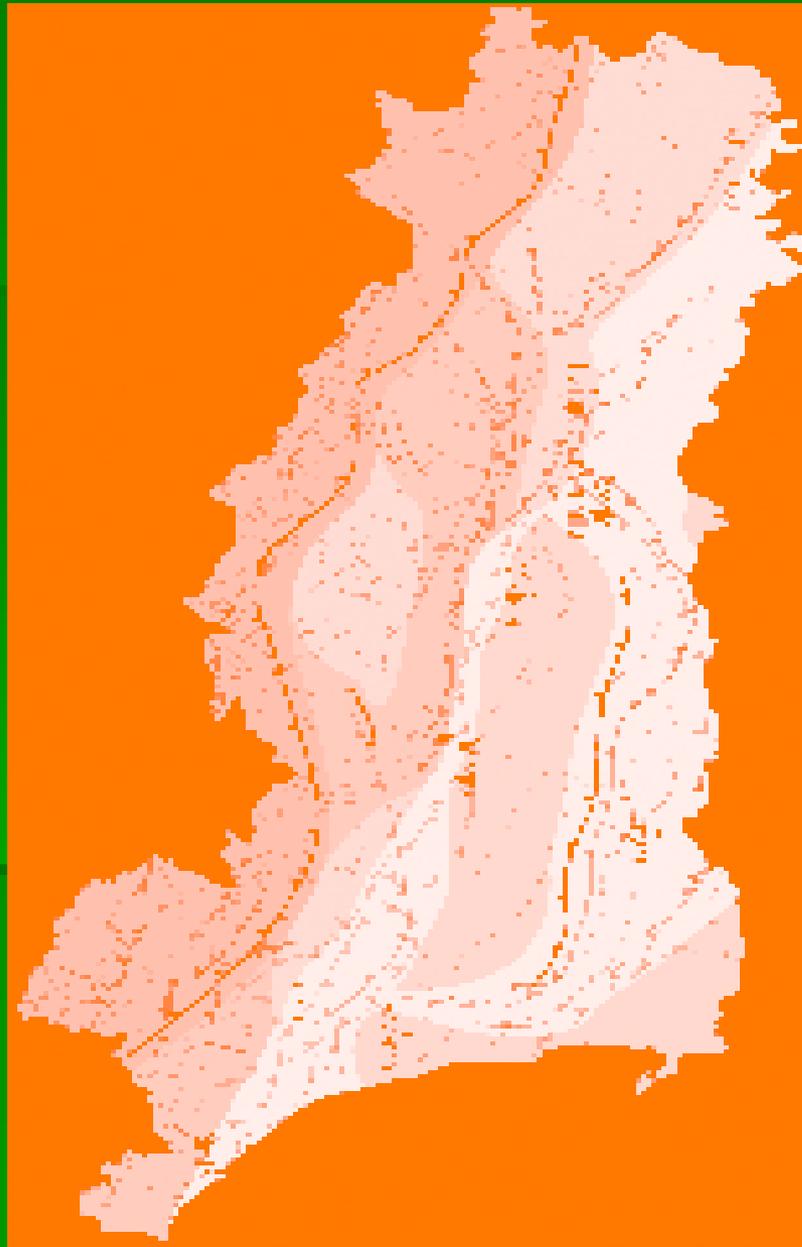
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**Strict rules**

**No rules**

**Some rules**

# Discretion

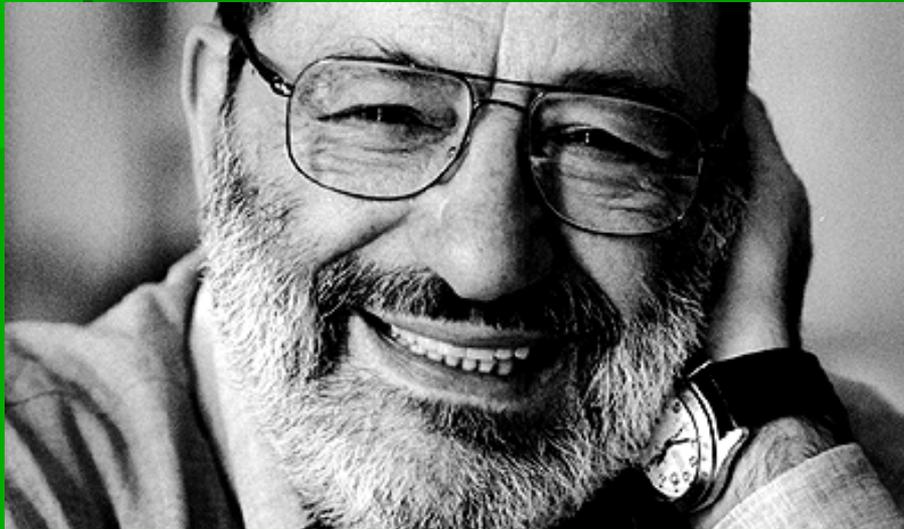














ACETO BALSAMICO  
TRADIZIONALE DI MODENA

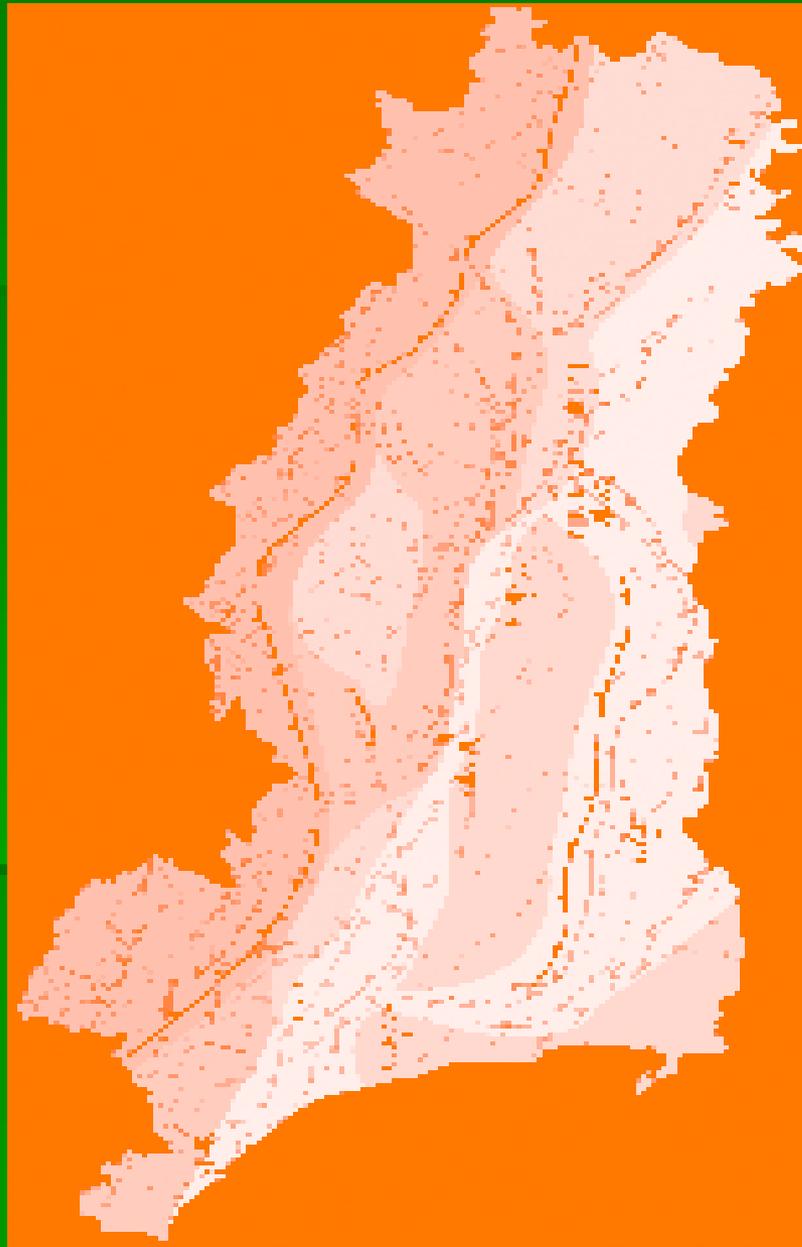
Extra Vecchio

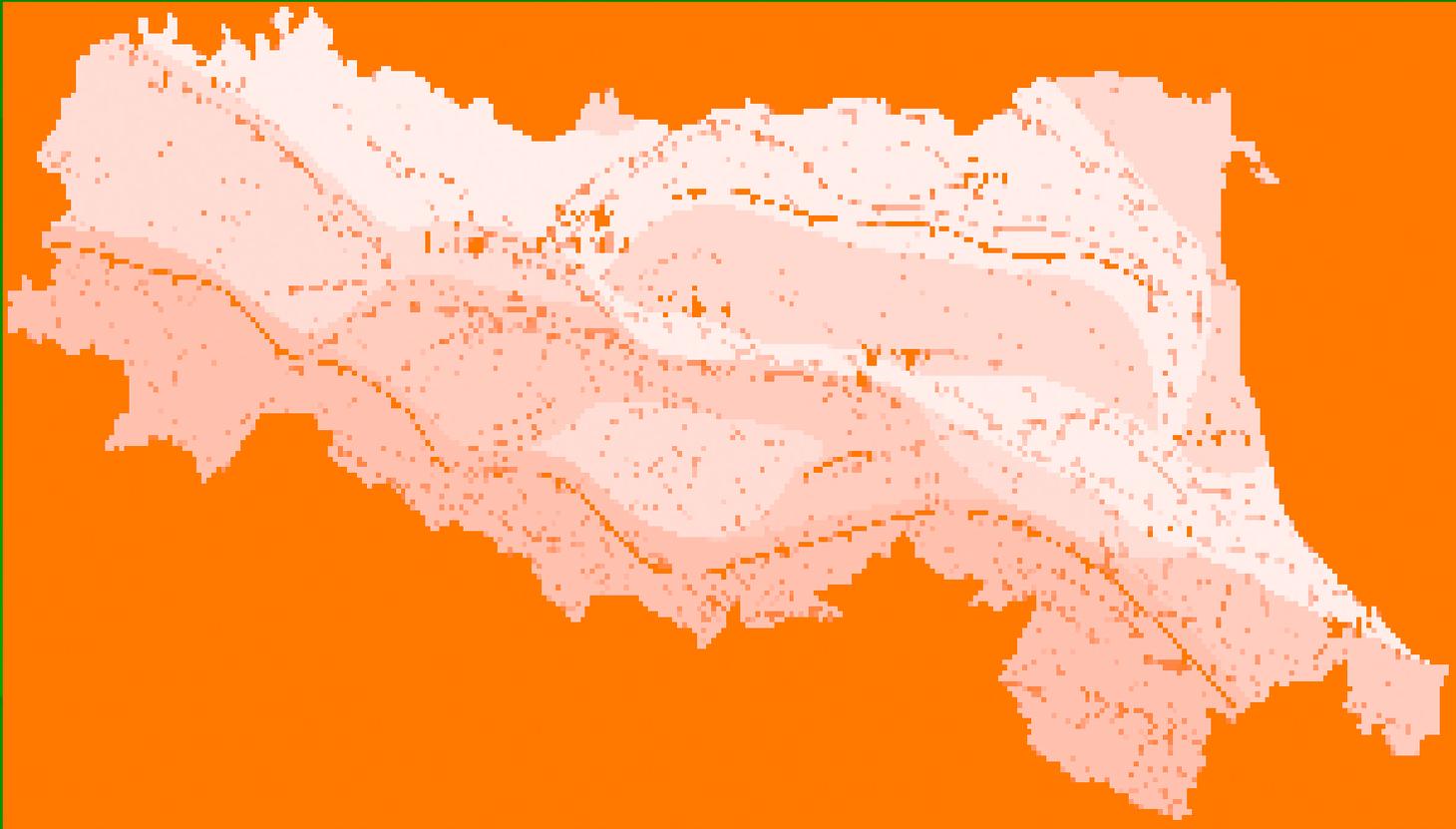
Aceto Balsamico  
Tradizionale di Modena

D.O.C.G.  
Extra Vecchio  
CESARE



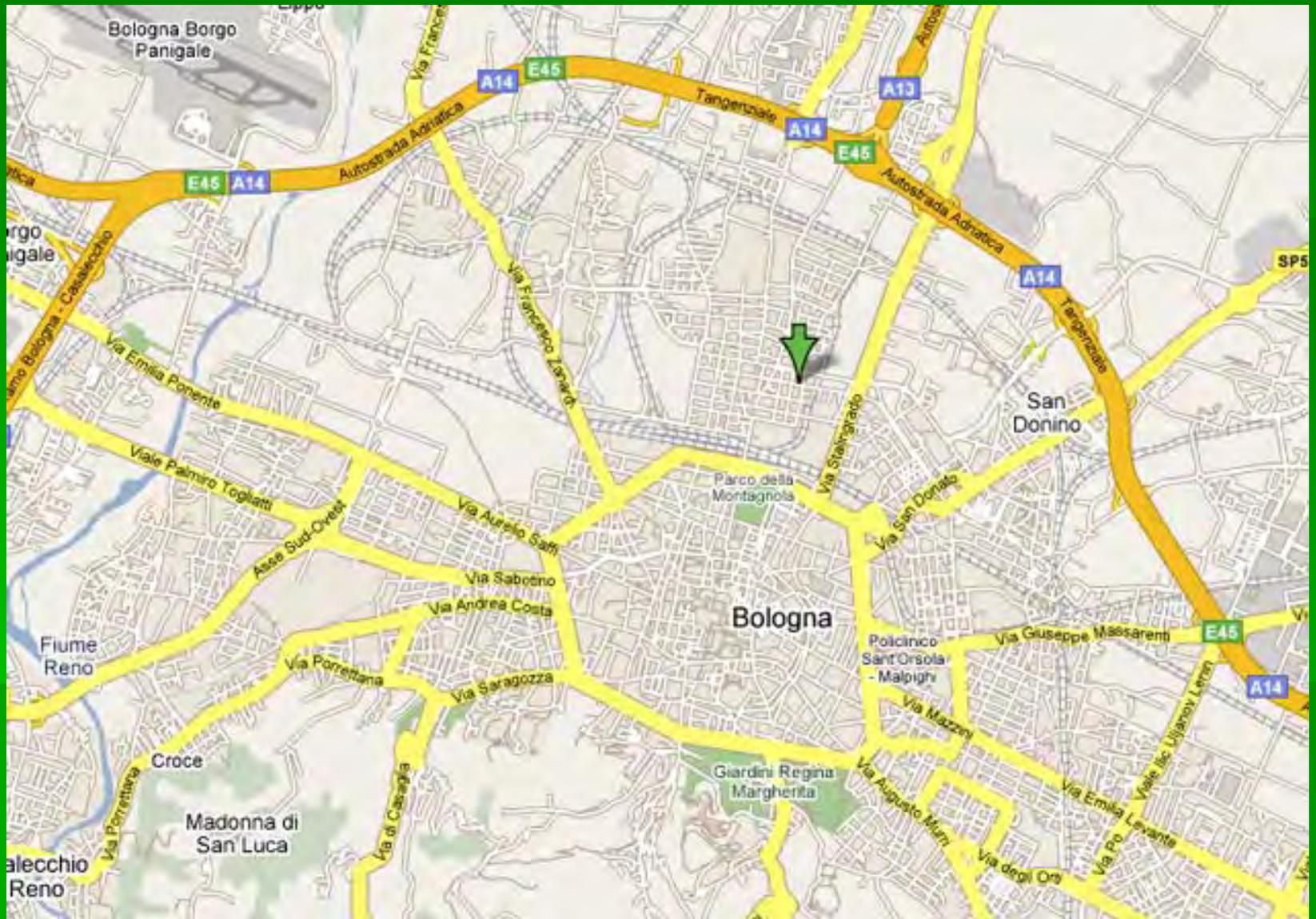


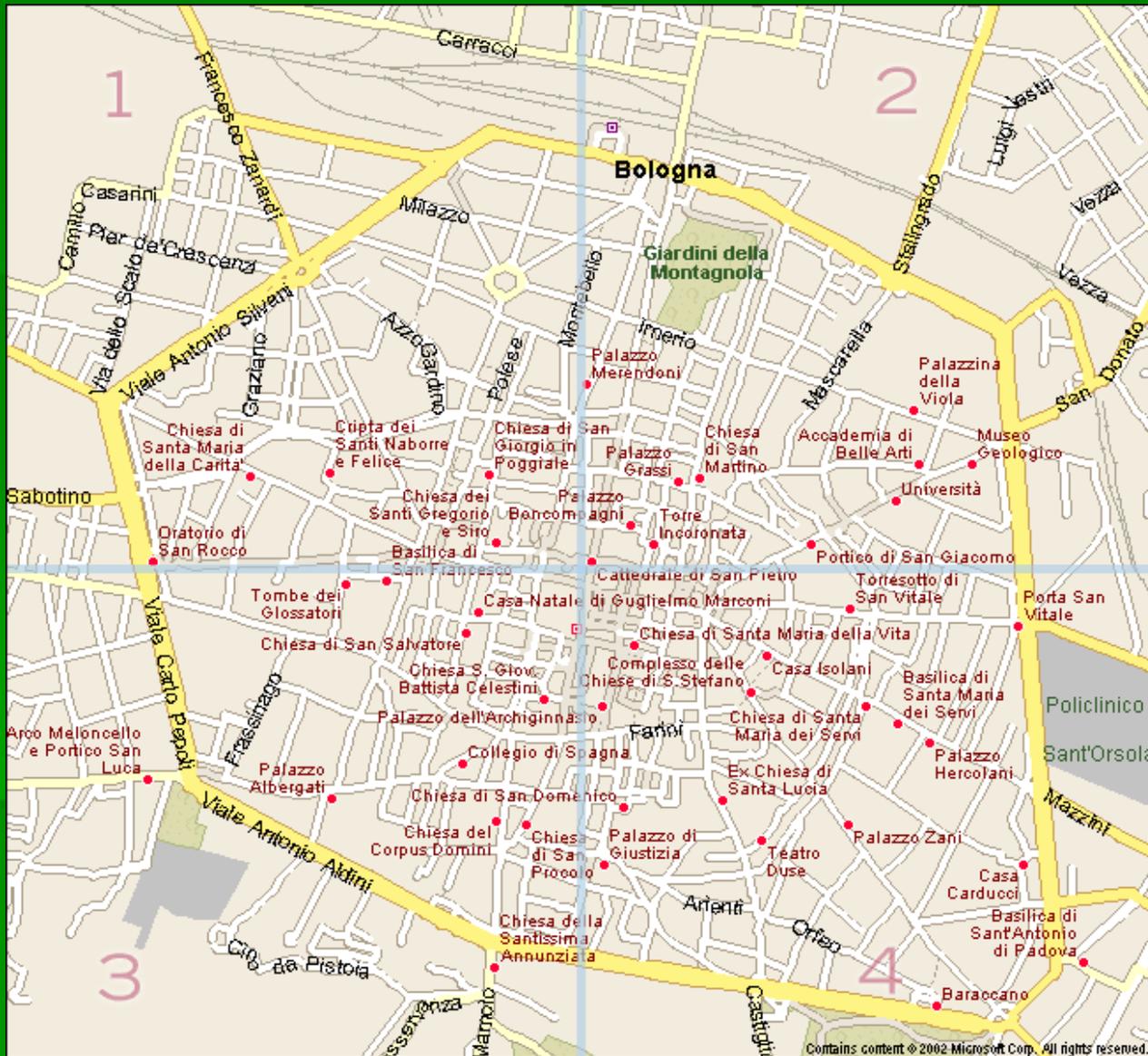












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Plan of Bologna, Italy -  
click sections for greater detail





Piazza Maggiore





# *Ragù alla Bolognese*



*“Counterfeit bolognese sauce appears on menus all over the world and should usually be avoided. I am tempted to say only eat bolognese sauce if you are in or around Bologna, or if you have made it yourself.”*

Diane Seed

*“Every Italian restaurant abroad serves a dish of so called tagliatelle bolognese; it is worth visiting Bologna to find out what this dish really tastes like, (...)”*

Elizabeth David 1953

*“Ground or minced beef (skirt) steak,  
pancetta, celery, carrot, onion, homemade  
passata, white wine, cooked with milk and  
finished with cream.”*

*Accademia Italiana della Cucina  
1982*

# *FUNDAMENTAL CONCEPTS*

**Admissibility**

# *FUNDAMENTAL CONCEPTS*

Relevance

## 59 Making of child protection order

- (1) The Childrens Court may make a child protection order only if it is satisfied—
  - (a) the child is a child in need of protection and the order is appropriate and desirable for the child's protection; and
  - (b) there is a case plan for the child—
    - (i) that has been developed or revised under part 3A; and
    - (ii) that is appropriate for meeting the child's assessed protection and care needs; and
  - (c) if the making of the order has been contested, a conference between the parties has been held or reasonable attempts to hold a conference have been made; and
  - (d) the child's wishes or views, if able to be ascertained, have been made known to the court; and
  - (e) the protection sought to be achieved by the order is unlikely to be achieved by an order under this part on less intrusive terms.
- (2) The court must not make a child protection order unless a copy of the child's case plan and, if it is a revised case plan, a copy of the report about the last revision under section 51X have been filed in the court.
- (3) Also, before making a child protection order granting custody or guardianship of a child to a person other than the chief executive, the court must have regard to any report given, or recommendation made, to the court by the chief executive about the person, including a report about the person's criminal history, domestic violence history and traffic history.<sup>20</sup>
- (4) In addition, before making a child protection order granting long-term guardianship of a child, the court must be satisfied—
  - (a) there is no parent able and willing to protect the child within the foreseeable future; or
  - (b) the child's need for emotional security will be best met in the long-term by making the order.
- (5) Further, the court must not grant long-term guardianship of a child to—
  - (a) a person who is not a member of the child's family unless the child is already in custody or guardianship under a child protection order; or
  - (b) the chief executive if the court can properly grant guardianship to another suitable person.
- (6) This section does not apply to the making of an interim order under section 67.

# *FUNDAMENTAL CONCEPTS*

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Categories of evidence

Direct

Indirect

Admissions

Lay and Expert Opinion

## The grounds on which this application is made are:

### Current Child Protection Concerns:

The Caboolture Child Safety Service Centre received a notification on the 9th January, 2009 in relation to Peter Jones. The child was presented to the emergency department of the Redcliffe Hospital with head injuries and significant bruising to his body. The injuries were of a serious nature and the child was immediately transferred to the Mater Children's Hospital, where he was admitted to the intensive care unit for treatment.

The child's father, Barry Jones and his partner, Denise Sutton advised me that at the time the injuries occurred they were in the living room of their home. They heard a crash from the kitchen and when they went to investigate the noise they found the child lying on the ground amongst a number of grocery items. The child appeared to be having a seizure. The father and his partner explained that it appeared that the child had fallen whilst trying to climb up on his high chair to get some food. The father advised that he called an ambulance immediately given that the child was "fitting".

On the 11th January, 2009 Dr. Lewis from the Mater Children's Hospital advised me that the child's injuries on admission included:

- A subdural haemorrhage (bleeding between the skull and brain).

- Retinal haemorrhaging in both eyes.

- Bruising to the left side of the face, this was estimated to be approximately two days old.

- Bruising to left side of the body, this was estimated to be approximately two days old.

He also informed me that the injuries to the child are considered to be non-accidental. This preliminary finding is based on a CT scan and professional opinion that the child suffered a severe blow to the head, 24 to 48 hours prior to his presentation at the Redcliffe Hospital. Dr. Lewis also indicated to me that the retinal haemorrhaging is consistent with the child being severely shaken.

(...)

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A subdural haemorrhage (bleeding between the skull and brain).

Retinal haemorrhaging in both eyes.

Bruising to the left side of the face, this was estimated to be approximately two days old.

Bruising to left side of the body, this was estimated to be approximately two days old.

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(...)

# *FUNDAMENTAL CONCEPTS*

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Weight  
or

Persuasiveness

# *FUNDAMENTAL CONCEPTS*

Proof

## 105 Evidence

- (1) In a proceeding, the Childrens Court is not bound by the rules of evidence, but may inform itself in any way it thinks appropriate.
  
- (2) If, on an application for an order, the Childrens Court is to be satisfied of a matter, the court need only be satisfied of the matter on the balance of probabilities.

# *STANDARDS OF PROOF*

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Beyond reasonable doubt

Balance of probabilities

# *Briginshaw*

The degree of satisfaction demanded may depend on the nature of the issue.

“Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences.”

*Briginshaw v Briginshaw* (1938) 60 CLR 336 per Dixon J

# Re H

“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A stepfather is usually less likely to have repeatedly raped and had non-consensual oral sex with his under age stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.”

*Re H & Ors (minors)* [1995] UKHL 16 per Lord Nicholls of Birkenhead

# *H v Chief Executive*

“The Children’s Court has to be satisfied on the balance of probabilities, however, it is accepted for the purposes of this application that the more serious the question, the more cogent the evidence needs to be.”

*H v Chief Executive Department of Communities* [2005] QDC (unreported) (25 November 2005), per Richards DCJ

# *The Sliding Scale*

- Type of order (PSO, Directive, TAO/CAO, STC, STG or LTG)
- Type of hearing (interim or final)
- Seriousness of the consequences

# *Interim Hearing*

“However, short of a complete hearing of all of the evidence, which is still taking place, there is little else that could have been done. A temporary protection order functions rather like an interim or interlocutory injunction, or an interim order for custody, to maintain the status quo pending the determination of the proceedings for final relief, in which it is common practice to continue the relief until those proceedings are completed. Unless persuaded to discharge or vary the protection order at that stage, it is not easy to see what else the magistrates could on the evidence before them have done but to extend the temporary order until the hearing was concluded and the application finally determined. Contrary to the husband’s assertion before us and to the magistrates, there is no reason to suppose that the material on which the wife relied was completely fabricated. Indeed, the purpose of that hearing, which is not yet concluded, is to determine where the truth lies”

*Bell v Bay-Jespersen* [2004] QCA 68 per McPherson JA

# *Seriousness of the consequences*

On appeal, His Honour stated that “it by no means appears from the magistrate’s reasons for his decision that he was satisfied to the requisite standard of proof. Even assuming that standard to be no higher than the ordinary civil standard of satisfaction on a balance of probabilities, what his worship said was:

“there seems to have been no significant improvement in the behavioural pattern of the child, and *perhaps to that extent* the child could be said to have been neglected by the lack of proper care.”

“Something more is needed than a bare possibility (“perhaps”) that some treatment, not necessarily curative, has “to an extent” been neglected before the court takes a child from the care of a person who has looked after and cared for him for as long as that.”

The appeal decision thus clearly contemplates that the standard should be at the higher end of the scale in relation to the making of an order that would have the effect of removing a child from the care of a person (the grandmother) in whose care the child had been for 10 years and with whom the child had a strong attachment.

*Dunnett v Gebers & Anor: ex parte Dunnett* [1997] QCA 056 per McPherson JA

# *Note the dissenting opinion in Re H*

“This seems to me to be a strong argument in favour of making the threshold lower rather than higher. It would be a bizarre result if the more serious the anticipated injury, whether physical or sexual, the more difficult it became for the local authority to satisfy the initial burden of proof, and thereby ultimately, if the welfare test is satisfied, secure protection for the child.”

*Re H & Ors (minors)* [1995] UKHL 16 per Lord Lloyd of Berwick  
dissenting

# *BURDEN OF PROOF*

Reversal

# *BURDEN OF PROOF*

“The legal burden of establishing the existence of these conditions rests on the applicant for a care order. The general principle is that he who asserts must prove. Generally, although there are exceptions, a plaintiff or applicant must establish the existence of all the pre-conditions and other facts entitling him to the order he seeks.”

*Re H & Ors (minors)* [1995] UKHL 16 per Lord Nicholls of Birkenhead

## Community Welfare Act 2008 (NT)

### 39. Powers of Court at hearing of application

- (1) At the hearing of an application under this Part, the Court may, in addition to any other powers it has –
  - (a) **require the person having the custody of the child at the time to account for the cause of an injury** which is a ground for the application; and
  - (b) **admit as evidence the finding that any other child in the care of the person having the custody of the child in relation to whom the application is made has suffered maltreatment.**
- (2) In hearing an application under this Part the Court is not bound by the rules of evidence but may inform itself on any matters it thinks fit.
- (...)

### 42. Proof of need of care

The **burden** of proving that a child is in need of care in an application under this Part lies on the Minister and the standard of proof is on the balance of probabilities.

## ***Children and Young Persons (Care and Protection) Act 1998 (NSW)***

### **106A Admissibility of certain other evidence**

- (1) The Children's Court must admit in proceedings before it any evidence adduced that a parent or primary care-giver of a child or young person the subject of a care application:
  - (a) is a person:
    - (i) from whose care and protection a child or young person was previously removed by a court under this Act or the *Children (Care and Protection) Act 1987*, or by a court of another jurisdiction under an Act of that jurisdiction, and
    - (ii) to whose care and protection the child or young person has not been restored, or
  - (b) is a person who has been named or otherwise identified by the coroner or a police officer (whether by use of the term "person of interest" or otherwise) as a person who may have been involved in causing a reviewable death of a child or young person.
- (2) Evidence adduced under subsection (1) is prima facie evidence that the child or young person the subject of the care application is in need of care and protection.
- (3) A parent or primary care-giver in respect of whom evidence referred to in subsection (1) has been adduced may rebut the prima facie evidence referred to in subsection (2) by satisfying the Children's Court that, on the balance of probabilities:
  - (a) the circumstances that gave rise to the previous removal of the child or young person concerned no longer exist, or
  - (b) the parent or primary care-giver concerned was not involved in causing the relevant reviewable death of the child or young person, as the case may require.
- (...)

# BURDEN OF PROOF

“I would accept that his Honour’s judgment could have been more felicitously expressed. But when it is read as a whole and in the context of the paragraphs which both preceded and succeeded it, there can be no doubt that his Honour consciously placed the ultimate burden of proving on the balance of probabilities that sexual contact was the cause of Sophie’s infection wholly upon the Director-General.

Given the father’s denial of sexual contact upon the basis of the bathing/towelling scenario, his Honour’s rejection of it clearly left the father’s denial, as he described it, “*compromised*”.

I therefore do not accept that at his Honour was shifting the burden of proving that Sophie’s infection was caused by non-sexual means to the father or, to put the matter another way, that he placed upon the father the burden of disproving that the infection was caused by sexual means. “

*Re Sophie (No. 2)* [2009] NSWCA 89 per Tobias JA

# *Hidden Reversal*

A parent's failure to engage can and usually is led in evidence to invite the inference that the parent has failed to take responsibility for claimed concerns; or

- lacks insight into the nature of the concerns; or
- refuses to accept the validity of the concerns; or
- Is unable to acknowledge their role in causing the harm;
- all of the above,

by way of founding a conclusion that the parent lacks the willingness and/or ability to protect the child from harm.

# *Errors of omission*

- Insufficient factual description – be emphatically descriptive (whether it is in the body of an affidavit or an exhibited CP history)
- Opinionated “expert” type statements that are not supported by factual description (be careful of adjectives such as “alcoholic”, “addicted”, “violent”, “evasive”, “aggressive” if you haven’t laid a factual platform)
- Insufficient corroborative material – inadequate use of Chapter 5A provisions or subpoenas or failing to obtain updated material immediately prior to trial
- Failing to call a relevant witness or to subpoena relevant documentary material (*Jones v Dunkel* (1959) 101 CLR 298) – a failure to adduce evidence (ie call a witness or tender evidence) in support of an allegation may lead the Court to draw an adverse inference that the uncalled evidence would not have supported your case, particularly where the evidence was reasonably available to you.

# *PRACTICE NOTES*

---

- Queensland Police Service
  - issues re completeness of records and location of evidence (esp ICARE ROI video and audio, police notebooks)
- Queensland Health
  - database issues (advise them of locality/hospitals/regions if known)
- Education Queensland
  - holidays (subpoenae to produce/attend and give evidence)

## 10 Who is a *child in need of protection*

A *child in need of protection* is a child who—

- (a) has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm; and
- (b) does not have a parent able and willing to protect the child from the harm.

## 9 What is *harm*

- (1) *Harm*, to a child, is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing.
- (2) It is immaterial how the harm is caused.
- (3) Harm can be caused by—
  - (a) physical, psychological or emotional abuse or neglect;  
or
  - (b) sexual abuse or exploitation.

# DAY 2 - homework

**DAY 3:** Role plays – mock court

(If time we will also discuss the affidavits associated with the “Jones family”)

Group 1: prepare submissions for a first mention – **CAO**

Group 2: prepare submissions for a first mention – **CPO**

# Overview of the *Child Protection Act 1999*

# *Child Protection Act 1999*

- The legislation which underpins the Department of Communities (Child Safety's) daily work is the *Child Protection Act 1999* (hereinafter referred to as 'the Act').
- The Act was introduced in 1999 and has subsequently undergone a number of amendments.
- The current version of the Act is reprint 6D which came into force on 1 July 2010.
- There are currently proposed amendments which are due for inclusion which can be found in the *Child Protection and Other Acts Amendment Bill 2010*. These have been tabled at Parliament and are currently waiting to be debated before being introduced.

# Purpose of the Act

- The purpose of the Act is set out at s4 which states:
  - *the purpose of this Act is to provide for the protection of children.*

# Principles of the Act

- The principles of the Act are outlined at s5 which states:
  - *this Act is to be administered under the principle that the welfare and best interests of a child are paramount;*
  - *every child has a right to protection from harm;*
  - *families have the primary responsibility for the upbringing, protection and development of their children;*
  - *the preferred way of ensuring a child's wellbeing is through the support of the child's family;*

# Principles of the Act CONT'D

- *powers conferred under this Act should be exercised in a way that is open, fair and respects the rights of people affected by their exercise, and, in particular, in a way that ensures—*
  - *(i) actions taken, while in the best interests of the child, maintain family relationships and are supportive of individual rights and ethnic, religious and cultural identity or values; and*
  - *(ii) the views of the child and the child's family are considered; and*
  - *(iii) the child and the child's parents have the opportunity to take part in making decisions affecting their lives;*
- *if a child does not have a parent able and willing to protect the child, the State has a responsibility to protect the child, but in protecting the child the State must not take action that is unwarranted in the circumstances;*

# Principles of the Act CONT'D

- *if a child is removed from the child's family—*
  - *(i) the aim of authorised officers' working with the child and the child's family is to safely return the child to the family if possible; and*
  - *(ii) the child's need to maintain family and social contacts, and ethnic and cultural identity, must be taken into account; and*
  - *(iii) in deciding in whose care the child should be placed, the chief executive must give proper consideration to placing the child, as a first option, with kin;*
- *a child should be kept informed of matters affecting him or her in a way and to an extent that is appropriate, having regard to the child's age and ability to understand;*
- *if a child is able to form and express views about his or her care, the views must be given consideration, taking into account the child's age or ability to understand; and*
- *if a child does not have a parent able and willing to give the child ongoing protection, the child has a right to long-term alternative care.*

# Basic Concepts

- Some basic concepts of the Act:-
  - s6 **Provisions about Aboriginal & Torres Strait Islander children**
    - *When making a significant decision about an Aboriginal or Torres Strait Islander child, the CE must give an opportunity to a RE for the child to participate in the decision-making process.*
    - *When making a decision, other than a significant decision, about an Aboriginal or Torres Strait Islander child, the CE must consult with a RE for the child before making the decision.*
  - 8 **Who is a *child***
    - *A **child** is an individual under 18 years.*
  - s9 **What is *harm***
    - ***Harm**, to a child, is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing.*
    - *It is immaterial how the harm is caused.*
    - *Harm can be caused by—*
      - *physical, psychological or emotional abuse or neglect; or*
      - *sexual abuse or exploitation.*

# Basic Concepts CONT'D

- s10 *Who is a child in need of protection*
  - *A child in need of protection is a child who—*
    - *has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm; and*
    - *does not have a parent able and willing to protect the child from the harm.*

# Natural Justice/Procedural Fairness

- What is Natural Justice/Procedural Fairness?
  - The rules or principles of natural justice, also known as procedural fairness, have been developed to ensure that decision-making is fair and reasonable.
  - Natural justice is a legal requirement that applies to government decision-making.
  - Put simply, natural justice involves decision-makers informing people of the case against them or their interests, giving them a right to be heard (the 'hearing' rule), not having a personal interest in the outcome (the rule against 'bias'), and acting only on the basis of logically probative evidence (the 'no evidence' rule).
  - A denial of natural justice is a ground of review/appeal.
  - An example of a denial of natural justice is late service of Court material.

# Due Process

- **Due process** (more fully **due process of law**) is the principle that the government must respect all of a person's legal rights, instead of just some or most of those legal rights, when the government deprives a person of life, liberty, or property.
- Due process is the idea that laws and legal proceedings must be fair.

# Rights of Parents

- Parents are afforded numerous rights under the Act.
- Section 11 defines who a parent is for the purposes of the Act. It should be noted that ss23, 37, 51F, 52, 67(3), 117, 205 provide for a narrower definition of parent for specific divisions of the Act.
- The following sections of the Act place obligations on the CE that must be complied with in relation to parents and their rights:-

# Section 15

## Child's parents to be told about allegation of harm and outcome of investigation

- *(1) An authorised officer or police officer who is investigating an allegation of harm, or risk of harm, to a child, or assessing the child's need of protection because of the allegation must give details of the alleged harm or risk of harm to at least 1 of the child's parents.*
- *(2) Also, as soon as practicable after completing the investigation, the officer must—*
  - *(a) tell at least 1 of the child's parents about the outcome of the investigation; and*
  - *(b) if asked by the parent—give the information in writing to the parent.*
- *(3) However, if the officer reasonably believes—*
  - *(a) someone may be charged with a criminal offence for the harm to the child and the officer's compliance with subsection (1) or (2) may jeopardise an investigation into the offence; or*
  - *(b) compliance with the subsection may expose the child to harm;**the officer need only comply with the subsection to the extent the officer considers is reasonable and appropriate in the particular circumstances.*

# Section 20

## Officer's obligations on taking child into custody

- *(1) If an authorised officer or police officer takes a child into the chief executive's custody, the officer must, as soon as practicable—*
  - *(a) take reasonable steps to tell at least 1 of the child's parents—*
    - *(i) that the child has been taken into custody and the reasons for the action; and*
    - *(ii) when the chief executive's custody ends under section 18(7); and*
  - *(b) tell the child about his or her being taken into the chief executive's custody; and*
  - *(c) tell the chief executive the child has been taken into the chief executive's custody and where the child has been taken.*
- *(2) Subsection (1) does not require the officer to tell the child's parents in whose care the child has been placed.*
- *(3) The officer's obligation under subsection (1)(a)(i) to give reasons for taking the child into custody is limited to the extent the officer considers is reasonable and appropriate in particular circumstances if the officer reasonably believes—*
  - *(a) someone may be charged with a criminal offence for harm to the child and the officer's compliance with the subparagraph may jeopardise an investigation into the offence; or*
  - *(b) compliance with the subparagraph may expose the child to harm.*

# Section 32 (TAOs)

## Explanation of temporary assessment orders

- *Immediately after a temporary assessment order is made for a child, the applicant for the order must—*
  - *(a) give a copy of the order, or facsimile order or order form under section 30(6), to at least 1 of the child's parents; and*
  - *(b) explain the terms and effect of the order; and*
  - *(c) inform the parent—*
    - *(i) about the right of appeal; and*
    - *(ii) that, because of the duration of the order, if the parent wishes to appeal against the order, an appeal should be started immediately; 10 and*
    - *(iii) how to appeal; and*
  - *(d) tell the child about the order.*

# Section 41 (CAOs)

## Notice of application

- *(1) As soon as practicable after the application is filed, the applicant must—*
  - *(a) personally serve a copy of it on each of the child's parents; and*
  - *(b) tell the child about the application. 13*
- *(2) However, if it is not practicable to serve the copy personally, a copy of the application may be served on a parent by leaving it at, or by sending it by post to, the parent's residential address last known to the applicant.*
- *(3) Also, if the applicant is a police officer, the applicant must immediately give a copy of the application to the chief executive.*
- *(4) A copy of the application served under this section must state—*
  - *(a) when and where the application is to be heard; and*
  - *(b) for a copy served on a parent—that the application may be heard and decided even though the parent does not appear in court.*

# Section 48 (CAOs)

## Chief executive's obligations after making of court assessment order

- *As soon as practicable after a court assessment order for a child is made, the chief executive must give to the parties to the application for the order—*
  - *(a) a copy of the order; and*
  - *(b) a written notice—*
    - *(i) explaining the terms and effect of the order; and*
    - *(ii) stating that a party may appeal against the decision to make the order within 28 days after the order is made; and*
    - *(iii) stating how to appeal.*

# Section 51L (Case Planning)

## Who should be involved

- *(1) The convenor must give the following persons a reasonable opportunity to attend and participate in the meeting—*
  - *(b) the child's parents.*

# Section 51T/Y (Case Planning)

## Distributing and implementing the plan

- *After a case plan has been recorded in the approved form and endorsed, the chief executive must—*
  - *(a) give a copy of the plan to the child, unless that would be inappropriate having regard to the child's age and ability to understand; and*
  - *(b) explain the plan to the child in a way, and to an extent, that is reasonable, having regard to the child's age and ability to understand; and*
  - *(c) give a copy of the plan to—*
    - *(i) the child's parents; and*
    - *(ii) anyone else affected by the plan or who the chief executive considers should receive a copy; and*
  - *(d) support the implementation of the plan.*

# Section 51T/Y CONT'D

## Distributing and implementing the revised case plan

- *(1) This section applies after the chief executive has prepared the revised case plan.*
- *(2) The chief executive must—*
  - *(a) give a copy of the plan to the child, unless that would be inappropriate having regard to the child's age and ability to understand; and*
  - *(b) explain any changes in the plan to the child in a way, and to an extent, that is reasonable, having regard to the child's age and ability to understand; and*
  - *(c) give a copy to the child's parents and anyone else affected by the plan or who the chief executive considers should receive a copy; and*
  - *(d) support the implementation of the plan.*

# Section 56 (CPOs)

## Notice of application

- *(1) As soon as practicable after the application is filed, the applicant must—*
  - *(a) personally serve a copy of it on each of the child's parents; and*
  - *(b) tell the child about the application.*
- *(2) However, if it is not practicable to serve the copy personally, a copy of the application may be served on a parent by leaving it at, or by sending it by post to, the parent's residential address last known to the applicant.*
- *(3) The copy of the application served under this section must state—*
  - *(a) when and where the application is to be heard; and*
  - *(b) the application may be heard and decided even though the parent does not appear in court.*

# Section 63 (CPOs)

## Chief executive's obligations after making of child protection order

- *As soon as practicable after a child protection order for a child is made, the chief executive must give to the parties to the application for the order—*
  - *(a) a copy of the order; and*
  - *(b) a written notice—*
    - *(i) explaining the terms and effect of the order; and*
    - *(ii) stating that a party may appeal against the decision to make the order within 28 days after the order is made; and*
    - *(iii) stating how to appeal.*

# Section 73 (Obligations)

## Chief executive's obligations about meeting child's protection and care needs under certain orders and agreements

- *(2) The CE must take steps that are reasonable and practicable to help the child's family meet the child's protection and care needs.*
- *(3) The CE must have regular contact with the child and the child's parents or other appropriate members of the child's family.*

# Section 78 (Obligations)

## Chief executive's powers

- *(1) For giving effect to the child protection order, the chief executive may, by written notice given to a parent of the child, direct the parent to do or refrain from doing something specifically relating to the supervision matters stated in the order.*
- *(2) The notice must comply with QCAT Act s157(2).*
- *(3) The parent may apply to have the decision to give the direction reviewed only on the ground that the direction does not specifically relate to the supervision matters.*
- *(4) The Tribunal may not stay the operation of the decision under the QCAT Act s22(3).*

# Section 85 (Obligations)

## Chief executive to tell parents of placing child in care – assessment order

- *(1) This section applies if the child is in the chief executive's custody under an assessment order.*
- *(2) Subject to subsections (3) and (4), the chief executive must, as soon as practicable after deciding in whose care to place the child, tell the child's parents in whose care the child is placed and where the child is living.*
- *(3) Before complying with subsection (2), the chief executive must consider the matters prescribed under a regulation.*
- *(4) If, after considering the matters, the chief executive reasonably suspects compliance with subsection (2) would constitute a significant risk to the safety of the child or anyone else with whom the child is living, the chief executive may decide not to comply with the subsection.*

# Section 86 (Obligations)

## Chief executive to notify parents of placing child in care—child protection order

- *(1) This section applies if the child is in the chief executive's custody or guardianship under a child protection order.*
- *(2) Subject to subsections (3) and (4), the chief executive must, as soon as practicable after deciding in whose care to place the child, give written notice of the decision to the child and the child's parents stating the following—*
  - *(a) the person in whose care the child is placed and where the child is living;*
  - *(b) the reasons for the decision;*
  - *(c) that the child or the child's parents may apply to the tribunal to have the decision reviewed;*
  - *(d) how, and the time within which, the child or child's parent may apply to have the decision reviewed;*
  - *(e) any right the child or child's parent has to have the operation of the decisions stayed.*
- *(3) Before complying with subsection (2), the chief executive must consider the matters prescribed under a regulation.*
- *(4) If, after considering the matters, the chief executive reasonably suspects compliance with subsection (2) would constitute a significant risk to the safety of the child or anyone else with whom the child is living, the chief executive may decide not to comply with the subsection.*
- *(5) If the chief executive makes a decision under subsection (4), the chief executive must give written notice of the decision to the child and the child's parents stating the following—*
  - *(a) that the chief executive has decided not to tell the child's parents the person in whose care the child is placed and where the child is living;*
  - *(b) the reasons for the decision;*
  - *(c) that the child or the child's parents may apply to the tribunal to have the decision reviewed;*
  - *(d) how, and the time within which, the child or child's parent may apply to have the decision reviewed;*
  - *(e) any right the child or child's parent has to have the operation of the decisions stayed.*
- *(6) Subsection (2) does not apply if the chief executive is satisfied it is not reasonably practicable for the chief executive to give the notice because the child is placed in the person's care for less than 7 days.*

# Section 87 (Obligations)

## Chief executive to provide contact between child and child's parents

- *(1) The chief executive must provide opportunity for contact between the child and the child's parents and appropriate members of the child's family as often as is appropriate in the circumstances.*
- *(2) However, the chief executive may refuse to allow, or restrict or impose conditions on, contact between the child and the child's parents or members of the child's family, if the chief executive is satisfied it is in the child's best interests to do so or it is not reasonably practicable in the circumstances for the parents or family member to have the contact.*
- *(3) If the chief executive refuses to allow, or restricts or imposes conditions on contact between the child and a person, the chief executive must give written notice of the decision to each person affected by the decision.*
- *(4) The notice must comply with the QCAT Act s157(2).*

# Section 88 (Obligations)

## **Chief executive to provide contact between Aboriginal or Torres Strait Islander child and child's community or language group**

- (1) This section applies if the child is an Aboriginal or Torres Strait Islander child.*
- (2) The CE must provide opportunity for contact, as often as is appropriate in the circumstances, between the child and appropriate members of the child's community or language group.*

# Obligations – Interstate Matters

- There are also a number of obligations posed on the CE in relation to interstate transfers of orders and/or proceedings, these can be found at ss 209, 210, 216, 227 and 231.

# Model Litigant Principles

- Refer to the Model Litigant Principles article by Conrad Lohe (dated 28 June 2007).
- Principles apply to the Department of Communities as a state department.
- Principles are broken down into two main headings:
  - Fairness:-
    - Acting consistently;
    - Dealing promptly;
    - Endeavouring to avoid litigation;
    - Keeping litigation costs to a minimum where it cannot be avoided;
    - Paying legitimate claims without litigation;
    - Not seeking to take advantage of an impecunious opponent;
    - Not contesting matters which it accepts is correct; and
    - Not instituting and perusing appeals unless there is a belief for reasonable prospects of success.

# Model Litigant Principles

CONT'D

## – Firmness:-

- Appropriately testing claims;
- Contesting all spurious or vexatious claims;
- Claiming legal professional privilege where appropriate;
- Claiming public interest immunity to protect confidential information;
- Seeking security for costs;
- Relying on available statutes of limitation; and
- Acting properly to protect state's interest.

QCAT:  
Queensland  
Civil and  
Administrative  
Tribunal

# Queensland Civil and Administration Tribunal (QCAT)

- On 12 March 2008, the Premier, the Hon Anna Bligh MP, announced the establishment of a Queensland Civil and Administrative Tribunal (QCAT); and
- the establishment of an independent panel to report to Government about the implementation of a new Civil and Administrative Tribunal for Queensland.

# QCAT was born

- On the 1 December 2009, the Queensland Civil and Administrative Tribunal (QCAT) became operational
- Most significant justice reform in Queensland in 50 years



# QCAT amalgamates *Children Services Tribunal*

- QCAT has taken over the functions of a number of different tribunals as well as some review functions of the courts and other administrative bodies. Including the *Children Services Tribunal*.

# Super Tribunal

- A list of the Former Tribunals can be found in Schedule 1 of the Queensland Civil and Administrative Tribunals Act 2009.
- Benefits include:
  - ad hoc proliferation of tribunals
  - Single gateway
  - Greater standardisation
  - Development of internal body of precedents

# QCAT Legislation

- In order to establish QCAT, several pieces of legislation needed to be developed and amended:
  - The Queensland Civil and Administrative Tribunal Act 2009 (the QCAT Act), establishes QCAT and provides for its generic functions, powers and procedures; and

# Continued...

- The Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009, amends over 160 pieces of legislation to transfer jurisdiction from existing tribunal and courts to QCAT, including the *CPA* and the *ACA*, and
- The QCAT Rules and the QCAT Regulation

# Specialist provisions retained

- QCAT legislation provides for the general users of the tribunal and includes provisions regarding children who may more generally come into contact with the tribunal.
- However there were specialist provisions of the *Children Services Tribunal Act 2000* which needed to be retained and for which do not fit with the more general approach of the QCAT legislation.
- The specialist provisions are now located in the *CPA* and *ACA*.

# Jurisdictional scope of QCAT

- Because of the wide variety of matters that QCAT deals with, the tribunal is organised into three divisions.

1. Human Rights;

2. Civil Disputes; and

3. Administrative and Disciplinary Matters.

# Structure

QCAT

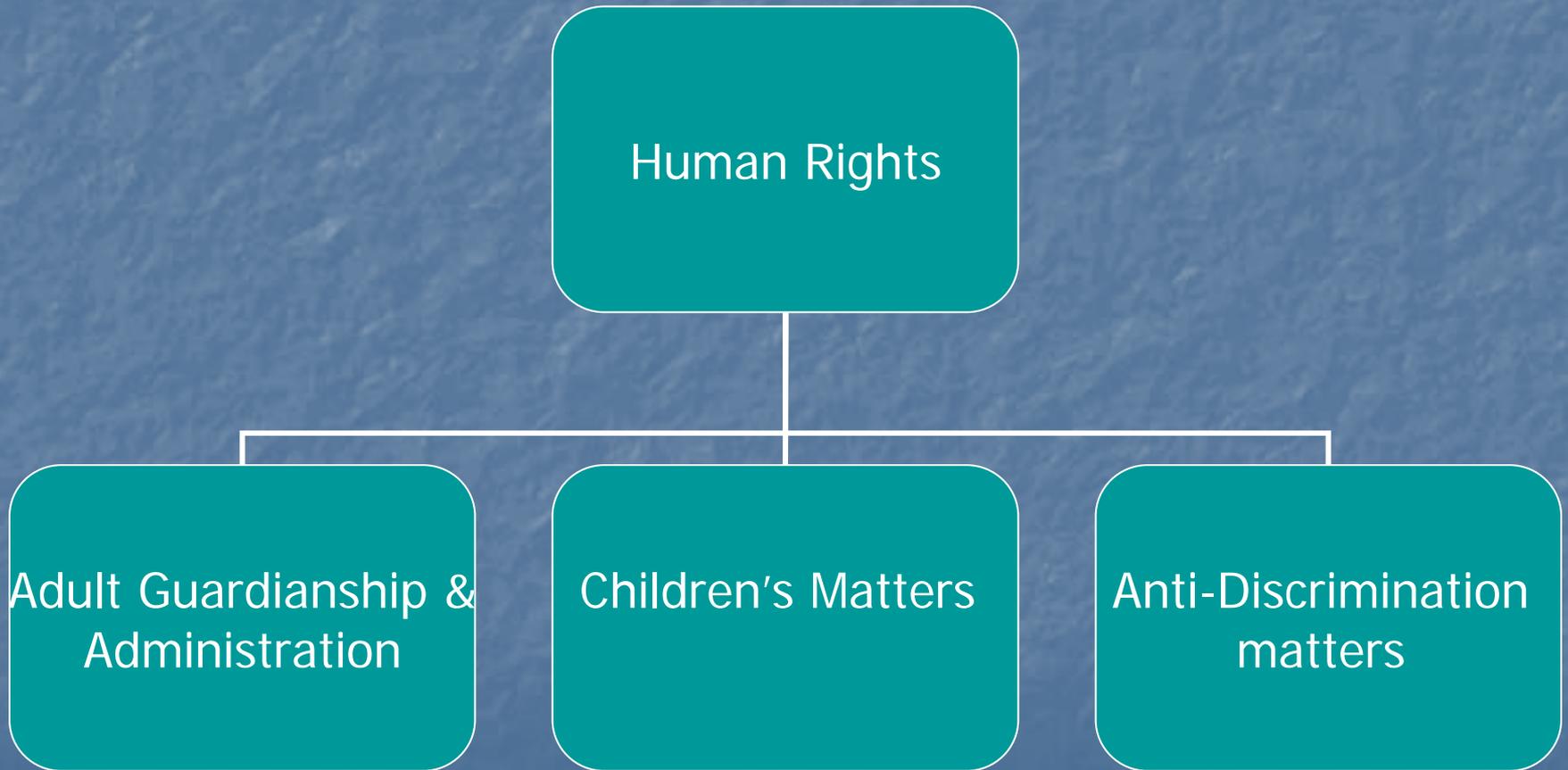
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graph TD; QCAT[QCAT] --- HR[Human Rights]; QCAT --- AD[Administration And Disciplinary]; QCAT --- CD[Civil Disputes];
```

Human Rights

Administration  
And Disciplinary

Civil Disputes

# Human Rights Division



# Structure of QCAT

- ❖ A President sits over QCAT, the President must be a Supreme Court Judge. The current President appointed is Justice Alan Wilson
- ❖ A Deputy President sits under the President – this is Justice Fleur Kingham

# Continued....

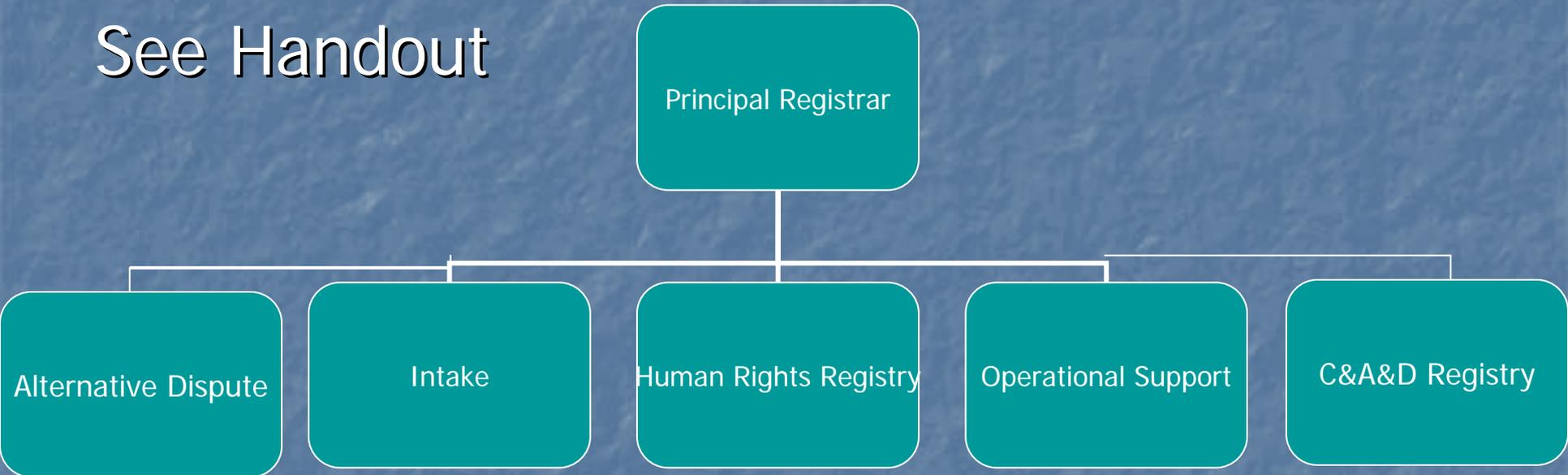
- ❖ Directly under the Deputy President QCAT has four Senior Members who have full time positions within QCAT
- ❖ Under the four Senior Members the following sit:
  - ❖ 9 Ordinary Members – full time
  - ❖ 5 Adjudicators (lawyers)
  - ❖ Sessional Members
- ❖ Included in the above membership are five indigenous members.
- ❖ Details of current members and their background can be found on the QCAT website

# QCAT Registry

- The department's primary point of contact with the QCAT is through the registry.
- All departmental contact with QCAT must go through Court Services

# Structure of QCAT Registry

See Handout



# So what has really changed?

- QCAT reviews the same decisions that were previously reviewable.
- However there is much more legislation now, and
- Discreet areas within organisation managing different aspects of an application
- At times is more formal in it's management of matters

# continued

- The department is advised of a matter by being served a Notice or Review, however this is a new document with less details in some areas
- Stay orders can be made by Registrar
- The department is required to provide a Statement of Reasons, however we now have 28 days to complete

# continued

- Increasing number of forms which dictate how we communicate/respond about an application
- Directions Hearings
- Emphasis on mediating outcomes where possible

# Continued....

- Management of witnesses/costs
- Appeal processes

# Daily Learnings

To restate, introduction of QCAT is one of the biggest justice reform in some 50 years within QLD.

In short there are daily learnings for us about what is different now and to this end Court Services are collating this to inform and develop training packages for departmental staff involved in QCAT.

Court Services is currently reviewing data from QCAT since it's inception and this will be reported back to the regions.

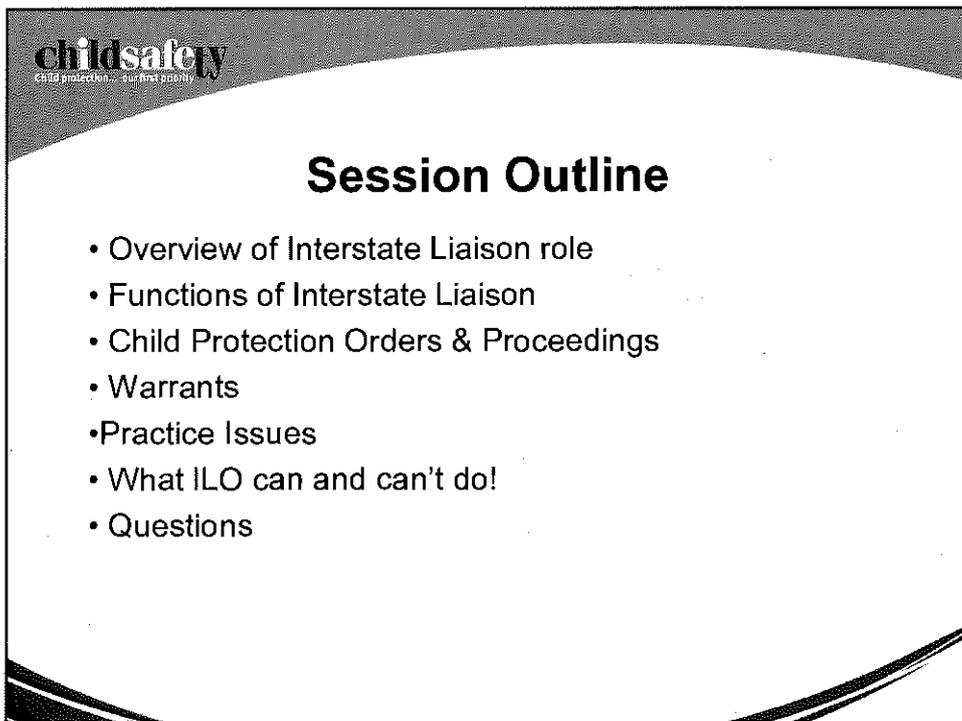
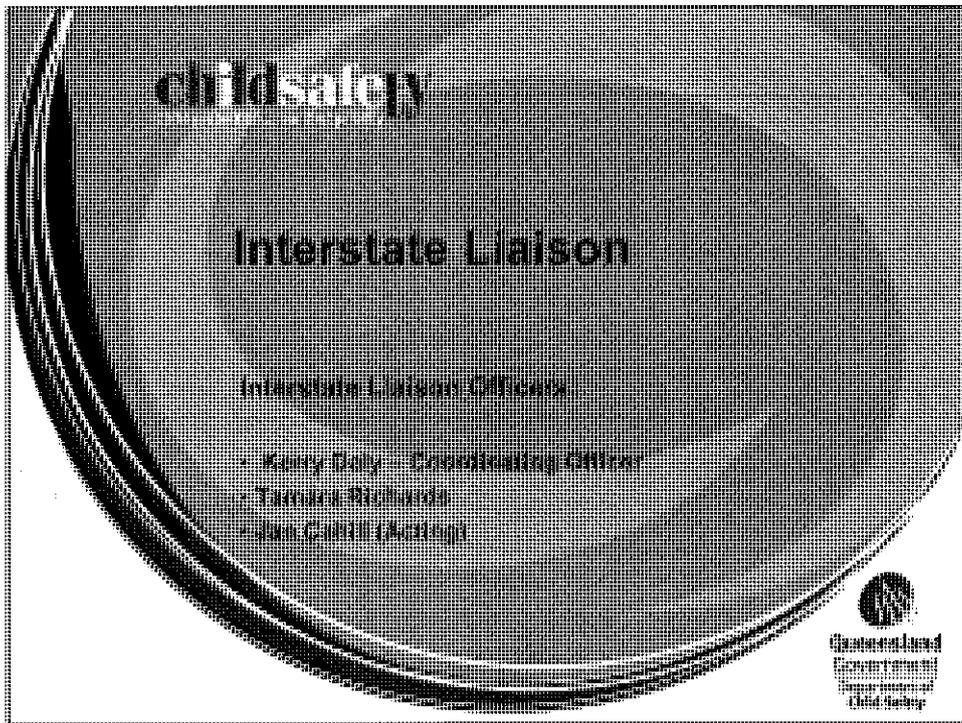
# Conclusion

QCAT has seen new processes introduced around the process of merit review of reviewable decision of the department  
HOWEVER, the practice of how we make our decisions, undertake casework and case management remains the same.

# Good Practice = Good Decisions

And Good Practice is...

Good practice remains linked to information gathering, detailed recording and ensuring proper communication, which all sit within a sound child protection framework consistent with departmental policy and the legislation.



## Overview of Interstate Liaison Officers Role

- Court Services Unit
- Role:
  - Guide and process Interstate requests
  - Assistance and advice
- Liaise with various stakeholders (e.g. CSSC Staff, other ILO's)
- Practice guided by:
  - *Protocol for the Transfer of Care & Protection Orders & Proceedings and Interstate Assistance 2007.*
  - *Chapter 7, Child Protection Act 1999*
  - *Chapter 17, Child Safety Practice Manual*
  - *The Warrants Protocol 2000*

## Functions of the ILO

- Interstate requests:  
Tasks we can request Interstate and NZ Departments to assist with:
  - Alerts
  - Notifications
  - Assessments
  - Locating a placement
  - Casework Tasks/Assistance
  - Transfer of order/proceedings
  - Warrants

## Alerts & Notifications

- Request for Interstate Alert:
  - child/family believed to have relocated interstate
  - exact whereabouts of family is unknown
  - request can be sent to several states/NZ
  
- Request for Interstate Notifications:
  - notify an interstate jurisdiction about child protection concerns in relation to a child/family living interstate
  - Exact address is known
  - For example:
    - Family relocates interstate prior to I & A being commenced/completed
    - Family subject to IPA relocates interstate
  - Interstate Department records and screens information in accordance with their legislative requirements

## Assessments

- Request an assessment of a prospective carer or parent who resides interstate.
  
- Types of assessments:
  - Carer/ kinship
  - Reunification
  - Holiday
  - Household Safety Check
  
- Timeframe:
  - Approx 6 to 8 weeks
  - Urgent assessments: a Private Practitioner can be sourced however, the requesting CSSC is responsible for cost.
  
- CSSC is responsible for suitability checks (e.g. CP and Criminal history checks, Form APA, Blue Card)

## Casework Tasks

- Request an interstate jurisdiction to undertake casework tasks with a child/young person and their carer, if the child/young person is under a Queensland CPO and residing interstate
- The state holding the order retains case management and financial responsibility. For example:
  - When a CSSC accepts casework for a child subject to an interstate order, the CSSC is not authorised to:
    - hold FGM
    - develop case plan
    - make any case management decisions e.g. contact

## Locating a Placement

- Request an interstate department to locate an interstate long term placement (with foster carers) for a child/young person under a Queensland CPO
- CSO should explore kinship placement options prior to submitting request
- Request remains current for 6 months
- No guarantee a placement will be located

## Transferring Order/ Proceedings

- Request to transfer an order to an interstate jurisdiction, where a child/young person is under a Queensland CPO and residing interstate
- When can an order be transferred interstate:
  - Interstate placement is stable
  - Best interests of the child
  - Order is compatible
  - Order is close to maximum length ( 6 months remaining)
  - Relevant written consents have been obtained – Section 209, CPA 1999
  - Section 206, CPA 1999: LTG to 3<sup>rd</sup> party and interim orders are not transferable
- IPA cases and Care Agreements are not transferable.

Orders from QLD to another State

QLD	Acceptance							
	NSW	VIC	NT	WA	ACT	TAS	SA	NZ
Short term Custody To CE	No	Yes	No	No	Yes	Yes	Yes	Yes
Short Term Guardianship to CE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Long term Guardianship to CE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Long Term Guardianship to 3 <sup>rd</sup> Party – see CPA 1999 Section 206b	No	No	No	No	No	No	No	No
Protective Supervision Order (directives)	Yes	Yes	No	No	Yes	Yes	Yes	Yes
TAO / Proceedings	No	No	No	No	No	No	No	No
CAO / Proceedings	No	No	No	No	No	No	No	No
CPO Proceedings	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Interim order	No	No	No	No	No	No	No	No

## Transferring Order/ Proceedings cont.

- Administrative vs Judicial Transfer
  - Administrative:
    - consent has been obtained from relevant persons
    - processed via ILO's
    - *Section 207 & 220, CPA 1999*
  - Judicial transfer:
    - transfer is contested by those required to provide consent
    - Application to court for an order transferring a CPO interstate
    - *Section 214, CPA 1999*
- When can a proceeding be transferred:
  - *Section 225 & 229, CPA 1999*

## Warrants

- When is a warrant for apprehension of a child required:
  - *Section 171, CPA 1999*
  - the Chief Executive has been granted custody/guardianship but has not been able to take child into custody
  - the child has been unlawfully removed from a persons custody/ guardianship under *CPA 1999*
- How is the warrant executed interstate:
  - *Warrants Protocol*
  - *Service and Execution of Process Act 1992 (SEPA)*
- Role of ILO: assistance in executing a warrant for the return of a child/young person under a Queensland CPO from interstate.
- CSSC may be asked to assist an interstate department to execute a warrant in QLD.
  - For example: provide facilities, court attendance

## Information Sharing

- Interstate child protection history checks:
  - Data Management Services
- Interstate criminal history checks:
  - QPS undertake national search
- Information from Interstate Govt departments (health, education):
  - Contact dept directly, SCAN, Subpoena
- Subpoenaing interstate child protection files:
  - Refer to table

## Practice Issues

- Case planning when considering placing a child interstate
  - For example: STC order, child placed interstate, parents reside in QLD, goal of case plan is reunification.
- Seeking appropriate orders
  - For example: LTG 3<sup>rd</sup> party order for children placed interstate
- Promising parents that child/ren will be placed interstate
- Placing children on interim orders interstate
- Expectations regarding the level of service provided by an interstate department
- Interstate request should be processed via ILO
- Interstate outcomes do not often happen quickly!!!

## What ILO can & can't do!

- Can't do:

- CP & criminal history checks (except for NZ)
- Carer checks
- Access interstate departmental databases
- Obtain interstate education/medical records

- Can do:

- Provide notice of holiday placement/interstate travel
- Assistance in locating parents/siblings etc
- Serve papers
- Assist with cases that have an interstate component

**Questions or comments?**



**Queensland Government**  
Department of Communities

## **Magellan Case Management Model** **Family Court of Australia**

Court Coordinator Induction Training  
Program – 2010

## **What is the Magellan Case Management Model?**

- A case management tool utilised by the Family Court of Australia in dealing with applications for matters where allegations of serious physical abuse and sexual abuse are made in relation to children who are subject to FC applications.

Principles include:

- an inter-organisational approach;
- a child centred focus;
- a priority on early intervention;
- the use of a Judge-led, tightly managed and time limited approach;
- the use of court-ordered expert investigations and assessments from the State child protection service and court counsellors;
- the use of a court-ordered legal representative for every child funded by legal aid; and
- the use of a multidisciplinary team.

## Current Research

In 2007, the Australian Institute of Family Studies (AIFS) conducted an evaluation of the Magellan Case Management Model.

Essential elements identified -

- Cooperation between all the agencies involves (FCT, LAQ and the department);
- Court timeliness and prioritisation of Magellan cases;
- Early reports from the Department of Communities;
- Good individual case management (Judge-led);
- a dedicated Magellan Registrar;
- uncapped legal aid funding for eligible parties;
- ICL's to help gather information early, foster discussions and represent the interests of children;
- Child focused processes.

## Australian Institute of Family Studies

### Key message

Magellan matters were believed to be settled, often resulting without judicial determination. Many participants described being involved for children and families through their case management procedures, particularly the role of Magellan Judges and Registrars. The importance placed on Magellan matters by the Court is reflected in the role the Judge play, and this was seen as one of the ways that the process gave parties a sense of procedural fairness. Through the Magellan activities involving court-ordered meetings and the process outlining the role of the department in providing for their named 'Magellan Paper', the cooperation with the Victorian Child Protection Department was seen as central to the success of Magellan.

## DChS Role

In December 2008, the Director-General of the then Department of Child Safety committed to participating fully in Magellan.



### So what does this mean?

For every Queensland Magellan matter, the department will provide a Magellan Report, detailing the CP history with the family, any assessments, current intervention and response to the Form 4 allegations.

## Statistics

- Brisbane callovers are approximately every 4 – 6 weeks.
  - 85 Matters
  - 40 listed for Hearing
  - Approx 20 matters listed for mention each callover
- Townsville callovers are approximately every 8 weeks.
  - 20 Matters

## Family Law Act 1975 (Cth)

Provides the legislative framework that supports the Federal Magistrates Court and Family Court to govern the dissolution of a marriage and issues related to this, such as divorce, children's matters, child support etc.

When allegations of Child Abuse or Family Violence are made during proceedings, the FLA provides a legislative framework for the provision of this information to the relevant child welfare authority -

### **67Z Where party to proceedings makes allegation of child abuse**

- (1) This section applies if a party to proceedings under this Act alleges that a child to whom the proceedings relate has been abused or is at risk of being abused.
- (2) The party must file a notice in the prescribed form in the court hearing the proceedings, and serve a true copy of the notice upon the person who is alleged to have abused the child or from whom the child is alleged to be at risk of abuse.
- (3) If a notice under subsection (2) is filed in a court, the Registry Manager must, as soon as practicable, notify a prescribed child welfare authority.

## How a matter is designated Magellan

- Allegations of child abuse or family violence are made by one of the parties (S67Z, FLA)-
  - In an Affidavit, filed in the proceedings; or
  - Via a Form 4, Notice of Child Abuse and/or Family Violence.
- Originated in the FMC – transferred to the FCT for consideration of it's inclusion in the Magellan List.
- Originated in the FCT – either transferred to the Magellan Registrar for consideration of it's inclusion in the Magellan List.
- The allegations are considered by Magellan Registrar and if considered appropriate, the matter may be designated Magellan.

## Once matter is designated Magellan

- The Department of Communities is notified immediately once a matter is designated Magellan.
- The FCT then makes an order under Section 91B and the Department provides the Magellan Report under this order.

### 3 step Response –

1. Concerns contained in the Form 4 are screened, recorded and a response is provided to the Family Court, by the CSSC.
2. A Magellan Report is prepared, detailing the departments CP history and assessment of the concerns raised in the Form 4. The report is provided to the Family Court and the ICL, by Court Services.
3. The matter continues to be monitored by Court Services, and further updated reports will be provided if further contact with family while matter remains on foot in the Family Court.

## Form 4's – Notice of Child abuse/Family Violence

- Intake Training
- Guide Sheets for Intake Workers

## Notice of Child Abuse or Family Violence

FORM 4 Family Law Rules - RULES 2.04B and 2.04D

Please type or print clearly and mark (X) all boxes that apply. Attach extra pages if you need more space to answer any questions.

Applicant's Client ID \_\_\_\_\_

Respondent's Client ID \_\_\_\_\_

## Court Services responsibilities

- Maintain a register of all Magellan matters across QLD;
- Prepare Magellan Reports;
- Ensure reports are provided to the Family Court and ICL's;
- Liaise with CSSC's about factual accuracy of reports;
- Engage in case discussions about appropriate responses to allegations;
- Ensure the appropriate recording of Magellan Matters;
- Provide updated reports to the Family Court, if necessary;

## CSSC responsibilities

Current involvement with a child, subject to a Family Court application that has been designated Magellan –

- You will be notified via email that the child is subject to an application in the Family Court that has been designated Magellan. You will be advised of the ICL, if one has been appointed;
- Should the CSSC require further information about the current proceedings in the Family Court, you should contact Court Services to discuss further;
- The CSO with the most case knowledge will be asked to review the Magellan Report, once it has been drafted.

No current involvement –

- You will be notified via email that a child who the CSSC has had contact with is subject to an application in the Family Court that has been designated Magellan. You will be advised of the ICL, if there is one appointed;
- The CSO or TL with the most case knowledge will be asked to review the Magellan Report, once it has been drafted.

## Court Coordinators Role

Key points when you may be approached for advice –

- Intake Workers and Team Leaders will receive an initial email from Data Management Services with a Form 4 attached.
- Staff will receive 2 Emails from Court Services in relation to Magellan matters –
  1. Initial Email, advising of ICL and details of the matter; and
  2. Second Email, with draft report attached, requesting that the report be QA'd.

## **In closing.....**

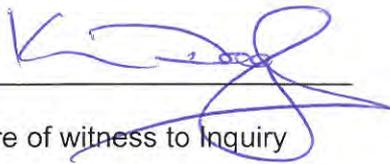
- Magellan is a case management model that deals with Family Court matters in which allegations of serious physical or sexual child abuse have been made.
- The Department has fully committed to the Magellan Project by agreeing to provide 'Magellan Report's' for all matters where the Department has a Child Protection history with the family.
- Intake workers are responsible for screening and recording concerns received in a Form 4, Notice of Child Abuse and/or Family Violence.
- The Court Services Unit is responsible for the preparation of the Magellan Report however may request assistance from the CSSC in preparing the response.
- Court Coordinators can assist to make the process run as smoothly as possible by being the driver and the coordinator of the Magellan process at the CSSC level.

## **Other Resources**

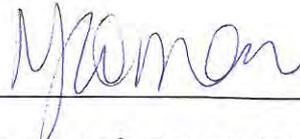
- Protocol between the Department and the Family Court
- CSPM – Chapter 10.16
- Court Services

### Attachment Marking

The preceding 756 pages is the annexure mentioned and referred to as ATTACHMENT 5a in the statement of Kenneth Dagley taken on 25/10/2012

A handwritten signature in blue ink, appearing to be 'K. Dagley', written over a horizontal line.

Signature of witness to inquiry

A handwritten signature in blue ink, appearing to be 'M. Man', written over a horizontal line.

Signature of person witnessing statement

**COURT COORDINATOR CONFERENCE**  
**14, 15, 16 SEPTEMBER 2011**

**DAY ONE – 14 September 2011**

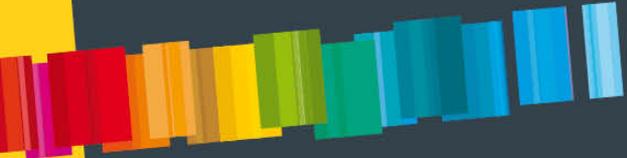
<b>Time</b>	<b>Content</b>	<b>Presenter/s</b>
11:50 -12:00pm	Registration	
12:00 – 1:30pm	<b>WELCOME LUNCH</b> Including CSU presentation (1:10 – 1:30pm)	<b>Melissa Scott</b> A/Team Leader, Court Services Child Safety and <b>CSU staff</b>
1:30 – 2:15pm	Child & youth participation from a direct advocate perspective	<b>Catherine Moynihan</b> Youth Advocate, Family Law Coordination Team Legal Aid Queensland
2:15 – 2:30pm	Child & youth participation from a departmental perspective	<b>Belinda Mayfield</b> Director Child Protection Development
2:30 – 3:15pm	Child & youth participation – being in care	<b>Lucas Moore</b> State Coordinator, CREATE <b>Angela Purkiss</b> Young Consultant, CREATE <b>Rahnie Callon</b> Young Consultant, CREATE
3:15 – 3:30pm	Welcome Address	<b>Tony Hayes</b> Associate Director General
<b>3:30 – 3:45pm</b>	<b>AFTERNOON TEA</b>	
3:45– 4:55pm	Child & youth participation from a national perspective	<b>Dr Clare Tilbury</b> Associate Professor, School of Human Services & Social Work, Griffith University
4:55 – 5:00pm	Wrap up / Evaluation	<b>Melissa Scott</b> A/Team Leader, Court Services Child Safety

**DAY 2 – 15 September 2011**

Time	Content	Presenters
8:50 – 9:00am	Welcome Back / Housekeeping	<b>Bernadette Smith</b> Manager, Court Services Child Safety
9:00 – 9:30am	Reflective Practice Tool – explanation, development and examples in practice	<b>Learning Solutions Unit</b>
9:30 -10:15am	ICMS – Changes and updates	<b>Fiona Day</b> ICMS, Business Representative
10:15 – 10:30am	<b>MORNING TEA</b>	
10:30 – 12:30pm	Module 2 – Ongoing Intervention – Amendments to the <i>Child Protection Act 1999</i>	<b>Andrea Clark</b> Principal Practice Improvement Coordinator
12:30 – 1:15pm	<b>LUNCH</b>	
1:15 – 2:15pm	Module 2 – Ongoing Intervention – Amendments to <i>Child Protection Act 1999</i> (continued)	<b>Andrea Clark</b> Principal Practice Improvement Coordinator
2:15 – 3:15pm	Follow-up / discussion	<b>Andrea Clark</b> Principal Practice Improvement Coordinator
3:15 – 3:30pm	<b>AFTERNOON TEA</b>	
3:30 – 3:50pm 4:00 - 4:20pm 4:30 - 4:50pm	<b>Regional Presentations</b> Central Region Brisbane Region Far North Region	<b>Court Coordinators</b> Central Region Brisbane Region Far North Region
4:55 – 5:00pm	Wrap up / Evaluation	<b>Bernadette Smith</b> Manager, Court Services Child Safety

DAY 3 – 16 September 2011

Time	Content	Presenters
8:50 – 9:00am	Welcome Back / Housekeeping	<b>Bernadette Smith</b> Manager, Court Services Child Safety
9:00-9:25am 9:25-9:50am 9:50-10:15am 10:15-10:35am	<b><i>Regional presentations continued</i></b> North Coast South West South East North Queensland	<b>Court Coordinators</b> North Coast Region North Queensland Region South East Region North Queensland Region
<b>10:35– 10:50am</b>	<b>MORNING TEA</b>	
10:50 – 12:20pm	Court Work Project	<b>Andrew Davidson</b> Business Analyst  <b>Bernadette Smith</b> Manager, Court Services Child Safety
12:20 – 12:30pm	Evaluation / Close	<b>Bernadette Smith</b> Manager, Court Services Child Safety



# Court Services Child Safety

# Which Team Am I?

- You will be given 3 cryptic clues about a team at Court Services and you will have to guess which team they relate to...

## Which Team Am I?

- You appeal to me at 5 to 5:00pm on a Friday (usually from Toowoomba 😊) when the Court errs.
- When parties disagree, we engage those who charge us a fee.
- We help lay the foundation and sharpen the tools to build the house of best practice.

# What Team Am I?



# **TEAM A OF COURSE!!!!**

Insert pic...



# Which Team Am I?

- We travel by word, if not in person.
- “2” is the magic number.
- Canetoads vs Cockroaches.

# What Team Am I?



# ILO TEAM OF COURSE!!!!

Insert pic...

# Which Team Am I?

- The police have just called your office and told you they need to execute a warrant for the return of a child to their parent. The department is currently engaged with the family.
- You've removed a child from one parent and placed with the other parent. You have assessed that this parent is willing but not legally able.
- You get an email from Court Services requesting that you endorse a report that has been prepared and is required to be provided to the courts. The report includes a summary of departmental history with a family.

# What Team Am I?

# **TEAM C OF COURSE!!!!**

Insert pic...

# Which Team Am I?

- We often meet anxious Managers and Team Leaders at the BOQ building for what they perceive as a review of their decision making performance?
- Conventionally we chase children in and out of Australia?
- You might occasionally call us because that child in the Chief Executive's care is an illegal alien?

# What Team Am I?



# **TEAM B OF COURSE!!!!**

Insert pic...



# Which Team Am I?

- For a gatekeeper to put forward an answer without screening is to send the wrong message about your state of affairs.
- Upon hearing the request to compose, we will record and soundly keep count of every note for the rank file.
- If my rate of return doesn't meet the taxing demands of a developing bud, get me a true asset resourceful enough to thresh and hold back costs.

# What Team Am I?

# **ADMIN TEAM OF COURSE!!!!**

Insert pic...

## Which Team Am I?

- Our mission is to keep the D.G jail free on a daily basis.
- We read so fast we get bored when watching subtitled movies.
- The timeframes we contend with are as quick as a paper jam.

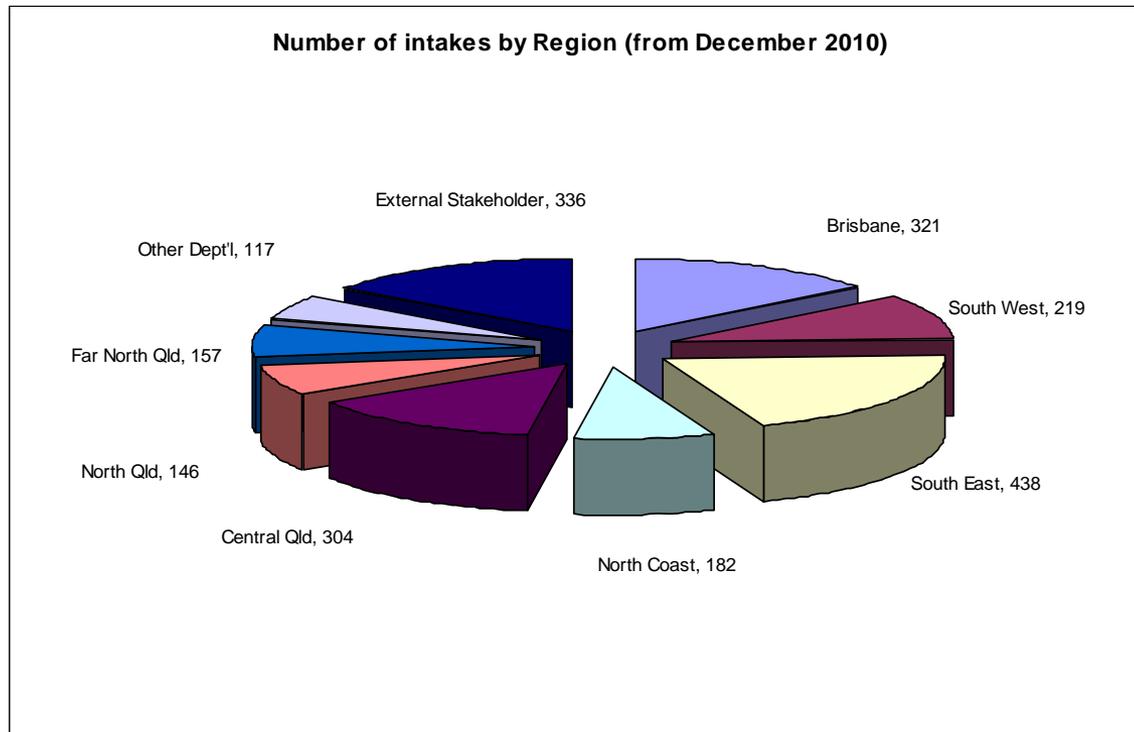
# What Team Am I?



# **SUBPEONA TEAM OF COURSE!!!!**

Insert pic...

# Court Services Intakes



Program Area	Bisore	South West	South East	North Coast	Central Qld	North Qld	Far North Qld	Other Dept	External Stakeholder	Total Intakes
CP	139	91	235	62	85	66	73	11	5	767
COAT	14	7	19	10	18	7	9	25	5	114
Huge	1	1	0	0	0	0	1	0	34	37
ICP	3	1	3	5	1	3	0	5	2	23
Family Law	29	29	59	26	25	20	15	13	29	245
Instate Liason	90	86	100	69	152	42	54	25	171	789
Superna	39	2	17	5	17	8	4	35	88	215
Other	6	2	5	5	6	0	1	3	2	30
Total no of Intakes	321	219	488	182	304	146	157	117	336	2220

## Court Coordinator Conference 2011

### REGIONAL PRESENTATIONS

On 14 September 2011, day one of the 2011 Court Coordinator Conference, Court Coordinators from each region will be required to present information about their region to the other delegates at the Conference. ***This will require coordination and preparation prior to the Conference – i.e no preparation time has been factored into the Conference agenda. Please ask your region to come prepared to present.***

The regional presentation should be no more than 20 minutes in duration. The presentation can be as creative as agreed by members of your region and can use any media format.

*NB: if your region chooses to use a format other than the use of a laptop for PowerPoint presentations, e.g DVD, CD, etc, please let me know ASAP so that arrangements can be made for appropriate media equipment to be available.*

#### What should the presentation be about?

The presentation should include the following basic information for each individual region:

- A brief outline of the region – i.e area covered; CSSCs within the region; whether all CSSCs have a Court Coordinator; introduction of each Court Coordinator including length of time in the role and whether the role is full-time/part-time; information about the role of the CC within each CSSC, i.e is the CC part of the management team, turnover of staff in the CSSC and impact on the CC in terms of training, etc. (Maybe, for each region, where their RIS team is based and any impact on the CC for that CSSC?).
- A summary of any key difficulties or challenges in the region. If you have overcome any difficulties outline the solutions or strategies engaged.
- Stakeholder relationships/forums – information about whether these exist, if so - who attends, how often are they held, how are they held (i.e where, in person or via phone, etc), do they work, any initiatives arising from these forums?
- Statistics around the types of harm (e.g DV) that seems to be the most prevalent type of harm in the region or whether applications are made in relation to concerns from across the harm spectrum.
- Statistics on the number of children currently under orders in the CSSCs across the region and the types of orders.
- Is there a pattern in the types of orders sought / any obstacles in obtaining these?
- Information in relation to the Childrens Court – i.e distances travelled; frequency; consistency of magistrates and positions/views taken, e.g reluctance to grant temporary custody on an infant due to attachment issues, etc.
- Current issues/trends in the region, e.g experiencing an increase in direct rep's acting for children, etc.

After the basics are covered your region can consider presenting information that their colleagues may find interesting – for example:

- A best practice scenario or a negotiated outcome with staff.
- A case of interest.
- An example of the region working together for an outcome.
- Information / suggestions / practice / training modules provided to staff.

## ICMS Key Changes relating to Phase 2 Child Protection Reforms – Child Protection Legislative Amendments

The ICMS Child Protection Legislative Amendments release, available from 29 August 2011, will deliver the required functionality to ICMS to support the legislative amendments, as well as additional functionality to support the Helping out Families (HOF) initiative. This document is aimed to provide an overview of the changes to ICMS and impacts to staff from these changes.

Support and resources are available to staff in a variety of ways, as detailed below –

- The ICMS Training Manual is available to staff by following the below link – <http://comintranet/it/ict-training/business-systems-training/training-resources/icms-child-safety/>
- Online help is available in ICMS by clicking on the Help link in the top right-hand corner of the screen. Clicking this link opens online help in a new window and displays instructions for the ICMS screen you are currently viewing.
- Through System Support Officers – located in each region and available by telephone, email or in person for ICMS support and training. Refer to the departmental telephone directory for more information.

- 
- A new event participant of Long-term guardian (LTG) has been added to all events in ICMS. A LTG must be added as an event participant for users to see specific LTG-SP related information within various forms in the event. This change is a result from the new definition of a parent in the *Child Protection Act 1999*. Long-term guardians should only be added as event participants to events commenced after the court has granted a Long-term guardianship – suitable person order in their favour.
  - If a child has a Long-term guardian – suitable person, the name of the Long-term guardian will show in the child's Profile page. If the child has a relationship to the Long-term guardian, then this relationship will appear in brackets behind the person's name (e.g. aunt). This will allow staff to quickly identify whether a child has a Long-term guardian, and if so, who that is.
  - The Court tab has been renamed the 'Orders' tab, to allow for the Youth Justice integration into ICMS. Within the Orders tab, users will be able to see all orders the child has been subject to, with any current orders listed in **bold**.

### INTAKE EVENT

- The **Record of concerns** and **Additional notified concerns** forms have been updated to include the question relating to provision of information to QPS, pursuant to S14 of the *Child Protection Act 1999*. This change has been implemented due to the inclusion of a subsection to S14 which states that the referral must be made whether or not the chief executive suspects the child is in need of protection. Staff will complete the referral question in the same way as they currently do.
- The **Record of concerns** and **Additional notified concerns** forms have been updated to include the option to record that a notifier is a Long-term guardian. This option is available under the notifier category of 'Other'.

### INVESTIGATION AND ASSESSMENT EVENT

- A new form, the **Record of use of powers / interviews** will be available to staff in the ICMS Investigation and assessment event. This form is a combination of the previous Record of use of powers and Record of Interviews forms, which have been deleted and will not be available post 29 August 2011. Staff will complete this form as they would have used the previous forms, including recording information provision to LTG-SP's in relation to use of powers.
- An 'Apply Date' button has been applied regarding the date the I&A was commenced. This will allow for commencement dates to be known in real time, rather than once the entire form has been completed.
- The **Information provision to parents** form has been updated to include an information provision specifically related to LTG-SP's, where applicable, to record compliance with the information provisions directed by the *Child Protection Act 1999*. For this section of the form to conditionally display, there must be a LTG-SP selected as an event participant.
- The **I&A Plan** has been removed from ICMS.

### **PLACEMENT EVENT**

- A new question has been added to the existing **Care Agreement** form in ICMS, asking the user to record if the signatures of the parents were obtained. This change is a result from the new provision in the *Child Protection Act 1999* clarifying that, in certain circumstances, an Assessment Care Agreement may be entered into with only the signature of one parent.

### **TEMPORARY ASSESSMENT ORDER EVENT**

- The period for TAO's will now be calculated in business days and users will need to calculate the expiry date of orders and record these in ICMS as there is no 'live' calendar in ICMS (ICMS cannot sufficiently account for public holidays). Similar rules will apply for extension applications.

### **COURT ASSESSMENT ORDER EVENT**

Key changes and messages –

- CAO COF's have been amended to include information regarding non-parties, in line with the amendments to the *Child Protection Act 1999*. Staff will have the ability to record in ICMS if a non-party attended and/or participated in a court mention, if they had legal representation and/or if the court granted leave for the non-party to view any part of the court file. Staff should ensure that they record relevant information about non-parties to ensure accurate recording of court proceedings.

### **TEMPORARY CUSTODY ORDERS EVENT**

- The Temporary Custody Order (TCO) event is a new event in ICMS and will be used to create applications for the new Temporary Custody Order and record the outcome of applications. This event has been developed based on the TAO event and most functionality will mirror the TAO event.
- The event contains new application forms (**Form 39 Application for a TCO** and **Form 41 Application to extend/vary a TCO**) as well as new court outcome forms (**Form 39 – TCOF** and **Form 41 - TCOF**). These forms will be used by staff to develop applications to be filed with the court and to record the magistrate's decision about an application.
- The period for a TCO is calculated in business days and users will need to calculate the expiry date of the order and record this in ICMS as there is no 'live' calendar in ICMS (ie. the ICMS calendar does not account for local or national public holidays).

### **CHILD PROTECTION ORDERS – VARY AND EXTEND**

- ICMS CPO applications and COF's will now include rules in regards to the length of time that CPO's can be extended for. Non-custodial orders will only be able to be extended to a maximum of 1 year from the date that the original order was made and Short term custody and guardianship orders will only be able to be extended to a maximum of 2 years from the date that the original order was made. The ICMS rules are consistent with the order periods set out in the *Child Protection Act 1999* and as detailed in the CSPM.
- ICMS CPO applications and COF's will now allow users to vary different types of CPO's, in line with new departmental practice and policy. Orders will be able to be varied within the same 'type' of order. For example, a directive order directing a parent not to have contact with a child can be varied to a directive order directing a parent not to have contact with the child unless a stated person or a person of a stated category is present. Similarly, an order granting custody of a child to the chief executive can be varied to an order granting custody of a child to a suitable person.
- ICMS COF's have been amended to include information about Separate Representatives and non-parties, in line with the amendments to the *Child Protection Act 1999*. Staff will have the ability to record in ICMS if a Separate Representative contested an application; if a non-party attended and/or participated in a court mention; if the non-party had legal representation; or if the court granted leave for the non-party to view any part of the court file. Staff should ensure that they record relevant information about Separate Representatives and non-parties to ensure accurate recording of court proceedings.

## **TRANSITION ORDERS**

- **Form 10, 11 and 12 final order COF's** have been amended to include information about the new Transition Orders (TO). In situations where the substantive child protection order is not made, the user will be asked to record if an application for a TO was made, and if so, the outcome of this application. This information will be completed in the COF after the application is made. There is no application for a Transition order on ICMS, as the application will usually be made verbally at the time the substantive application is not granted.
- A new form has also been created – the **Form 44 Adjournment of Transition Order** and will be used to record a further mention of an application for a Transition order. This form will be created automatically in the CPO Event, if it is recorded in the final order COF that the TO application was made and subsequently was adjourned. This form includes order linking and will link back to the final COF, where the TO application is recorded.
- Information about the adjournment or granting of a TO will populate into the Orders tab, in line with existing functionality for orders made in relation to a child.
- A new form has been created in the OI event for the **Transition Plan**. This form should be used to record a Transition Plan once a TO is being considered or has been granted by the court. It should not be used in other situations (for example, as a reunification plan or 'transition from care' plan).

## **ONGOING INTERVENTION EVENT - LONG TERM GUARDIANSHIP TO OTHER (LTG-SUITABLE PERSON)**

- Two new case planning forms have been created in ICMS, specifically for children subject to LTG – Suitable Person orders. They are called, **LTG to a suitable person – Case Plan** and **LTG to a suitable person – Contact and review report**.
- There must be a LTG-SP added as an event participant in the OI event to have access to the LTG-SP Case plan and Contact and review report.
- The Contact and review report has a dual purpose. It will be used to record contact with a child, and, if applicable, a review of the child's case plan. If a review of the case plan is not conducted, then the user will record the contact with the child and any decisions made in relation to a possible review. Once approved by a Team Leader, the current OI event will remain open and casework will continue. If a review of the case plan is conducted, the user will record this information in the contact and review report form before submitting the form for approval. Once the form is approved, the current OI event will close and a new OI event will be created – as per current functionality with case plan reviews.

## **MOC and MOC I&A EVENT**

- The **Child placement concern report**, **Assessment plan – CPR** and **Information Provision** forms have been updated to include questions relating to information provision to LTG-SP's, where applicable. For specific LTG-SP question to display, a LTG-SP must be selected as an event participant.

**Amendments to the Child Protection Act 1999 pursuant to the Child Protection & Other Acts  
Amendment Bill 2010**

The *Child Protection & Other Acts Amendment Bill 2010* was passed on 2 September 2010 after being debated in Parliament. The final amendments were proclaimed on 29 August 2011.

This table outlines the amendments as they relate to sections of the *Child Protection Act 1999* [NOTE – amendments are underlined].

Amendment (including section)	Practice implications	ICMS Changes
<p>Ch 1, Part 2, Division 1, Heading – <b>omit s5 &amp; insert new</b></p> <p><b><u>Division 1 Purpose of Act and principles for its administration</u></b></p> <p><b><u>5 Application of principles</u></b>  <u>'(1) This Act is to be administered under the principles stated in this division.</u>  <u>'(2) All other principles stated in this Act are subject to the principle stated in section 5A.</u></p> <p><b><u>5A Paramount principle</u></b>  <u>'The main principle for administering this Act is that the safety, wellbeing and best interests of a child are paramount.</u>  <u>Example—</u>  <u>If the chief executive is making a decision under this Act about a child where there is a conflict between the child's safety, wellbeing and best interests, and the interests of an adult caring for the child, the conflict must be resolved in favour of the child's safety, wellbeing and best interests.</u></p> <p><b><u>5B Other general principles</u></b>  <u>'The following are general principles for ensuring the safety, wellbeing and best interests of a child—</u>  <u>(a) a child has a right to be protected from harm or risk of harm;</u>  <u>(b) a child's family has the primary responsibility for the child's upbringing, protection and development;</u>  <u>(c) the preferred way of ensuring a child's safety and wellbeing is through supporting the child's family;</u>  <u>(d) if a child does not have a parent who is able and willing to protect the child, the State is responsible for protecting the child;</u>  <u>(e) in protecting a child, the State should only take action that is warranted in the circumstances;</u>  <u>(f) if a child is removed from the child's family, support should be given to the child and the child's family for the purpose of allowing the child to return to the child's family if the return is in the child's best interests;</u>  <u>(g) if a child does not have a parent able and willing to give the child ongoing protection in the foreseeable future, the child should have long-term alternative care;</u>  <u>(h) if a child is removed from the child's family, consideration should be given to placing the child, as a first option, in the care of kin;</u>  <u>(i) if a child is removed from the child's family, the child should be placed with the child's siblings, to the extent that is possible;</u>  <u>(j) a child should only be placed in the care of a parent or other person who has the capacity and is willing to care for the child (including a parent or other person with capacity to care for the child with assistance or support);</u>  <u>(k) a child should have stable living arrangements, including arrangements that provide—</u>  <u>(i) for a stable connection with the child's family and community, to the extent that is in the child's best interests; and</u>  <u>(ii) for the child's developmental, educational, emotional, health, intellectual and physical needs to be met;</u>  <u>(l) a child should be able to maintain relationships with the child's parents and kin, if it is appropriate for the child;</u>  <u>(m) a child should be able to know, explore and maintain the child's identity and values, including their cultural, ethnic and religious identity and values;</u>  <u>(n) a delay in making a decision in relation to a child should be avoided, unless appropriate for the child.</u></p>	<p>Sections 5A – 5C need to be taken into consideration by the Court when making an order. As such, departmental staff need to be familiar with the principles in this section to ensure that these principles are reflected in court material.</p>	<p>NA</p>

<p><b><u>‘5C Additional principles for Aboriginal or Torres Strait Islander children</u></b>  <b><u>Islander children</u></b>  ‘The following additional principles apply in relation to an Aboriginal or Torres Strait Islander child—  (a) <u>the child should be allowed to develop and maintain a connection with the child’s family, culture, traditions, language and community;</u>  (b) <u>the long-term effect of a decision on the child’s identity and connection with their family and community should be taken into account.</u>  <u>Note—</u>  See also sections 6 (Recognised entities and decisions about Aboriginal and Torres Strait Islander children) and 83 (Additional provisions for placing Aboriginal and Torres Strait Islander children in care).</p> <p><b><u>‘5D Principles about exercising powers and making decisions</u></b>  ‘(1) <u>The following principles are relevant to exercising a power or making a decision under this Act—</u>  (a) <u>a power under this Act should be exercised in a way that is open, fair and respectful of the rights of each person affected by the exercise of the power;</u>  (b) <u>to the extent that it is appropriate, the views of relevant persons should be sought and taken into account before a decision is made under this Act;</u>  (c) <u>if a relevant person for a decision under this Act needs help to participate in or understand the decision making process, or to understand a statutory right relevant to the decision, the relevant person should be given help;</u>  (d) <u>a relevant person for a decision under this Act may obtain their own legal advice, or be represented by a lawyer or supported by another person, in relation to the decision-making process;</u>  (e) <u>information about a child affected by a decision under this Act should be shared—</u>  (i) <u>only to the extent necessary for the purposes of this Act; and</u>  (ii) <u>in a way that protects the child’s privacy.</u>  ‘(2) <u>This section does not apply to a court.</u>  ‘(3) <u>In this section—</u>  <u>relevant person, for a decision, means each of the following persons—</u>  (a) <u>the child to whom the decision relates;</u>  (b) <u>a person who is a parent or sibling of the child and is affected by the decision;</u>  (c) <u>any long-term guardian of the child.</u></p> <p><b><u>‘5E Obtaining child’s views</u></b>  ‘(1) <u>When giving a child an opportunity to express their views under this Act—</u>  (a) <u>language appropriate to the age, maturity and capacity of the child should be used; and</u>  (b) <u>communication with the child should be in a way that is appropriate to the child’s circumstances; and</u>  (c) <u>if the child requires help to express their views, the child should be given help; and</u>  (d) <u>the child should be given an appropriate explanation of any decision affecting the child, including a decision about the development of a case plan or the effect of the decision or the case plan; and</u>  (e) <u>the child should be given an opportunity, and any help if needed, to respond to any decision affecting the child.</u>  ‘(2) <u>Nothing in this section requires a child to express a view about a matter.</u>  ‘(3) <u>This section does not apply to a court.’.</u></p>	<p>Obligations in s5D need to be adhered to in terms of onus on the department when working with families.</p> <p>Obligations in s5E place a positive obligation on the department in terms of communicating with children to obtain their views. This may be relied on heavily by organisations such as LAQ and YAC as it relates to the involvement of children in matters, e.g. reviewable decision letters, etc.</p>	
<p>s9 – insert</p> <p><b>9 What is harm</b>  (1) <b>Harm</b>, to a child, is any detrimental effect of a significant nature on the child’s physical, psychological or emotional wellbeing.  (2) It is immaterial how the harm is caused.  (3) Harm can be caused by—  (a) physical, psychological or emotional abuse or neglect; or  (b) sexual abuse or exploitation.  ‘(4) Harm can be caused by—</p>	<p>Note the inclusion of subsection (4) which makes explicit that ‘cumulative harm’ is a form of harm.</p> <p>In affidavit material, link wording in this section to the words ‘cumulative harm’ and</p>	<p>Rationale to be included in the grounds of the application field in all ICMS court applications.</p>

<p><u>(a) a single act, omission or circumstance; or</u>  <u>(b) a series or combination of acts, omissions or circumstances.</u></p>	<p>provide examples in court material, where applicable.</p>	
<p>s11 – insert</p> <p><b>11 Who is a parent</b>  (1) A <b>parent</b> of a child is the child’s mother, father or someone else (other than the chief executive) having or exercising parental responsibility for the child.  (2) However, a person standing in the place of a parent of a child on a temporary basis is not a parent of the child.  (3) A parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child.  (4) A parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child.  (5) A reference in this Act to the parents of a child or to 1 of the parents of a child is, if the child has only 1 parent, a reference to the parent.  <i>Editor’s note—</i>  In some provisions, parent has a narrower meaning. The same meaning is given the term in chapter 2, part 2 (see section 23), chapter 2, part 3 (see section 37), chapter 2, part 3AA (see section 51AA), chapter 2, part 3A (see section 51F) and chapter 2, part 4 (see section 52).</p>	<p>NA</p>	<p>NA</p>
<p>s13 – omit &amp; insert</p> <p><b>13 What is effect of guardianship</b>  If the chief executive or someone else is granted guardianship of a child under a child protection order, the chief executive or other person has—  (a) the right to have the child’s daily care; and  (b) the right and responsibility to make decisions about the child’s daily care; and  (c) all the powers, rights and responsibilities in relation to the child that would otherwise have been vested in the person having parental responsibility for making decisions about the long-term care, <u>wellbeing</u> and development of the child.</p>	<p>Requirement to consider a child’s wellbeing when making decisions about a child subject to a guardianship order.</p>	<p>Rationale to be included in the grounds of the application field in all ICMS court applications.</p>
<p>s14 – omit &amp; insert</p> <p><b>14 Chief executive may investigate alleged harm</b>  (1) If the chief executive becomes aware (whether because of notification given to the chief executive or otherwise) of alleged harm or alleged risk of harm to a child and reasonably suspects the child is in need of protection, the chief executive must immediately—  (a) have an authorised officer investigate the allegation and assess the child’s need of protection; or  (b) take other action the chief executive considers appropriate.  <i>Editor’s note—</i>  Section 22 provides for protection from civil liability for persons who, acting honestly, notify or give information about suspected harm to a child.  (2) If the chief executive reasonably believes <u>alleged harm to a child may involve</u> the commission of a criminal offence relating to the child, the chief executive must immediately give details of the alleged harm to the police commissioner.  <u>‘(3) Subsection (2) applies whether or not the chief executive suspects the child is in need of protection.’</u></p>	<p>Clarifies the positive obligation to report allegations of harm to QPS, even if the harm does not meet the threshold of a CPN. NB: must relate to the child.</p>	<p>Users will be asked to answer the question, ‘was information forwarded to QPS’ at an earlier stage of the Intake process, in the Record of Concerns form rather than the Notification form, and in all Additional notified concerns forms.</p>
<p>s15 – omit s15 &amp; insert new</p> <p><b><u>‘15 Child’s parents and long-term guardians to be told about allegation of harm and outcome of investigation</u></b>  <u>‘(1) This section applies if an authorised officer or police officer—</u>  <u>(a) investigates an allegation of harm or risk of harm to a child; or</u>  <u>(b) assesses a child’s need of protection because of an allegation of harm or risk of harm to the child.</u>  <u>‘(2) If the child does not have long-term guardians, the officer must—</u>  <u>(a) give details of the alleged harm or risk of harm to at least 1 of the child’s parents; and</u>  <u>(b) as soon as practicable after completing the investigation—</u>  <u>(i) tell at least 1 of the child’s parents about the outcome of the investigation;</u>  <u>and</u></p>	<p>Inclusion of obligations as they relate to LTGs and an investigation of an allegation of harm.</p> <p>Note the discretion as it relates to notifying natural parents where LTGs are involved.</p> <p>Departmental staff to be aware of the</p>	<p>Various information provision questions within ICMS will ask users to record if a LTG was notified, if applicable, including Information provision to parents in the IA event.</p> <p>NOTE: An LTG</p>

<p><u>(ii) if asked by the parent, give the information about the outcome of the investigation to the parent in writing.</u></p> <p><u>'(3) If the child has long-term guardians, the officer must—</u></p> <p><u>(a) take, or make a reasonable attempt to take, the actions stated in subsection (2)(a) and (b), but only if the officer is satisfied it would be in the child's best interests to do so, having regard to—</u></p> <p><u>(i) the nature and extent of the child's connection with the child's parents;</u>  <u>and</u>  <u>(ii) the evidence in support of the allegation of harm or risk of harm; and</u>  <u>(iii) any other relevant matter; and</u></p> <p><u>(b) take the actions stated in subsection (2)(a) and (b) in relation to the long-term guardians.</u></p> <p><u>'(4) However, if the officer reasonably believes—</u></p> <p><u>(a) someone may be charged with a criminal offence for the harm to the child and the officer's compliance with subsection (2) or (3) may jeopardise an investigation into the offence; or</u></p> <p><u>(b) compliance with subsection (2) or (3) may expose the child to harm, the officer need only comply with the subsection to the extent the officer considers is reasonable and appropriate in the particular circumstances.</u></p> <p><u>'(5) If, under subsection (3)(a), the officer does not take the actions stated in subsection (2)(a) and (b) but makes a reasonable attempt to take the actions, the officer must document full details about the actions taken by the officer in making the attempt.'</u></p>	<p>obligations as they relate to advising/ notifying LTGs in addition to a child's parents.</p>	<p>must be selected as an event participant for these questions to display.</p>
<p>s17 – omit &amp; insert</p> <p><b>17 Contact with children in school, child care centre, family day care etc.</b></p> <p>(1) This section applies if—</p> <p>(a) an authorised officer or police officer is investigating an allegation of harm, or risk of harm, to a child; and</p> <p>(b) the officer reasonably believes—</p> <p>(i) it is in the child's best interests that the officer has contact with the child before the child's parents or <u>long-term guardians</u> are told about the investigation; and</p> <p>(ii) the child's parents or <u>long-term guardians</u> knowing in advance about the proposed contact with the child is likely to adversely affect or otherwise prevent the proper and effective conduct of the investigation; and</p> <p>(c) the child is at a school, or place where child care is provided, when the officer is to have contact with the child; and</p> <p>(d) the officer has lawfully entered, and is lawfully remaining at, the school or place.</p> <p>(2) The officer may have contact with the child for as long as the officer reasonably considers necessary for investigating the allegation.</p> <p>(3) Before exercising a power under subsection (2), the officer must notify the principal or other person in charge of the school or place of the intention to exercise the power.</p> <p><u>(4) As soon as practicable after the officer has had contact with the child, the officer must –</u></p> <p><u>(a) if the child has long-term guardians - tell at least 1 of the long-term guardians that the officer has had contact with the child and the reasons for the contact; or</u></p> <p><u>(b) otherwise – tell at least 1 of the child's parents that the officer has had contact with the child and the reasons for the contact.</u></p> <p>(5) The officer's obligation under subsection (4) to give reasons for the contact with the child is limited to the extent the officer considers is reasonable and appropriate in particular circumstances if the officer reasonably believes—</p> <p>(a) someone may be charged with a criminal offence for harm to the child and the officer's compliance with the subsection may jeopardise an investigation into the offence; or</p> <p>(b) compliance with the subsection may expose the child to harm.</p> <p>(6) Also, at the first reasonable opportunity, the officer must record, in a register kept for the purpose by the department or the Queensland Police Service, full details about the exercise of the powers and other actions taken by the officer.</p>	<p>Inclusion of LTGs in this provision and the obligation for them to be advised of the department's involvement, where appropriate.</p>	<p>Various information provision questions within ICMS will ask users to record if a LTG was notified, if applicable.</p> <p>Users will need to record this information in the new Record of use of powers / Interviews form in the IA event.</p>
<p>s18 – omit &amp; insert</p> <p><b>18 Child at immediate risk may be taken into custody</b></p> <p><u>'(1) This section applies if an authorised officer or police officer reasonably believes a child is at risk of harm and the child is likely to suffer harm if the officer</u></p>	<p>Clarifies that the department must apply for a TAO or</p>	<p>Users will need to record this information in the</p>

<p><u>does not immediately take the child into custody.'</u></p> <p>(2) The officer may take the child into the chief executive's custody.</p> <p>(3) For subsection (2), the officer may—</p> <p>(a) enter the place where the officer reasonably believes the child is; and</p> <p>(b) search the place to find the child; and</p> <p>(c) remain in the place for as long as the officer reasonably considers is necessary to find the child.</p> <p>(4) The officer may exercise a power under subsection (2) or (3) with the help, and using the force, that is reasonable in the circumstances.</p> <p>(5) The officer must, as soon as practicable, apply for a temporary assessment order for the child.</p> <p><u>'(6) However, subsection (5) does not apply if an authorised officer applies for a temporary custody order for the child.'</u></p> <p>(7) Also, the officer may arrange a medical examination of, or for medical treatment for, the child that is reasonable in the circumstances.</p> <p><i>Editor's note—</i></p> <p>Section 97 (Carrying out medical examinations or treatment) applies to the medical examination or treatment.</p> <p>(8) The chief executive's custody of the child ends on the earlier of the following to happen—</p> <p>(a) the application for the temporary assessment order <u>or temporary custody order</u> for the child is decided;</p> <p>(b) 8 hours elapses after the child is taken into custody.</p>	<p>TCO if s18 is relied on.</p>	<p>new Record of use of powers / Interviews form in the IA event.</p>
<p>s20 – <b>omit s20 &amp; insert new</b></p> <p><b><u>'20 Officer's obligations on taking child into custody</u></b></p> <p><u>'(1) This section applies if an authorised officer or police officer takes a child into the chief executive's custody.</u></p> <p><u>'(2) If the child does not have long-term guardians, the officer must, as soon as practicable—</u></p> <p><u>(a) take reasonable steps to tell at least 1 of the child's parents—</u></p> <p><u>(i) that the child has been taken into custody and the reasons for the action; and</u></p> <p><u>(ii) when the chief executive's custody ends under section 18(8); and</u></p> <p><u>(b) tell the child about their being taken into the chief executive's custody; and</u></p> <p><i>Editor's note—</i></p> <p>Section 195 deals with compliance with provisions about giving information.</p> <p><u>(c) tell the chief executive the child has been taken into the chief executive's custody, the reasons for the action and where the child has been taken.</u></p> <p><u>'(3) If the child has long-term guardians, the officer must, as soon as practicable—</u></p> <p><u>(a) comply with subsection (2)(a) to (c) as if the reference in subsection (2)(a) to parents were a reference to long-term guardians; and</u></p> <p><u>(b) comply, or make a reasonable attempt to comply, with subsection (2)(a).</u></p> <p><u>'(4) Subsections (2) and (3) do not require the officer to tell the child's parents or long-term guardians in whose care the child has been placed.</u></p> <p><u>'(5) The officer's obligation under subsection (2)(a)(i) or (3) to give reasons for taking the child into custody is limited to the extent the officer considers is reasonable and appropriate in particular circumstances if the officer reasonably believes—</u></p> <p><u>(a) someone may be charged with a criminal offence for harm to the child and the officer's compliance with the provision may jeopardise an investigation into the offence; or</u></p> <p><u>(b) compliance with the provision may expose the child to harm.</u></p> <p><u>'(6) If, under subsection (3)(b), the officer does not comply with subsection (2)(a) but makes a reasonable attempt to comply, the officer must document full details about the actions taken by the officer in making the attempt.'</u></p>	<p>Inclusion of LTGs in this provision and the obligation for them to be advised of the department's involvement, where appropriate.</p>	<p>Users will need to record this information in the new Record of use of powers / Interviews form in the IA event.</p>
<p>s21A – <b>omit &amp; insert</b></p> <p><b>21A Unborn children</b></p> <p>(1) This section applies if, before the birth of a child, the chief executive reasonably suspects the child may be in need of protection after he or she is born.</p> <p>(2) The chief executive must take the action the chief executive considers appropriate including, for example—</p> <p>(a) having an authorised officer investigate the circumstances and assess the</p>	<p>Requirement for the department to consult with a RE for unborn Aboriginal or Torres Strait Islander children only where the Mother <i>consents</i> to this.</p>	<p>NA</p>

<p>likelihood that the child will need protection after he or she is born; or  (b) offering help and support to the pregnant woman.  ‘(3) If the child is an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must consult with a recognised entity for the child for the purpose of—  (a) assessing the likelihood that the child may be in need of protection after he or she is born; and  (b) offering help and support to the pregnant woman.  ‘(4) However, subsection (3) applies only if the pregnant woman agrees to the consultation taking place.’  (5) The purpose of this section is to reduce the likelihood that the child will need protection after he or she is born (as opposed to interfering with the pregnant woman’s rights or liberties).</p>		
<p>s23 – omit &amp; insert</p> <p><b>23 Meaning of parent in pt 2</b>  In this part—  <b>parent</b>, of a child, means each of the following persons—  (a) the child’s mother or father;  (b) a person in whose favour a residence order or contact order for the child is in operation under the <i>Family Law Act 1975</i> (Cwlth);  ‘(c) a person, other than the chief executive, having custody or guardianship of the child under—  (i) a law of the State, other than this Act; or  (ii) a law of another State;  (d) a long-term guardian of the child.’.</p>	<p>Inclusion of LTGs in this provision and the obligations attaching to this as a ‘parent’ in this part, e.g. obligation to list them as respondents to the application, serve them with the order and explain the effects, provide for the appeal rights, etc.</p>	<p>LTG’s will now be available as an event participant and will be available for selection in all forms, where parents / other adults can currently be selected.</p> <p>NOTE: An LTG must be selected as an event participant for these questions to display.</p>
<p>s25 – omit &amp; insert</p> <p><b>25 Making of application for order</b>  (1) An authorised officer or police officer may apply to a magistrate for a temporary assessment order for a child.  (2) The officer must prepare a written application that states the following—  (a) the grounds on which it is made;  (b) the nature of the order sought;  (c) if taking the child into, or keeping the child in, the chief executive’s custody is sought—the proposed arrangements for the child’s care.  ‘(3) The written application must be sworn.’  (4) The magistrate may refuse to consider the application until the applicant gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.  <i>Example—</i>  The magistrate may require additional information supporting the application be given by statutory declaration.</p>	<p>Clarifies that an application must be made in <b>writing</b> and must be <b>sworn</b>.</p>	<p>NA</p>
<p>s27 – omit &amp; insert</p> <p><b>27 Making of temporary assessment order</b>  (1) The magistrate may make a temporary assessment order for the child only if the magistrate is satisfied—  (a) an investigation is necessary to assess whether the child is a child in need of protection; and  (b) the investigation can not be properly carried out unless the order is made.  (2) However, in deciding the application, the magistrate must also be satisfied reasonable steps have been taken to obtain <u>appropriate parental consent</u> to the doing of the things sought to be authorised under the order or it is not practicable to take steps to obtain the consent.  ‘(3) In this section—  <b>appropriate parental consent</b> means—  (a) if the child does not have long-term guardians—the consent of at least 1 of the child’s parents; or  (b) if the child has long-term guardians—the consent of at least 1 of the long-</p>	<p>Inclusion of LTGs in this provision and the obligations attaching to this as a ‘parent’ – i.e. consent of LTG required to be sought where appropriate in terms of meeting the criteria for why a TAO is required.</p> <p>Note the ‘OR’ involved in that if consent is not obtained from 1, you do not have to seek it</p>	<p>Details to be recorded in the existing Form 1 Application for a Temporary assessment order.</p>

<p><u>term guardians.</u>'.</p>	<p>from the other (refer to explanatory notes).</p>	
<p>s29 – omit &amp; insert</p> <p><b>29 Duration of temporary assessment orders</b></p> <p>(1) A temporary assessment order must state the time when it ends.</p> <p>(2) The stated time must not be more than <u>3 business days</u> after the day the order is made.</p> <p>(3) The order ends at the stated time unless it is extended.</p> <p>(4) Regardless of subsections (1) to (3), the order ends when the child turns 18 years.</p>	<p>Timeframe for TAOs now reflected as 3 business days.</p>	<p>ICMS TAO applications and COF's have been amended to reflect this new timeframe and will not allow the selection of weekends for the expiry date of an order.</p> <p>Users will need to manually calculate timeframes when public holidays fall within the duration of an order.</p>
<p>s30 – omit s30 and insert new</p> <p><b><u>'30 Application by particular forms of communication and duplicate order</u></b></p> <p><u>'(1) An application under section 25 may be made by phone, fax, radio or another form of communication if the authorised officer or police officer reasonably considers it necessary because of—</u></p> <p><u>(a) urgent circumstances; or</u></p> <p><u>(b) other special circumstances (including, for example, the officer's remote location).</u></p> <p><u>'(2) The application—</u></p> <p><u>(a) may not be made before the officer prepares the written application under section 25(2); but</u></p> <p><u>(b) may be made before the written application is sworn.</u></p> <p><u>'(3) The magistrate may make the order (the <b>original order</b>) only if the magistrate is satisfied—</u></p> <p><u>(a) it was necessary to make the application under subsection (1); and</u></p> <p><u>(b) the way the application was made under subsection (1) was appropriate.</u></p> <p><u>'(4) After the magistrate makes the original order—</u></p> <p><u>(a) if there is a reasonably practicable way of immediately giving a copy of the order to the officer (for example, by sending a copy by fax), the magistrate must immediately give a copy of the order to the officer; or</u></p> <p><u>(b) otherwise—</u></p> <p><u>(i) the magistrate must tell the officer the date and time the order was made and the other terms of the order; and</u></p> <p><u>(ii) the officer must complete a form of the order, including by writing on it—</u></p> <p><u>(A) the magistrate's name; and</u></p> <p><u>(B) the date and time the magistrate made the order; and</u></p> <p><u>(C) the other terms of the order.</u></p> <p><u>'(5) The copy of the order mentioned in subsection (4)(a), or the form of the order completed under subsection (4)(b), (in either case the <b>duplicate order</b>) is a duplicate of, and as effectual as, the original order.</u></p> <p><u>'(6) The officer must, at the first reasonable opportunity, send to the magistrate—</u></p> <p><u>(a) the written application complying with section 25(2) and (3); and</u></p> <p><u>(b) if the officer completed a form of the order under subsection (4)(b)—the completed form of the order.</u></p> <p><u>'(7) The magistrate must keep the original order and, on receiving the documents under subsection (6)—</u></p> <p><u>(a) attach the documents to the original order; and</u></p> <p><u>(b) give the original order and documents to the clerk of the court of the relevant magistrates court.</u></p> <p><u>'(8) Despite subsection (7), if—</u></p> <p><u>(a) an issue arises in a proceeding about whether an exercise of a power was authorised by an order made under this section; and</u></p> <p><u>(b) the original order is not produced in evidence; the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove an order authorised the exercise of the power.'</u></p>	<p>Note change in terminology to 'original order' and 'duplicate order' when seeking TAOs under s30 and relating requirements.</p>	<p>NA</p>

<p>s31 – omit &amp; insert</p> <p><b>31 Order—procedure before entry</b></p> <p>(1) This section applies if an authorised officer or police officer is intending to enter a place under an authority under a temporary assessment order.</p> <p>(2) Before entering the place, the officer must do or make a reasonable attempt to do the following things—</p> <p>(a) identify himself or herself to a person present at the place who is an occupier of the place;</p> <p>(b) give the person—</p> <p>(i) a copy of the order so far as it relates to the entry and searching of the place; or</p> <p>(ii) if the entry and searching is authorised by a <u>duplicate order under section 30(5), a copy of the duplicate order</u> so far as it relates to the entry and searching of the place;</p> <p>(c) tell the person the officer is permitted by the order to enter and search the place to find the child;</p> <p>(d) give the person an opportunity to allow the officer immediate entry to the place without using force.</p> <p>(3) For subsection (2)(a), an authorised officer must produce the officer’s identity card to the person for inspection.</p> <p><i>Editor’s note—</i></p> <p>For a police officer, see the <i>Police Powers and Responsibilities Act 2000</i>, section 637 (Supplying police officer’s details).</p> <p>(4) However, the officer need not comply with subsection (2) if the officer reasonably believes that immediate entry to the place is required to ensure the effective exercise of powers under the order is not frustrated.</p>	<p>NA</p>	<p>NA</p>
<p>s32 – omit &amp; insert</p> <p><b>32 Explanation of temporary assessment orders</b></p> <p><u>If the child does not have long-term guardians, then, immediately after a temporary assessment order is made for a child, the applicant for the order must—</u></p> <p>(a) give a copy of the order, or <u>duplicate order under section 30(5)</u>, to at least 1 of the child’s parents; and</p> <p>(b) explain the terms and effect of the order; and</p> <p>(c) inform the parent—</p> <p>(i) about the right of appeal; and</p> <p>(ii) that, because of the duration of the order, if the parent wishes to appeal against the order, an appeal should be started immediately; and</p> <p><i>Editor’s note—</i></p> <p>Under section 29, the duration of a temporary assessment order must be not more than <u>3 business days</u>.</p> <p>(iii) how to appeal; and</p> <p>(d) tell the child about the order.</p> <p><i>Editor’s note—</i></p> <p>Section 195 deals with compliance with provisions about giving information.</p> <p><u>(2) If the child has long-term guardians, then, immediately after a temporary assessment order is made for a child, the applicant for the order must—</u></p> <p>(a) <u>comply with subsection (1)(a) to (d) as if a reference to parents were a reference to long-term guardians; and</u></p> <p>(b) <u>comply, or make a reasonable attempt to comply, with subsection (1)(a) to (c).</u></p> <p><u>‘(3) If, under subsection (2)(b), the applicant does not comply with subsection (1)(a) to (c) but makes a reasonable attempt to comply, the applicant must document full details about the actions taken by the applicant in making the attempt.’.</u></p>	<p>Note change in terminology.</p> <p>Note change in calculation of timeframe.</p> <p>Inclusion of LTGs in this provision and the obligations attaching to this – i.e. explaining the terms and effect of the order where appropriate.</p>	<p>NA</p>
<p>s34 – omit &amp; insert</p> <p><b>34 Extension of temporary assessment orders</b></p> <p>(1) An authorised officer or police officer may apply to a magistrate for an order to extend the term of a temporary assessment order for a child.</p> <p>(2) This part applies, with all necessary changes, to the application as if it were an application for a temporary assessment order.</p> <p>(3) The magistrate may extend the temporary assessment order only if the</p>	<p>Note change in calculation of timeframe to 3 business days.</p> <p>Note – for an</p>	<p>ICMS TAO applications and COF’s have been amended to reflect this new timeframe and will not allow</p>

<p>magistrate is satisfied the order has not ended.</p> <p>(4) The temporary assessment order may be extended until the end of the next business day after it would have otherwise ended if the magistrate is satisfied the officer intends to apply for a court assessment order or child protection order for the child within the extended term.</p> <p>(5) Unless subsection (4) applies, the temporary assessment order may not be extended to a time ending more than <u>3 business days</u> after the day it was made.</p> <p>(6) A temporary assessment order may not be extended more than once under subsection (4).</p>	<p>extension, if a TAO was originally sought for 1 business day, an extension can be sought for a further 2 business days up to the maximum of 3 business days if further assessments are required. HOWEVER, this changes if the extension is sought so as to apply for a CAO or CPO.</p>	<p>the selection of weekends for the expiry date of an order.</p> <p>Users will need to manually calculate timeframes when public holidays fall within the duration of an order.</p>
<p>s37 – omit &amp; insert</p> <p><b>37 Meaning of parent in pt 3</b> In this part— <b>parent</b>, of a child, means each of the following persons—</p> <p>(a) the child’s mother or father;</p> <p>(b) a person in whose favour a residence order or contact order for the child is in operation under the <i>Family Law Act 1975</i> (Cwlth);</p> <p><u>(c) a person, other than the chief executive, having custody or guardianship of the child under—</u></p> <p>(i) a law of the State, other than this Act; or</p> <p>(ii) a law of another State;</p> <p><u>(d) a long-term guardian of the child.’.</u></p>	<p>Inclusion of LTGs in this provision and the obligations attaching to this as a ‘parent’ in this part, e.g. obligation to list them as respondents to the application, serve them with the application and subsequent order and explain the effects, provide for the appeal rights, etc.</p>	<p>LTG’s will now be available as an event participant and will be available for selection in all forms, where parents / other adults can currently be selected.</p> <p>NOTE: An LTG must be selected as an event participant for these questions to display.</p>
<p>s38 – omit &amp; insert</p> <p><b>38 Purpose of pt 3</b></p> <p>(1) This part provides for the making of court assessment orders.</p> <p>(2) A court assessment order is made to authorise actions necessary as part of an investigation to assess whether a child is a child in need of protection if—</p> <p>(a) the consent of a parent of the child to the actions has not been able to be obtained or it is not practicable to take steps to obtain the parent’s consent; and</p> <p>(b) more than <u>3 business days</u> is necessary to complete the investigation and assessment.</p> <p><i>Editor’s note—</i> Under part 2, a temporary assessment order may be obtained for not more than <u>3 business days</u>.</p>	<p>Note change in terminology to reflect 3 business days.</p>	<p>NA</p>
<p>s41 – omit &amp; insert</p> <p><b>41 Notice of application</b></p> <p><u>‘(1) As soon as practicable after the application is filed, the applicant must do the following—</u></p> <p><u>(a) if the child does not have long-term guardians—personally serve a copy of the application on each of the child’s parents;</u></p> <p><u>(b) if the child has long-term guardians—</u></p> <p><u>(i) personally serve a copy of the application on each of the long-term guardians; and</u></p> <p><u>(ii) personally serve, or make a reasonable attempt to personally serve, a copy of the application on each of the child’s parents other than the long-term guardians;</u></p> <p><u>(c) tell the child about the application.</u></p> <p><i>Editor’s note—</i> Section 195 deals with compliance with provisions about giving information.</p> <p><u>‘(2) If the applicant makes a reasonable attempt to personally serve, but does not personally serve, a copy of the application under subsection (1)(b)(ii), the</u></p>	<p>Obligation on departmental staff to ensure that LTGs are served with a CAO application where appropriate.</p>	<p>NA</p>

<p><u>applicant must document full details about the actions taken in making the attempt.</u>  <u>Example of how an applicant may make a reasonable attempt—</u>  leaving a copy of the application at, or posting a copy of the application to, the parent's last known residential address'.</p> <p>(3) Also, if the applicant is a police officer, the applicant must immediately give a copy of the application to the chief executive.</p> <p>(4) A copy of the application served under this section must state—</p> <p>(a) when and where the application is to be heard; and</p> <p>(b) for a copy served on a parent—that the application may be heard and decided even though the parent does not appear in court.</p>		
<p>s45 – omit &amp; insert</p> <p><b>45 Provisions of court assessment order</b></p> <p>(1) The order may provide for any 1 or more of the following the court considers to be appropriate in the circumstances—</p> <p>(a) authorising an authorised officer or police officer to have contact with the child;</p> <p>(b) authorising the medical examination or treatment of the child;</p> <p>(c) if the court is satisfied it is necessary to provide interim protection for the child while the investigation is carried out—</p> <p>(i) granting temporary custody of the child to the chief executive; and</p> <p>(ii) authorising an authorised officer or police officer to take the child into, or keep the child in, the chief executive's custody while the order is in force;</p> <p>(d) making provision about the child's contact with the child's family during the chief executive's custody of the child;</p> <p>(e) directing a parent not to have contact (direct or indirect)—</p> <p>(i) with the child; or</p> <p>(ii) with the child other than when a stated person or a person of a stated category is present.</p> <p><u>'(2) Before making an order under subsection (1)(d), the court must consider the views of the chief executive about the child's contact with the child's family, including—</u></p> <p><u>(a) whether any contact with the child should be supervised; and</u></p> <p><u>(b) the duration and frequency of any contact with the child.'</u></p> <p>(3) In addition, the order may also authorise an authorised officer or police officer to enter and search any place the officer reasonably believes the child is, to find the child, if the court is satisfied—</p> <p>(a) entry to a place has been, or is likely to be, refused, or it is otherwise justified in particular circumstances, including, for example, because the child's whereabouts are not known; and</p> <p>(b) the entry is necessary for the effective enforcement of the order.</p> <p>(4) On entering a place, an authorised officer or police officer may remain in the place for as long as the officer considers necessary for exercising the officer's powers under this section.</p> <p>(5) An authorised officer or police officer may exercise the officer's powers under the order with the help, and using the force, that is reasonable in the circumstances.</p>	<p>The amendment draws the Court's attention to the fact that they are able to make orders in relation to both 'duration' and 'frequency' as it relates to contact.</p> <p>As such, departmental staff will need to ensure that views and assessments, as they relate to contact, are included in Court material by way of the CAO application or affidavit material.</p>	<p>Details to be recorded in the existing Form 5 Application for a Court assessment order.</p>
<p>Ch 2, Part 3AA – insert new</p> <p><b><u>'Part 3AA Temporary custody orders 'Division 1 Preliminary '51AA</u></b></p> <p><b><u>Meaning of parent in pt 3AA</u></b></p> <p><u>'In this part—</u></p> <p><b><u>parent</u></b>, of a child, means each of the following persons—</p> <p><u>(a) the child's mother or father;</u></p> <p><u>(b) a person in whose favour a residence order or contact order for the child is in operation under the <i>Family Law Act 1975</i> (Cwlth);</u></p> <p><u>(c) a person, other than the chief executive, having custody or guardianship of the child under—</u></p> <p><u>(i) a law of the State, other than this Act; or</u></p> <p><u>(ii) a law of another State;</u></p> <p><u>(d) a long-term guardian of the child.</u></p> <p><b><u>'51AB Purpose</u></b></p> <p><u>'(1) This part provides for the making of temporary custody orders.</u></p>	<p>The new Temporary custody orders (TCO) are to be used when a child has been assessed as being in need of protection and is at unacceptable risk of being harmed if an order is not made. It can be utilised during the I &amp; A or ongoing intervention phase to take the appropriate action to</p>	<p>A new ICMS event – Temporary custody order – has been created. This event has the same functionality as the existing ICMS court events, with relevant applications, COF's, Recognised entity participation forms ect available within the event.</p>

<p><u>‘(2) The purpose of a temporary custody order is to authorise the action necessary to ensure the immediate safety of a child while the chief executive decides the most appropriate action to meet the child’s ongoing protection and care needs (for example, applying for a child protection order).</u></p> <p><b><u>‘Division 2 Applications for, and making and effect of, temporary custody orders ‘51AC Making of application for order</u></b></p> <p><u>‘(1) An authorised officer may apply to a magistrate for a temporary custody order for a child.</u></p> <p><u>‘(2) The officer must prepare a written application that states the following—</u></p> <ul style="list-style-type: none"> <li><u>(a) the grounds on which it is made;</u></li> <li><u>(b) the nature of the order sought;</u></li> <li><u>(c) the proposed arrangements for the child’s care.</u></li> </ul> <p><u>‘(3) The written application must be sworn.</u></p> <p><u>‘(4) The magistrate may refuse to consider the application until the officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.</u></p> <p><u>Example—</u></p> <p><u>The magistrate may require additional information supporting the application be given by statutory declaration.</u></p> <p><b><u>‘51AD Deciding application</u></b></p> <p><u>‘A magistrate may decide an application for a temporary custody order without notifying the child’s parents of the application or hearing them on the application.</u></p> <p><b><u>‘51AE Making of temporary custody order</u></b></p> <p><u>‘The magistrate may make a temporary custody order for the child only if the magistrate is satisfied—</u></p> <ul style="list-style-type: none"> <li><u>(a) the child will be at unacceptable risk of suffering harm if the order is not made; and</u></li> <li><u>(b) the chief executive will be able, within the term of the temporary custody order, to decide the most appropriate action to meet the child’s ongoing protection and care needs and start taking that action.</u></li> </ul> <p><b><u>‘51AF Provisions of temporary custody order</u></b></p> <p><u>‘(1) The magistrate may make a temporary custody order for the child that provides for any 1 or more of the following the magistrate considers to be appropriate in the circumstances—</u></p> <ul style="list-style-type: none"> <li><u>(a) authorising an authorised officer or police officer—</u> <ul style="list-style-type: none"> <li><u>(i) to have contact with the child; and</u></li> <li><u>(ii) to take the child into, or keep the child in, the chief executive’s custody while the order is in force;</u></li> </ul> </li> <li><u>(b) authorising the child’s medical examination or treatment;</u></li> </ul> <p><u>Editor’s note—</u></p> <p><u>Section 97 (Carrying out medical examinations or treatment) applies to the medical examination or treatment.</u></p> <ul style="list-style-type: none"> <li><u>(c) directing a parent not to have contact (direct or indirect)—</u> <ul style="list-style-type: none"> <li><u>(i) with the child; or</u></li> <li><u>(ii) with the child other than when a stated person or person of a stated category is present.</u></li> </ul> </li> </ul> <p><u>‘(2) In addition, the order may authorise an authorised officer or police officer to enter and search any place the officer reasonably believes the child is, to find the child, if the magistrate is satisfied—</u></p> <ul style="list-style-type: none"> <li><u>(a) entry to a place has been, or is likely to be, refused, or it is otherwise justified in particular circumstances, including, for example, because the child’s whereabouts are not known; and</u></li> <li><u>(b) the entry is necessary for the effective enforcement of the order.</u></li> </ul> <p><u>‘(3) On entering a place, an authorised officer or police officer may remain in the place for as long as the officer reasonably considers necessary for exercising the officer’s powers under this section.</u></p> <p><u>‘(4) An authorised officer or police officer may exercise powers under the order with the help, and using the force, that is reasonable in the circumstances.</u></p> <p><b><u>‘51AG Duration of temporary custody orders</u></b></p> <p><u>‘(1) A temporary custody order must state the time when it ends.</u></p> <p><u>‘(2) The stated time must not be more than 3 business days after the day the order is made.</u></p> <p><u>‘(3) The order ends at the stated time unless it is extended.</u></p>	<p>meet the child’s ongoing protection and care needs. The TCO is different to the TAO, which provides custody while still assessing the protection and care needs of the child</p> <p>Note – similar to a TAO, for an extension, if a TCO was originally sought for 1 business day, an extension can be sought for a further 2 business days up to the maximum of 3 business days if further assessments are required. HOWEVER, this changes if the extension is sought so as to apply for a CPO.</p> <p><b>NOTE:</b> based on current communiqué, TCOs should NOT be applied for until further amendments are made to rectify issues around their use.</p>
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'(4) Regardless of subsections (1) to (3), the order ends when the child turns 18 years.

#### **'51AH Extension of temporary custody orders**

'(1) An authorised officer may apply to a magistrate for an order to extend the term of a temporary custody order for a child.

'(2) This part applies, with all necessary changes, to the application as if it were an application for a temporary custody order.

'(3) The magistrate may extend the temporary custody order only if the magistrate is satisfied the order has not ended.

'(4) The temporary custody order may be extended until the end of the next business day after it would otherwise have ended if the magistrate is satisfied the officer intends to apply for a child protection order for the child within the extended term.

'(5) Unless subsection (4) applies, the temporary custody order may not be extended to a time ending more than 3 business days after the day it was made.

'(6) A temporary custody order may not be extended more than once under subsection (4).

#### **'51AI Application by particular forms of communication and duplicate order**

'(1) An application under section 51AC may be made by phone, fax, radio or another form of communication if the authorised officer reasonably considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances (including, for example, the officer's remote location).

'(2) The application—

(a) may not be made before the officer prepares the written application under section 51AC(2); but

(b) may be made before the written application is sworn.

'(3) The magistrate may make the order (the **original order**) only if the magistrate is satisfied—

(a) it was necessary to make the application under subsection (1); and

(b) the way the application was made under subsection (1) was appropriate.

'(4) After the magistrate makes the original order—

(a) if there is a reasonably practicable way of immediately giving a copy of the order to the officer (for example, by sending a copy by fax), the magistrate must immediately give a copy of the order to the officer; or

(b) otherwise—

(i) the magistrate must tell the officer the date and time the order was made and the other terms of the order; and

(ii) the officer must complete a form of the order, including by writing on it—

(A) the magistrate's name; and

(B) the date and time the magistrate made the order; and

(C) the other terms of the order.

'(5) The copy of the order mentioned in subsection (4)(a), or the form of the order completed under subsection (4)(b), (in either case the **duplicate order**) is a duplicate of, and as effectual as, the original order.

'(6) The officer must, at the first reasonable opportunity, send to the magistrate—

(a) the written application complying with section 51AC(2) and (3); and

(b) if the officer completed a form of the order under subsection (4)(b)—the completed form of the order.

'(7) The magistrate must keep the original order and, on receiving the documents under subsection (6)—

(a) attach the documents to the original order; and

(b) give the original order and documents to the clerk of the court of the relevant magistrates court.

'(8) Despite subsection (7), if—

(a) an issue arises in a proceeding about whether an exercise of a power was authorised by an order made under this section; and

(b) the original order is not produced in evidence; the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove an order authorised the exercise of the power.

#### **'51AJ Order—procedure before entry**

'(1) This section applies if an authorised officer or police officer is intending to enter a place under an authority under a temporary custody order.

<p><u>'(2) Before entering the place, the officer must do or make a reasonable attempt to do the following things—</u></p> <p><u>(a) identify himself or herself to a person present at the place who is an occupier of the place;</u></p> <p><u>(b) give the person—</u></p> <p><u>(i) a copy of the order so far as it relates to the entry and searching of the place; or</u></p> <p><u>(ii) if the entry and searching is authorised by a duplicate order under section 51A(5), a copy of the duplicate order so far as it relates to the entry and searching of the place;</u></p> <p><u>(c) tell the person the officer is permitted by the order to enter and search the place to find the child;</u></p> <p><u>(d) give the person an opportunity to allow the officer immediate entry to the place without using force.</u></p> <p><u>'(3) For subsection (2)(a), an authorised officer must produce the officer's identity card to the person for inspection.</u></p> <p><u><i>Editor's note—</i></u></p> <p><u>For a police officer, see the <i>Police Powers and Responsibilities Act 2000</i>, section 637 (Supplying police officer's details).</u></p> <p><u>'(4) However, the officer need not comply with subsection (2) if the officer reasonably believes that immediate entry to the place is required to ensure the effective exercise of powers under the order is not frustrated.</u></p> <p><b><u>'Division 3 Other provisions about temporary custody orders</u></b></p> <p><b><u>'51AK Explanation of temporary custody orders</u></b></p> <p><u>'(1) This section applies if a temporary custody order is made for a child.</u></p> <p><u>'(2) If the child does not have long-term guardians, the applicant for the order must immediately—</u></p> <p><u>(a) provide at least 1 of the child's parents with—</u></p> <p><u>(i) a copy of the order or the duplicate order under section 51A(5); and</u></p> <p><u>(ii) an explanation of the terms and effect of the order; and</u></p> <p><u>(ii) information—</u></p> <p><u>(A) about the right of appeal; and</u></p> <p><u>(B) that, because of the duration of the order, if the parent wishes to appeal against the order, an appeal should be started immediately; and</u></p> <p><u>(C) about how to appeal; and</u></p> <p><u>(b) tell the child about the order.</u></p> <p><u><i>Editor's note—</i></u></p> <p><u>Section 195 deals with compliance with provisions about giving information.</u></p> <p><u>'(3) If the child has long-term guardians, the applicant for the order must immediately—</u></p> <p><u>(a) comply with subsection (2)(a) as if a reference to parents were a reference to long-term guardians; and</u></p> <p><u>(b) comply, or make a reasonable attempt to comply, with subsection (2)(a) in relation to the child's parents other than the long-term guardians; and</u></p> <p><u>(c) comply with subsection (2)(b).</u></p> <p><u>'(4) If, under subsection (3)(b), the applicant does not comply with subsection (2)(a) in relation to the child's parents other than the long-term guardians, but makes a reasonable attempt to comply, the applicant must document full details about the actions taken by the applicant in making the attempt.</u></p> <p><b><u>'51AL Variation of temporary custody orders</u></b></p> <p><u>'(1) An authorised officer may apply to a magistrate for an order to vary a temporary custody order for a child.</u></p> <p><u>'(2) This part applies, with all necessary changes, to the application as if it were an application for a temporary custody order.</u></p> <p><b><u>'51AM Effect of temporary custody order on existing child protection orders</u></b></p> <p><u>'(1) This section applies if a temporary custody order is made for a child for whom a child protection order is already in force.</u></p> <p><u>'(2) The child protection order, so far as it relates to the child's custody or guardianship, ceases to have effect while the chief executive's custody of the child continues under the temporary custody order.'</u></p>		
s51F – omit & insert		

<p><b>51F Meaning of parent in pt 3A</b> In this part— <b>parent</b>, of a child, means each of the following persons—</p> <ul style="list-style-type: none"> <li>(a) the child’s mother or father;</li> <li>(b) a person in whose favour a residence order or contact order for the child is in operation under the <i>Family Law Act 1975</i> (Cwlth);</li> <li><u>‘(c) a person, other than the chief executive, having custody or guardianship of the child under—</u> <ul style="list-style-type: none"> <li>(i) a law of the State, other than this Act; or</li> <li>(ii) a law of another State;</li> </ul> </li> <li><u>(d) a long-term guardian of the child.’.</u></li> </ul>	<p>Inclusion of LTGs in this provision and the obligations attaching to this as a ‘parent’.</p>	<p>LTG’s will now be available as an event participant and will be available for selection in all forms, where parents / other adults can currently be selected.</p> <p>NOTE: An LTG must be selected as an event participant for these questions to display.</p>
<p>s51Q – omit &amp; insert</p> <p><b>51Q Dealing with a case plan developed at a meeting</b> Within <u>10 business days</u> after a case plan is developed at a case planning meeting, the chief executive must endorse the plan unless section 51R applies.</p>	<p>Departmental practice will need to be familiar with the calculation of timeframes as 10 business days for case plans to be endorsed.</p>	<p>NA</p>
<p>s51V – omit &amp; insert</p> <p><b><u>‘51V Review of plan—no long-term guardian’.</u></b> <u>‘(1) This section applies if the child does not have a long-term guardian.’.</u> (2) The chief executive must regularly review the case plan. (3) In deciding when, or how often, to review the plan, the chief executive must have regard to—</p> <ul style="list-style-type: none"> <li>(a) the child’s age and circumstances; and</li> <li>(b) the nature of the arrangements in place under the plan; and</li> <li>(c) any problems or potential problems with the plan, or ways the plan might be improved, of which the chief executive is aware; and</li> <li>(d) if a child protection order for the child is in force—the duration of the order.</li> </ul> <p>(4) In any case, the review must happen at least every 6 months. (5) After reviewing the plan, the chief executive must prepare—</p> <ul style="list-style-type: none"> <li>(a) a report about the review under section 51X; and</li> <li>(b) a revised case plan.</li> </ul>	<p>Note practice in relation to review of case plan when there is no LTG involved and requirement for department to maintain at least 6 monthly reviews.</p>	<p>NA</p>
<p>s51VA – insert</p> <p><b><u>‘51VA Review of plan—long-term guardian</u></b> <u>‘(1) This section applies if the child has a long-term guardian.</u> <u>‘(2) The chief executive must contact the child at least once every 12 months to give the child an opportunity to make comments or queries about, or ask for a review of, the child’s case plan.</u> <u>‘(3) The long-term guardian must allow the chief executive to have contact with the child at least once every 12 months.</u> <u>‘(4) At any time, the child or the long-term guardian may ask the chief executive to review the case plan.</u> <u>‘(5) On a request under subsection (4)—</u> <u>(a) the chief executive may decide not to review the plan if satisfied it would not be appropriate in all the circumstances; or</u> <u>Example—</u> <u>It may not be appropriate to review a case plan when it has been recently reviewed and the child’s circumstances have not changed significantly since the plan was finalised.</u> <u>(b) otherwise, the chief executive must review the plan and prepare—</u> <u>(i) a report about the review under section 51X; and</u> <u>(ii) a revised case plan.</u> <u>‘(6) If, on a request under subsection (4), the chief executive decides not to review the case plan, the chief executive must give written notice of the decision</u></p>	<p>Where a child has a LTG, the department is required to contact the child at least once every 12 months in relation to a review of the child’s case plan.</p> <p>Further, the section places a requirement on the LTG to allow the department to have contact with the child at least once every 12 months.</p> <p>A request can now be made by the child or LTG for the department to review a case plan and if it is deemed by the</p>	<p>Two new Case planning forms – LTG to a suitable person – Contact and review report and LTG to a suitable person – Case Plan - will be available to users within OI events, where a LTG has been selected as an event participant.</p> <p>NOTE: An LTG must be selected as an event participant for the LTG case plans to be available.</p>

<p>to—</p> <p>(a) the person who made the request; and</p> <p>(b) if it was the child who made the request—the long-term guardian.</p> <p><u>‘(7) The notice mentioned in subsection (6) must comply with the QCAT Act, section 157(2).’.</u></p>	<p>department that this is not required, then written notice has to be provided to the child/LTG and the decision becomes a reviewable decision in QCAT.</p>	
<p>Ch 2, Part 3A, Division 6 – insert</p> <p><b><u>‘Division 6 Particular evidence inadmissible in criminal proceedings</u></b></p> <p><b><u>‘51YA Evidence of anything said or done at family group meetings</u></b></p> <p><u>‘Evidence of anything said or done at a family group meeting is inadmissible in a criminal proceeding before a court other than—</u></p> <p><u>(a) with the consent of all persons participating in the family group meeting; or</u></p> <p><u>(b) in a proceeding for an offence committed during the family group meeting.</u></p> <p><b><u>‘51YB Evidence of anything recorded in a case plan</u></b></p> <p><u>‘Evidence of anything recorded in a case plan is inadmissible in a criminal proceeding before a court other than with the consent of all persons mentioned in the case plan.’.</u></p>	<p>Departmental staff should note that anything said or done in a FGM is inadmissible in a criminal proceeding (unless with consent of all parties).</p> <p>Further, that anything recorded in a case plan is inadmissible in a criminal proceeding (unless with consent of all parties).</p>	<p>NA</p>
<p>s51ZE – insert</p> <p><b>51ZE Entering an agreement</b></p> <p>(1) The chief executive may enter a care agreement for the child if satisfied—</p> <p>(a) it would be in the child’s best interests to be temporarily placed in the care of someone other than the child’s parents; and</p> <p>(b) it is not likely that, if the parents end the agreement, the child will be at immediate risk of harm.</p> <p>(2) The chief executive must obtain and have regard to the child’s views before entering the care agreement, unless the child is unable to form and express views, taking into account the child’s age and ability to understand.</p> <p>(3) The child may also be a party to the care agreement.</p> <p><u>‘(4) Despite section 51ZD(1), the chief executive may enter an assessment care agreement with only 1 of the child’s parents if—</u></p> <p><u>(a) it is impractical to obtain the consent of the other parent to the agreement before entering the agreement; or</u></p> <p><u>(b) the chief executive has made a reasonable attempt to obtain the consent of the other parent before entering the agreement.</u></p> <p><u>‘(5) If the chief executive has not obtained the consent of the other parent before entering an assessment care agreement under subsection (4), the chief executive must make a reasonable attempt to give a copy of the agreement to the other parent, and obtain the other parent’s consent, after the agreement has been entered into.</u></p> <p><u>Note—</u></p> <p><u>See section 51ZI(2) for how the other parent may end the agreement.</u></p> <p><u>‘(6) The chief executive may not enter an assessment care agreement with only 1 of the child’s parents if another parent refuses to enter the agreement.’.</u></p>	<p>Staff should be aware that this provision now clarifies that an Assessment Care Agreement may be entered into with the consent of only 1 of the child’s parent if it is unreasonable or impracticable to obtain the consent of the other (note – if the other refuses to enter the agreement than the department cannot rely on it).</p>	<p>A question in relation to obtaining the parents signature has been added to the existing Care agreement form, in the OI event.</p>
<p>s51ZI – insert</p> <p><b>51ZI Ending an agreement</b></p> <p>(1) A party to a care agreement may end the agreement at any time by giving at least 2 days notice to the other parties.</p> <p><u>‘(2) If a care agreement is entered into with only 1 of the child’s parents, the other parent may end the agreement at any time by giving at least 2 days notice to the parties.’.</u></p> <p>(3) A care agreement ends automatically if—</p> <p>(a) a child protection order is made granting custody or guardianship of the child to the chief executive or someone else; or</p> <p>(b) the chief executive otherwise gains custody or guardianship of the child under this Act or the <i>Adoption Act 2009</i>.</p>	<p>Staff need to ensure that they are aware that should a Care Agreement be entered into by only 1 parent, if the other parent seeks to end the agreement, the department is obliged to do so.</p>	<p>NA</p>

<p>s52 – omit &amp; insert</p> <p><b>52 Meaning of parent in pt 4</b> In this part— <b>parent</b>, of a child, means each of the following persons—</p> <p>(a) the child’s mother or father; (b) a person in whose favour a residence order or contact order for the child is in operation under the <i>Family Law Act 1975</i> (Cwlth); <u>‘(c) a person, other than the chief executive, having custody or guardianship of the child under—</u>     (i) a law of the State, other than this Act; or     (ii) a law of another State; <u>(d) a long-term guardian of the child.’</u></p>	<p>Inclusion of LTGs in this provision and the obligations attaching to this as a ‘parent’ in this part, e.g. obligation to list them as respondents to the application, serve them with the application and subsequent order and explain the effects, provide for the appeal rights, etc.</p>	<p>LTG’s will now be available as an event participant and will be available for selection in all forms, where parents / other adults can currently be selected.</p> <p>NOTE: An LTG must be selected as an event participant for these questions to display.</p>
<p>s59 – omit &amp; insert</p> <p><b>59 Making of child protection order</b></p> <p>(1) The Childrens Court may make a child protection order only if it is satisfied—</p> <p>(a) the child is a child in need of protection and the order is appropriate and desirable for the child’s protection; and (b) there is a case plan for the child—     (i) that has been developed or revised under part 3A; and     (ii) that is appropriate for meeting the child’s assessed protection and care needs; and (c) if the making of the order has been contested, a conference between the parties has been held or reasonable attempts to hold a conference have been made; and (d) the child’s wishes or views, if able to be ascertained, have been made known to the court; and (e) the protection sought to be achieved by the order is unlikely to be achieved by an order under this part on less intrusive terms.</p> <p><u>‘(2) Before making a child protection order, the court may have regard to any contravention of this Act or of an order made under this Act.</u> <u>‘(3) When deciding whether a case plan is appropriate under subsection (1)(b)(ii), it is not relevant whether or not all persons who participated in the development or revision of the plan agreed with the plan.’</u></p> <p>(4) The court must not make a child protection order unless a copy of the child’s case plan and, if it is a revised case plan, a copy of the report about the last revision under section 51X have been filed in the court.</p> <p>(5) Also, before making a child protection order granting custody or guardianship of a child to a person other than the chief executive, the court must have regard to any report given, or recommendation made, to the court by the chief executive about the person, including a report about the person’s criminal history, domestic violence history and traffic history.</p> <p><i>Editor’s note—</i> Section 95 deals with reports about the person’s criminal history, domestic violence history and traffic history.</p> <p>(6) In addition, before making a child protection order granting long-term guardianship of a child, the court must be satisfied— (a) there is no parent able and willing to protect the child within the foreseeable future; or (b) the child’s need for emotional security will be best met in the long-term by making the order.</p> <p>(7) Further, the court must not grant long-term guardianship of a child to— (a) a person who is not a member of the child’s family unless the child is already in custody or guardianship under a child protection order; or (b) the chief executive if the court can properly grant guardianship to another suitable person.</p> <p><u>‘(8) Before the court extends or makes a further child protection order granting custody or short-term guardianship of the child, the court must have regard to the child’s need for emotional security and stability.’</u></p> <p>(9) This section does not apply to the making of an interim order under section 67.</p>	<p>The department will need to ensure that evidence is presented (where appropriate) as to a contravention of orders made under the Act.</p> <p>Staff will need to provide information and evidence about the emotional security and attachment of a child when considering short-term vs long-term orders.</p>	<p>Information in relation to any contravention of an order should be included within the grounds of the new application, in the existing CPO application on ICMS.</p>

<p>s61 – omit &amp; insert</p> <p><b>61 Types of child protection orders</b>  The Childrens Court may make <u>'any 1 or more of the following child protection orders that the court'</u> considers to be appropriate in the circumstances—</p> <p>(a) an order directing a parent of the child to do or refrain from doing something directly related to the child's protection;</p> <p>(b) an order directing a parent not to have contact, direct or indirect—</p> <p>(i) with the child; or</p> <p>(ii) with the child other than when a stated person or a person of a stated category is present;</p> <p>(c) an order requiring the chief executive to supervise the child's protection in relation to the matters stated in the order;</p> <p>(d) an order granting custody of the child to—</p> <p>(i) a suitable person, other than a parent of the child, who is a member of the child's family; or</p> <p>(ii) the chief executive;</p> <p>(e) an order granting short-term guardianship of the child to the chief executive;</p> <p>(f) an order granting long-term guardianship of the child to—</p> <p>(i) a suitable person, other than a parent of the child, who is a member of the child's family; or</p> <p>(ii) another suitable person, other than a member of the child's family, nominated by the chief executive; or</p> <p>(iii) the chief executive.</p>	<p>Makes explicit that the department can seek concurrent CPOs.</p> <p>Note – this should only be where the orders are not in conflict with one another, for example, a supervision order with a directive order is appropriate however, a supervision order with a custody order is not appropriate.</p>	<p>Existing functionality within ICMS allows for more than one application to be completed for one subject child, within each Court event.</p>
<p>s65 – omit &amp; insert</p> <p><b>65 Variation and revocation of child protection orders</b></p> <p>(1) An authorised officer, a child's parent or the child may apply to the Childrens Court for an order to—</p> <p>(a) vary or revoke a child protection order for the child; or</p> <p>(b) revoke a child protection order for the child and make another child protection order in its place.</p> <p>(2) However, a child's parent can not—</p> <p>(a) apply for an order to revoke a child protection order for the child and make another child protection order in its place that grants guardianship of the child; or</p> <p>(b) without the leave of the court, apply for an order to vary or revoke a child protection order for the child if another application for an order by a parent of the child to vary or revoke the child protection order has been decided by the court.</p> <p>(3) For subsection (2)(b), the court may grant leave only if it is satisfied the child's parent has new evidence to give to the court.</p> <p>(4) This part applies, with the changes prescribed in subsection (5) and all other necessary changes, to the application as if it were an application for a child protection order for the child.</p> <p>(5) If the application is made by the child or a parent of the child—</p> <p>(a) other parents of the child and the chief executive become respondents to the application; and</p> <p>(b) immediately after the application is made, the registrar must give written notice to the chief executive of the time and place for hearing the application; and</p> <p>(c) as soon as practicable after receiving the registrar's notice, the chief executive must comply with section 56 except so far as it relates to the applicant.</p> <p>(6) The court may, under subsection (1)(a), revoke a child protection order for a child only if it is satisfied the order is no longer <u>'appropriate and desirable for the child's protection'</u>.</p> <p><u>'(7) Without limiting the things to which the court may have regard in deciding an application under this section, the court—</u></p> <p><u>(a) may have regard to a contravention of the child protection order or this Act; and</u></p> <p><u>(b) for an application to revoke a child protection order granting long-term guardianship of a child under section 61(f)(i) or (ii)—must have regard to the child's need for emotional security and stability.'</u></p> <p>(8) In this section—</p> <p><b>child protection order</b> does not include an interim order under section 67.</p>	<p>Evidence will be required in relation to supporting this provision as it relates to a contravention.</p> <p>Department will need to ensure that evidence is presented (where appropriate) as to a contravention of orders made under the Act.</p> <p>Consideration to be given to emotional security/stability of child vs child in need of protection when seeking to revoke a LTG order.</p> <p>Note - LTG as a child's parent (s52) – may be the applicant in these applications.</p>	<p>The rules within the Application to Vary / Extend a CPO have been amended. The forms will not allow for extensions to be made if the time period goes past maximum duration allowed for that type of order.</p> <p>Rules in the Form 11 have been changed to allow to vary CPO's – directive orders, protective supervision orders, custody orders and LTG. The rule will be that users can vary within the same type of order (eg. Directive to directive, STC to CE to STC to other) and extend, as long as maximum duration is not exceeded.</p> <p>Rationale in relation to the contravention of an existing order to be included in the grounds for the application.</p>

<p>Ch2, Part 4, Division 4 – insert</p> <p><b><u>‘Division 4 Transition orders ‘65A Court may make transition order</u></b></p> <p><u>‘(1) This section applies if a court—</u></p> <p><u>(a) in relation to a child protection order granted under section 61(d) or (e)—</u></p> <p><u>(i) refuses to extend the order or grant a further order before the order ends;</u>  <u>or</u>  <u>(ii) revokes the order; or</u>  <u>(iii) decides an appeal against the making of the order in favour of a person other than the chief executive; or</u></p> <p><u>(b) in relation to a child protection order granted under section 61(f)—</u></p> <p><u>(i) revokes the order; or</u>  <u>(ii) decides an appeal against the making of the order in favour of a person other than the chief executive.</u></p> <p><u>‘(2) The court may make an order (a <b>transition order</b>) that the child protection order ends on a later day stated in the transition order.</u></p> <p><u>‘(3) The transition order may be made on the court’s own initiative or on the application, made orally or in the approved form, of a party to the proceeding.</u></p> <p><u>‘(4) If a party applies for the transition order and the court adjourns the proceeding before deciding the application, the child protection order continues in force, despite the decision mentioned in subsection (1), until the application is decided.</u></p> <p><u>‘(5) The day stated in the transition order as the day on which the child protection order ends may not be more than 28 days after the day of the court’s decision under subsection (1), even if a party applied for the transition order and the court adjourned the proceeding before deciding the application.</u></p> <p><u>‘(6) The court may make a transition order in a proceeding only once.</u></p> <p><b><u>‘65B Grounds for making transition order</u></b></p> <p><u>‘(1) A court may make a transition order if satisfied the order is necessary to allow for the gradual transition of the child into the care of the child’s parents in a way that—</u></p> <p><u>(a) supports the child; and</u>  <u>(b) may reduce any disruption or distress experienced by the child; and</u>  <u>(c) is otherwise in the best interests of the child.</u></p> <p><u>‘(2) When deciding whether to make a transition order—</u></p> <p><u>(a) the court must have regard to—</u></p> <p><u>(i) the child’s wishes and views, if able to be ascertained; and</u>  <u>(ii) the parents’ readiness to care for the child; and</u></p> <p><u>(b) the court may have regard to any other relevant matter.</u></p> <p><u><i>Example for paragraph (b)—</i></u>  <u>The court may have regard to information, from the person caring for the child under the child protection order, about the child’s needs.</u></p> <p><b><u>‘65C Effect of stay of decision about child protection order</u></b></p> <p><u>‘If, under section 119, an appellate court stays a decision mentioned in section 65A(1), a transition order made in relation to the decision ends on the day the decision is stayed.</u></p> <p><b><u>‘65D Transition plans</u></b></p> <p><u>‘If the court makes a transition order in relation to a child, the chief executive must prepare a plan, for the period of the transition order, that—</u></p> <p><u>(a) states how the chief executive intends to provide for the support and gradual transition of the child into the care of the child’s parents; and</u>  <u>(b) includes matters prescribed under a regulation for inclusion in the plan.’.</u></p>	<p>Transition orders can only be sought in situations where there is a CPO granted under s61(d) (STC to CE or suitable person), s61(e) (STG to CE) or s61(f) (LTG to CE or suitable person).</p> <p>As such, transition orders cannot be sought when the department is seeking a new order and the matter is on foot for 18 months with the children remaining in the CEs temporary custody pursuant to s67.</p> <p>Further, transition orders cannot be sought when the previous CPO expires before the extension is granted (EG. S99 is ended by the court) and as such, a new order is required to be sought.</p> <p>The court can grant a Transition order without an application being made.</p> <p>It is important for staff to ensure that when moving from a CPO to a CPO, that interim orders are sought under s99.</p> <p>Departmental staff will be required to develop transition plans which will require a review of practice and policy.</p>	<p>CPO COF’s have been amended to allow for the recording of an application for a Transition order, the adjournment of the application and the granting or dismissal of an application.</p> <p>A new form, Transition plan, has also been added to the OI event.</p> <p>The Transition Plan form will be available in the OI event.</p>
<p>s67 – omit &amp; insert</p> <p><b>67 Court’s powers to make interim orders on adjournment</b></p> <p>(1) On the adjournment of a proceeding for a court assessment order or child protection order, the Childrens Court may make <u>‘any 1 or more’</u> of the following orders—</p> <p>(a) an interim order granting temporary custody of the child—</p> <p>(i) for a court assessment order—to the chief executive; or</p>	<p>Departmental staff will need to be familiar with the new interim order authorising contact with the child / enter and search and when</p>	<p>ICMS COF’s have been amended to allow for the new interim orders to be recorded, when granted.</p>

<p>(ii) for a child protection order—to the chief executive or a suitable person who is a member of the child’s family;</p> <p>(b) an interim order directing a parent of the child not to have contact (direct or indirect)—</p> <p>(i) with the child; or</p> <p>(ii) with the child other than when a stated person or a person of a stated category is present.</p> <p><u>‘(c) an interim order authorising an authorised officer or police officer to have contact with the child.’</u></p> <p><u>‘(2) In addition, the court may make an interim order authorising an authorised officer or police officer to enter and search any place the officer reasonably believes the child is, to find the child, if the court is satisfied—</u></p> <p><u>(a) entry to a place has been, or is likely to be, refused, or it is otherwise justified in particular circumstances, including, for example, because the child’s whereabouts are not known; and</u></p> <p><u>(b) the entry is necessary for the effective enforcement of an order made under subsection (1)(c).</u></p> <p><u>‘(3) On entering a place, an authorised officer or police officer may remain in the place for as long as the officer considers necessary for exercising the officer’s powers under this section.</u></p> <p><u>‘(4) An authorised officer or police officer may exercise the officer’s powers under the order with the help, and using the force, that is reasonable in the circumstances.’</u></p> <p>(5) The order has effect for the period of the adjournment.</p> <p>(6) In this section—</p> <p><b>parent</b>, of a child, means each of the following persons—</p> <p>(a) the child’s mother or father;</p> <p>(b) a person in whose favour a residence order or contact order for the child is in operation under the <i>Family Law Act 1975</i> (Cwlth);</p> <p><u>‘(c) a person, other than the chief executive, having custody or guardianship of the child under—</u></p> <p><u>(i) a law of the State, other than this Act; or</u></p> <p><u>(ii) a law of another State;</u></p> <p><u>(d) a long-term guardian of the child.’</u></p>	<p>these types of orders should be sought (e.g. on adjournment of an application for CPO requiring CE to supervise or CPO custody to 3<sup>rd</sup> party).</p> <p>Definition of parent includes LTG.</p>	
<p>s67A – insert</p> <p><b><u>‘67A Order—procedure before entry</u></b></p> <p><u>‘(1) This section applies if an authorised officer or police officer is intending to enter a place under an authority under an interim order mentioned in section 67(2).</u></p> <p><u>‘(2) Before entering the place, the officer must do or make a reasonable attempt to do the following things—</u></p> <p><u>(a) identify himself or herself to a person present at the place who is an occupier of the place;</u></p> <p><u>(b) give the person a copy of the order so far as it relates to the entry and searching of the place;</u></p> <p><u>(c) tell the person the officer is permitted by the order to enter and search the place to find the child;</u></p> <p><u>(d) give the person an opportunity to allow the officer immediate entry to the place without using force.</u></p> <p><u>‘(3) For subsection (2)(a), an authorised officer must produce the officer’s identity card to the person for inspection.</u></p> <p><u><i>Editor’s note—</i></u></p> <p><u>For a police officer, see the <i>Police Powers and Responsibilities Act 2000</i>, section 637 (Supplying police officer’s details).</u></p> <p><u>‘(4) However, the officer need not comply with subsection (2) if the officer reasonably believes that immediate entry to the place is required to ensure the effective exercise of powers under the order is not frustrated.’</u></p>	<p>Note practice to be adopted when entering a place pursuant to an interim order under s67(2).</p>	<p>NA</p>
<p>s80A – insert</p> <p><b><u>‘80A Obligations if child is no longer cared for by long-term guardian</u></b></p> <p><u>‘(1) This section applies if—</u></p> <p><u>(a) a child protection order granting long-term guardianship of a child under section 61(f)(i) or (ii) is in force; and</u></p> <p><u>(b) the child is no longer cared for by the child’s long-term guardian.</u></p> <p><u><i>Examples of situations where a child may no longer be cared for by the child’s</i></u></p>	<p>Note obligations on LTGs when a child is no longer cared for by them.</p>	<p>NA</p>

<p><u>long-term guardian—</u>  1 The child is an older child transitioning to independent living.  2 The relationship between the child and the long-term guardian has broken down to the point where the child is unable to live with the long-term guardian.  ‘(2) The long-term guardian must immediately give the chief executive written notice that the care has ended and, if the long-term guardian knows where the child is living, that information.  ‘(3) If the chief executive is given notice under subsection (2), the chief executive must review the child’s protection and care needs, and wellbeing, and take any further action the chief executive considers appropriate.’.</p>		
<p>s95 – omit &amp; insert</p> <p><b>95 Report about person’s criminal history etc.</b>  (1) Subsection (2) applies if—  (a) the chief executive intends to give a report or make a recommendation to the Childrens Court, or is asked or required by the court to give a report or make a recommendation to the court, about—  (i) a child’s parents; or  (ii) a person to whom the court is considering granting custody or guardianship of a child; or  (b) the chief executive proposes to place a child who is in the chief executive’s custody or guardianship in the care of an individual, other than an approved carer, who has agreed to <u>‘care for the child (the <b>proposed individual</b>).</u>  <u>Example for paragraph (b)—</u>  A child is placed in the care of a member of the child’s family as part of a plan for reunification with the child’s parents.’  (2) For ensuring the chief executive or court has all relevant information the chief executive or court needs for assessing the suitability of a person to have the custody, guardianship or care of a child who is found to be a child in need of protection, the chief executive may ask—  (a) the police commissioner to give the chief executive a written report about the criminal history and domestic violence history of—  (i) the parents, person to whom the court is considering granting custody or guardianship or an adult member of the parents’ or person’s household; or  ‘(ii) the proposed individual or an adult member of the proposed individual’s household; and’.  (b) the chief executive for transport to give the chief executive a written report about the traffic history of the parents, person to whom the court is considering granting custody or guardianship of the child or proposed individual.  (3) Also <u>‘for the purpose of making any other decision under this Act’</u> the chief executive may—  (a) ask the police commissioner to give the chief executive a written report about the criminal history and domestic violence history of—  (i) a parent of the child; or  (ii) an adult member of a parent’s household; or  ‘(iii) an adult against whom an allegation of harm or risk of harm to a child has been made; and’  (b) ask the chief executive for transport to give the chief executive a written report about the traffic history of a parent of the child.  (4) The police commissioner or chief executive for transport must comply with a request under subsection (2) or (3).  (5) Subsections (2)(a) and (3)(a) apply to the criminal history or domestic violence history in the police commissioner’s possession or to which the police commissioner has access.  (6) Subsection (4) applies despite the Transport Operations (Road Use Management) Act 1995, section 77.  (7) Subsection (8) applies to a person in relation to whom the police commissioner must give a report mentioned in subsection (2) or (3).  (8) Also, the police commissioner may give the chief executive a copy of, or extract from, the police commissioner’s records in relation to—  (a) the commission or alleged commission of the following offences by the person—  (i) a personal offence against anyone;  (ii) an offence against the <i>Drugs Misuse Act 1986</i>;  (iii) an offence against section 162, 164, 166, 167 or 168; or  (b) an application for a protection order under the <i>Domestic and Family</i></p>	<p>Note that the scope of this section has been widened to include <i>adult household members</i>.</p>	<p>NA</p>

<p><i>Violence Protection Act 1989</i> in which the person is an aggrieved or respondent under that Act.</p>		
<p>s97 – omit &amp; insert</p> <p><b>97 Carrying out medical examinations or treatment</b></p> <p>(1) This section applies if—</p> <p>(a) an authorised officer or police officer—</p> <p>(i) takes a child into the chief executive’s custody; and</p> <p>(ii) seeks medical examination of, or treatment for, the child; or</p> <p><i>Editor’s note—</i></p> <p>Under section 18(7), an authorised officer or police officer may arrange for a child’s medical examination or treatment.</p> <p>(b) a child is in the chief executive’s custody under this Act and the chief executive seeks medical examination of, or treatment for, the child; or</p> <p>(c) an order for a child authorises the child’s medical examination or treatment.</p> <p><i>Editor’s note—</i></p> <p>Under section 28(1)(b) a temporary assessment order may authorise the medical examination or treatment of the child. Also, under section 45(1)(b) a court assessment order may authorise the medical examination or treatment of the child.</p> <p>(2) A health practitioner may medically examine or treat the child.</p> <p>(3) Subsection (2) applies even though the child’s parents have not consented to the examination or treatment.</p> <p>(4) However, subsection (2) is subject to the rights the child has in relation to the examination or treatment.</p> <p>(5) Also, the health practitioner may only carry out medical treatment that is reasonable in the circumstances.</p> <p>(6) If this section applies because of subsection (1)(a) or (b) or because of an order mentioned in subsection (1)(c) that is an assessment order, the health practitioner must give the chief executive or police commissioner a report about the medical examination or treatment.</p> <p>(7) For the purpose of deciding any liability in relation to the carrying out of the examination or treatment, the health practitioner is taken to have the consent of the child’s parents to the examination or treatment.</p>	<p>Reference to change in section for use of medical examination or treatment to s18(7).</p>	<p>Details to be recorded in the new Record of use of powers / interviews form.</p>
<p>s99 – omit &amp; insert</p> <p><b>99 Custody or guardianship of child continues pending decision on application for order</b></p> <p>(1) This section applies if—</p> <p>(a) a child is in the chief executive’s custody or guardianship, or the custody of a member of the child’s family, under an order; and</p> <p>(b) before the order ends, an application is made for the extension of the order or for another order.</p> <p><u>‘(2) The order granting the custody or guardianship of the child continues until the application is decided unless the Childrens Court orders an earlier end to the order.</u></p> <p><u>‘(3) This section does not affect the application of section 67 in relation to the child.’.</u></p>	<p>Training will be required to ensure that departmental staff are aware that s99 now means that the <b>order</b> itself continues and not simply custody or guardianship.</p> <p>This means that the child, whilst under s99 is effectively subject to an order and all obligations, appeal rights and relevant reviewable decisions apply.</p> <p>If a Magistrate determines that interim custody to the CE is not required, and refuses to grant an interim order under S67, submissions may be required in relation to the necessity for the court to order an end to S99, if it hasn’t already done so.</p>	<p>CPO COF’s have been amended to include a new question in relation to S99 and this information will be populated into the Orders tab for the child.</p> <p>Reference to S99 has been removed from the CAO event and staff should not rely on S99 when progressing through a CAO application.</p> <p>NOTE: S99 does not apply to TCO’s.</p>

<p>s99D – <b>omit &amp; insert</b></p> <p><b>99D Principles for tribunal in matters relating to this Act</b>  In exercising its jurisdiction, functions or powers in relation to this Act, the tribunal must have regard to the principles mentioned in <u>'sections 5A to 5C, to the extent the principles are relevant'</u>.</p>	<p>Note reference to ss5A-5C and that the Tribunal must have regard to these.</p> <p>Departmental practice will need to ensure that these are addressed in the SORs provided to the Tribunal.</p>	<p>NA</p>
<p>s99H – <b>omit &amp; insert</b></p> <p><b>99H Constitution of tribunal</b>  (1) The tribunal must be constituted by 3 members with at least 1 legally qualified member.  (2) A compulsory conference must be heard by at least 2 members, at least 1 of whom is a legally qualified member.  (3) If a child to which a proceeding before the tribunal relates is Aboriginal or Torres Strait Islander, the tribunal hearing the proceeding must include, if practicable, a member who is Aboriginal or Torres Strait Islander.  (4) The president may choose a member to constitute the tribunal for a proceeding to which this part applies only if the president considers the member—  (a) is committed to the principles mentioned in <u>sections 5A to 5C</u>; and  (b) has extensive professional knowledge and experience of children; and  (c) has demonstrated a knowledge of and has experience in 1 or more of the fields of administrative review, child care, child protection, child welfare, community services, education, health, indigenous affairs, law, psychology or social work.  (5) A member is ineligible to be a constituting member for a review of a reviewable decision if the member—  (a) has been refused a certificate of approval, or a renewal of a certificate of approval, as an approved carer; or  (b) has had a certificate of approval as an approved carer cancelled.  (6) In this section—  <b>legally qualified member</b> has the meaning given by the <i>QCAT Act</i>.  <b>member</b> has the meaning given by the <i>QCAT Act</i>.</p>	<p>Note reference to ss5A-5C.</p>	<p>NA</p>
<p>s104 – <b>omit s104 &amp; insert new</b></p> <p><b><u>'104 Court must have regard to particular principles and state reasons</u></b>  <u>'(1) In exercising its jurisdiction or powers, the Childrens Court must have regard to the principles stated in sections 5A to 5C, to the extent the principles are relevant.</u>  <u>'(2) When making a decision under this Act, the Childrens Court must state its reasons for the decision.'</u></p>	<p>Departmental staff will need to ensure that affidavit material filed in support of applications make reference to the principles stated in ss5A-5C where relevant when evidencing why the order is sought.</p> <p>Departmental staff to be aware of the requirement for the Court to state its reasons for its decision and request this if/when this does not occur.</p>	<p>NA</p>
<p>s110 – <b>omit &amp; insert</b></p> <p><b>110 Separate legal representation of child</b>  (1) If, in a proceeding on an application for an order for a child, the Childrens</p>	<p>The formalisation that Sep Reps are now to</p>	<p>All CAO and CPO COF's have been</p>

<p>Court considers it is necessary in the child’s best interests for the child to be separately represented by a lawyer, the court may—</p> <p>(a) order that the child be separately represented by a lawyer; and</p> <p>(b) make the other orders it considers necessary to secure the child’s separate legal representation.</p> <p>(2) Without limiting subsection (1), the court must consider making orders about the child’s separate legal representation if—</p> <p>(a) the application for the order is contested by the child’s parents; or</p> <p>(b) the child opposes the application.</p> <p>(3) The lawyer must—</p> <p>(a) act in the child’s best interests regardless of any instructions from the child; and</p> <p>(b) as far as possible, present the child’s views and wishes to the court.</p> <p><u>‘(4) The lawyer is not a party to a proceeding on the application but—</u></p> <p><u>(a) must do anything required to be done by a party; and</u></p> <p><u>(b) may do anything permitted to be done by a party.</u></p> <p><u>‘(5) The parties to the proceeding must act in relation to the proceeding as if the lawyer were a party to the proceeding.</u></p> <p><u>‘(6) The lawyer’s role as the child’s separate legal representative ends when—</u></p> <p><u>(a) the application is decided or withdrawn; or</u></p> <p><u>(b) if there is an appeal in relation to the application—the appeal is decided or withdrawn.’.</u></p>	<p>be considered as parties to the proceedings and the obligations associated with this – including service, etc.</p> <p>It should be noted however, that they should not be listed as a respondent on application/affidavit material as they are technically not a party.</p>	<p>amended to include questions relating to Sep Reps being present and / or submissions they may make as a party to proceedings, etc.</p>
<p>s113 – omit &amp; insert</p> <p><b>113 Court may hear submissions from non-parties to proceeding</b></p> <p>(1) In a proceeding on an application for an order for a child, the Childrens Court may hear submissions from the following persons <u>‘(each a <b>non-party</b>)’—</u></p> <p>(a) a member of the child’s family;</p> <p>(b) anyone else the court considers is able to inform it on any matter relevant to the proceeding.</p> <p>(2) A submission may be made by a <u>non-partys’s</u> lawyer.</p> <p><u>‘(3) The court may allow the non-party to view a document or other information before the court on the application if the court is satisfied—</u></p> <p><u>(a) the document or information is relevant to a submission the non-party may make to the court; and</u></p> <p><u>(b) the non-party needs to view the document or information to make the submission; and</u></p> <p><u>(c) it is in the child’s best interests for the non-party to view the document or information; and</u></p> <p><u>(d) each person to whom the document or information relates—</u></p> <p><u>(i) has been informed that the document or information may be viewed by the non-party; and</u></p> <p><u>(ii) has been given a reasonable opportunity to make submissions to the court about the non-party being allowed to view the document or information.’.</u></p>	<p>This is a significant amendment and training will be required around the obligations and implications of non-parties being allowed to view material as ordered by the Court.</p> <p>Note – Non-parities are entitled to VIEW only, there is no mention of being served/provided with material. It is anticipated however, that the definition of ‘view’ will be fluid in terms of how each Court interprets this.</p> <p>Departmental staff should be aware of this when a person makes a non-party application and submission to view material and the need to make submissions in order to address any concerns about the release of information to the non-party – refer to criteria the Magistrate needs to be satisfied of at s113(3)(a) – (d)(ii).</p>	<p>All CAO and CPO COF’s have been amended to include questions relating to Non-parties being present, documents they may have been granted access to, submissions they may make as a party to proceedings, etc.</p>
<p>s117 – omit &amp; insert</p> <p><b>117 Who may appeal</b></p> <p>(1) The following persons may appeal to the appellate court against a decision on an application for a temporary assessment order <u>or a temporary custody order</u> for a child—</p>	<p>Note inclusion of a TCO and reference to LTG as a parent.</p> <p>Note however, that</p>	<p>NA</p>

<p>(a) the applicant;  (b) the child;  (c) the child's parents.</p> <p>(2) A party to the proceeding for an application for a court assessment order or child protection order for a child may appeal to the appellate court against a decision on the application.</p> <p>(3) In this section—  <b>parent</b>, of a child, means each of the following persons—  (a) the child's mother or father;  (b) a person in whose favour a residence order or contact order for the child is in operation under the <i>Family Law Act 1975</i> (Cwlth);  <u>'(c) a person, other than the chief executive, having custody or guardianship of the child under—</u>  <u>(i) a law of the State, other than this Act; or</u>  <u>(ii) a law of another State;</u>  (d) a long-term guardian of the child.'</p>	<p>until further amendments are made, TCOs are not captured in the definition of 'appellant court'.</p>	
<p>s120 – <b>omit &amp; insert</b></p> <p><b>120 Hearing procedures</b></p> <p>(1) An appeal against a decision of a magistrate on an application for a temporary assessment order <u>or a temporary custody order</u> is not restricted to the material before the magistrate.</p> <p>(2) An appeal against another decision must be decided on the evidence and proceedings before the Childrens Court.</p> <p>(3) However, the appellate court may order that the appeal be heard afresh, in whole or part.</p>	<p>Note inclusion of a TCO.</p>	<p>NA</p>
<p>s122 – <b>omit &amp; insert</b></p> <p><b>122 Statement of standards</b></p> <p>(1) The chief executive must take reasonable steps to ensure a child placed in care under <u>section 82(1)</u> is cared for in a way that meets the following standards (the <b>statement of standards</b>)—  (a) the child's dignity and rights will be respected at all times;  (b) the child's needs for physical care will be met, including adequate food, clothing and shelter;  (c) the child will receive emotional care that allows him or her to experience being cared about and valued and that contributes to the child's positive self-regard;  (d) the child's needs relating to his or her culture and ethnic grouping will be met;  (e) the child's material needs relating to his or her schooling, physical and mental stimulation, recreation and general living will be met;  (f) the child will receive education, training or employment opportunities relevant to the child's age and ability;  (g) the child will receive positive guidance when necessary to help him or her to change inappropriate behaviour;  (h) the child will receive dental, medical and therapeutic services necessary to meet his or her needs;  (i) the child will be given the opportunity to participate in positive social and recreational activities appropriate to his or her developmental level and age;  (j) the child will be encouraged to maintain family and other significant personal relationships;  (k) if the child has a disability—the child will receive care and help appropriate to the child's special needs.</p> <p>(2) For subsection (1)(g), techniques for managing the child's behaviour must not include corporal punishment or punishment that humiliates, frightens or threatens the child in a way that is likely to cause emotional harm.</p> <p>(3) For subsection (1)(j), if the chief executive has custody or guardianship of the child, the child's carer must act in accordance with the chief executive's reasonable directions.</p> <p>(4) The application of the standards to the child's care must take into account what is reasonable having regard to—  (a) the length of time the child is in the care of the carer or care service; and  (b) the child's age and development.</p>	<p>Note reference to s82(1).</p>	<p>NA</p>
<p>s126 – <b>omit &amp; insert</b></p>		

<p><b>126 Restrictions on granting application</b>  The chief executive must not grant the application unless the chief executive is satisfied—</p> <ul style="list-style-type: none"> <li>(a) the applicant is a suitable entity to provide care services; and</li> <li>(b) the following persons are suitable persons— <ul style="list-style-type: none"> <li>(i) the directors of the applicant;</li> <li>(ii) the nominee for the licence;</li> <li>(iii) the persons who will be, or are, responsible for directly managing the care service the subject of the application;</li> <li>(iv) the persons who will be, or are, engaged in relation to the provision of care services by the service; and</li> </ul> </li> <li>(c) each person mentioned in paragraph (b)(i) or (ii) has a current positive prescribed notice or current positive exemption notice; and</li> <li>(d) the applicant will comply with the <i>Commissioner's Act</i>, chapter 8, in carrying on a regulated business or employing persons in regulated employment under that Act; and</li> <li><u>'(e) the standard of care provided complies, and will continue to comply, with the statement of standards; and'</u></li> <li>(f) methods for the selection, training and management of people engaged in providing the services are suitable.</li> <li><u>'(g) the applicant's primary function is a function relating to the care of children in need of protection who are in the custody or guardianship of the chief executive; and</u></li> <li><u>(h) any accommodation provided by the applicant to children in need of protection is, and will continue to be, at a place that the applicant has a suitable right to occupy.</u></li> </ul> <p><u>Example of a place that an applicant has a suitable right to occupy—</u>  <u>residential premises leased, rented or owned by the applicant</u>  <u>Example of a place that an applicant does not have a suitable right to occupy—</u>  <u>a motel room booked by the applicant'.</u></p>	<p>Note for practice.</p>	<p>NA</p>
<p>s129A – <b>insert</b></p> <p><b><u>'129A Licensee's obligations</u></b>  <u>'A licensee must ensure that—</u></p> <ul style="list-style-type: none"> <li><u>(a) care services provided by the licensee comply with the standards of care stated in the statement of standards; and</u></li> <li><u>(b) each person the licensee engages to provide care services is a suitable person; and</u></li> <li><u>(c) for carrying on a regulated business or employing persons in regulated employment under the <i>Commissioner's Act</i>—the <i>Commissioner's Act</i>, chapter 8 is complied with.'</u></li> </ul>	<p>Note for practice.</p>	<p>NA</p>
<p>s130 – <b>omit &amp; insert</b></p> <p><b>130 Nominees</b>  <u>'(1) The nominee for a licence is responsible for ensuring the licensee complies with section 129A unless—</u></p> <ul style="list-style-type: none"> <li><u>(a) if the nominee is in a position to influence the conduct of the licensee in relation to the licensee's compliance—the nominee took reasonable steps to ensure the licensee complied; or</u></li> <li><u>(b) the nominee was not in a position to influence the conduct of the licensee in relation to the licensee's compliance.'</u></li> </ul> <p>(2) An adult may be a nominee for more than 1 licence.</p>	<p>Note for practice.</p>	<p>NA</p>
<p>s136D – <b>insert</b></p> <p><b>136D Issue of certificate</b>  (1) If the chief executive makes a decision under section 136C, the chief executive must issue a certificate and give it to the applicant.  (2) The certificate may be issued subject to the reasonable conditions the chief executive considers appropriate.  (3) The certificate must relate only to the care of 1 child.  (4) The matters stated in the certificate must include the following—</p> <ul style="list-style-type: none"> <li>(a) the approved carer's name;</li> <li>(b) that it is a certificate of approval as a provisionally approved carer;</li> <li>(c) the name of the child for whom the carer is approved;</li> </ul>	<p>Relates to provisionally approved carers only.</p> <p>Note for practice that a certificate continues despite a spouse residing with the carer after its issue (and before its expiry).</p>	<p>NA</p>

<p>(d) any conditions of the certificate;  (e) the day of its issue;  (f) the day on which it is due to expire (the <b>expiry day</b>).</p> <p>(5) The expiry day must be not more than 60 days from the day of issue.</p> <p>(6) Subject to this Act, the certificate has effect until the earlier of the following days—  (a) the expiry day;  (b) the day the carer is—  (i) issued with a foster carer certificate or kinship carer certificate for the child; or  (ii) given written notice that the carer’s application for a foster carer certificate or kinship carer certificate for the child has been refused.</p> <p><u>‘(7) If the approved carer starts to live with his or her spouse after the issue of the certificate but before its expiry day, the certificate continues to have effect until the day mentioned in subsection (6).’.</u></p>		
<p>s140AB – omit &amp; insert</p> <p><b>140AB Definitions for sdiv 3</b>  In this subdivision—  <b>apply for a review</b>, of a decision under the <i>Commissioner’s Act</i> to issue or give a negative prescribed notice or negative exemption notice, means apply to the tribunal under section 309(3) or 354 of that Act for a review of the decision.</p> <p><b>approved carer</b> does not include a provisionally approved carer.</p> <p><u>‘prohibiting event, for a person, means—</u>  (a) <u>the person is issued with or given a negative prescribed notice or negative exemption notice other than—</u>  (i) <u>under a prescribed provision; or</u>  (ii) <u>on cancellation of a positive prescribed notice or positive exemption notice that is suspended; or</u>  (b) <u>the person’s positive prescribed notice or positive exemption notice is suspended; or</u>  (c) <u>an application for a prescribed notice or exemption notice about the person is withdrawn.’.</u></p> <p><b>prescribed provision</b> means—  (a) in relation to a prescribed notice—the <i>Commissioner’s Act</i>, section 224 or 239; or  (b) in relation to an exemption notice—the <i>Commissioner’s Act</i>, section 224 (as applied under section 285) or 297.</p> <p><b>relevant person—</b>  (a) for an approved carer’s certificate of approval—means a person who is a member of the carer’s household; or  (b) for a licence—means the nominee for the licence or a director of the licensee.</p>	<p>Note the definition for a ‘prohibiting event’ in terms of carer approvals.</p>	<p>NA</p>
<p>s140AC – omit &amp; insert</p> <p><b>140AC Immediate suspension</b>  (1) Subsection (2) applies if a <u>prohibiting event</u> happens to—  (a) an approved carer, or a member of an approved carer’s household; or  (b) the nominee for a licence, or a director of a licensee.</p> <p>(2) The chief executive must suspend the approved carer’s certificate of approval or the licence as soon as practicable after becoming aware of the <u>prohibiting event</u>.</p> <p>(3) Subsection (4) applies if a relevant person for an authority is issued with or given a negative prescribed notice or negative exemption notice under a prescribed provision.</p> <p>(4) The chief executive must suspend the authority as soon as practicable after the day the negative prescribed notice or negative exemption notice is issued or given, unless the chief executive decides to cancel the authority under section 140AG(3) or 140AH(1).</p> <p>(5) However, the chief executive must not suspend an authority because a <u>prohibiting event</u> happens to a relevant person for the authority, or the relevant person is issued with or given a negative prescribed notice or negative</p>	<p>Note for practice.</p>	<p>NA</p>

<p>exemption notice under a prescribed provision, if the chief executive is satisfied the person is no longer a relevant person.</p>		
<p><b>S140AF – omit &amp; insert</b></p> <p><b>140AF End of suspension</b></p> <p>(1) The suspension of a person’s authority ends if the person or relevant person is issued with or given a positive prescribed notice or positive exemption notice or a further positive prescribed notice or positive exemption notice.</p> <p>(2) If an authority is suspended because a <u>prohibiting event</u> happens to a relevant person for the authority, or the relevant person is issued with or given a negative prescribed notice or negative exemption notice under a prescribed provision, the chief executive must end the suspension if satisfied the person is no longer a relevant person.</p> <p>(3) If the chief executive ends the suspension of a person’s authority under subsection (2)—</p> <p>(a) the chief executive must give the person written notice that the suspension is ended; and</p> <p>(b) the suspension ends on the day the notice is given to the person.</p>	<p>Note for practice.</p>	<p>NA</p>
<p><b>s159 – omit &amp; insert</b></p> <p><b>159 Payments for care and maintenance</b></p> <p>(1) The chief executive may pay the allowance decided by the chief executive to a child’s carer <u>or long-term guardian</u> for the child’s care and maintenance.</p> <p>(2) Also, the chief executive may pay the amount decided by the chief executive towards expenses incurred in the care and maintenance of a person who has been a child in the custody or under the guardianship of the chief executive to the person or the person’s carer to help the person with the transition from being a child in care to independence.</p> <p><u>‘(3) A payment may be made to the person or the person’s carer under subsection (2) whether the person is a child or an adult.’</u></p> <p>(4) Subsections (1) and (2) have effect subject to appropriation by Parliament of an amount for the purposes.</p> <p>(5) For subsection (1), the amount of the allowance must be worked out under a written policy of the department about the payment of allowances to carers <u>or long-term guardians</u> for a child’s care and maintenance.</p>	<p>Note for practice that there is a discretion highlighted in terms of payments to carers and now LTGs.</p>	<p>Details to be included in LTG to a suitable person – Case plan.</p>
<p><b>s159A – omit &amp; insert</b></p> <p><b>159A Purpose</b></p> <p>The purpose of this chapter is to provide for service providers to appropriately and effectively meet the protection and care needs of children <u>and promote their wellbeing</u> by—</p> <p>(a) coordinating the delivery of services to children and families; and</p> <p>(b) exchanging relevant information, while protecting the confidentiality of the information.</p>	<p>Note for practice.</p>	<p>NA</p>
<p><b>s159B – omit &amp; insert</b></p> <p><b>159B Principles for coordinating service delivery and exchanging information</b></p> <p>The principles underlying this chapter are as follows—</p> <p>(a) the State is responsible for ensuring that children in need of protection receive protection and care services that ensure their safety and promote their wellbeing;</p> <p><u>‘(b) the State is responsible for ensuring that children and families receive the family support services that they need in order to decrease the likelihood of the children becoming in need of protection;’</u></p> <p>(c) the chief executive has the primary responsibility for investigating, assessing and responding to allegations of harm to children, including by making plans for their protection and care;</p> <p>(d) each service provider should contribute, within the provider’s own sphere of responsibility, to assessing and meeting the protection and care needs of children and supporting their families;</p> <p><u>‘(e) children in need of protection’, and children who may become in need of protection,’ and their families should receive coordinated services that meet their needs in a timely and effective way;</u></p>	<p>Note for practice – need to assist families to link in with support services.</p>	<p>NA</p>

<p>(f) service providers should work collaboratively and in a way that respects the functions and expertise of other service providers;</p> <p>(g) because a child's <u>safety, wellbeing</u> and best interests are paramount, their protection and care needs take precedence over the protection of an individual's privacy.</p>		
<p>s159BA – insert</p> <p><b><u>'159BA Who is a relevant child</u></b>  <u>'In this chapter—</u>  <b><u>relevant child</u></b> means—  <u>(a) a child in need of protection; or</u>  <u>(b) a child who may become a child in need of protection if preventative support is not given to the child or the child's family.'</u></p>	<p>Note definition.</p>	<p>NA</p>
<p>s159C – omit &amp; insert</p> <p><b>159C What is relevant information</b>  (1) In this chapter—  <b>relevant information</b> means—  (a) in relation to giving information to the chief executive or an authorised officer—information that the holder of the information reasonably believes may—  (i) help an authorised officer to investigate an allegation of harm or risk of harm to a child or assess a child's need for protection; or  '<u>(ii) help the chief executive take action, or decide if he or she reasonably suspects a child is in need of protection, under section 14; or</u>  (iii) help an authorised officer to investigate or assess, before the birth of a child, the likelihood that the child will need protection after he or she is born; or  (iv) help the chief executive in offering help and support to a pregnant woman under section 21A; or  (v) help the chief executive to develop, or assess the effectiveness of, a child's case plan; or  (vi) help the chief executive to assess or respond to the health, educational or care needs of a <u>relevant child</u>; or  (vii) otherwise help the chief executive to make plans or decisions relating to, or provide services to, a <u>relevant child</u> or the child's family; or  (b) in relation to giving information to another service provider—information that the holder of the information reasonably believes may help the service provider to—  (i) decide whether information about suspected harm or risk of harm to a child should be given to the chief executive; or  '<u>(ii) decide whether information about an unborn child who may need protection after birth should be given to the chief executive; or</u>  <u>(iii) help the chief executive to offer help and support to a pregnant woman under section 21A; or</u>  (iv) assess or respond to the health, educational or care needs of a child in need of protection; or  (v) otherwise make plans or decisions relating to, or provide services to, a child in need of protection or the child's family.  '<u>(c) in relation to the chief executive giving information to a service provider under section 159M(4)—information that the chief executive reasonably believes may help the service provider to—</u>  <u>(i) assess or respond to the health, educational or care needs of a relevant child; or</u>  <u>(ii) otherwise make plans or decisions relating to, or provide services to, a relevant child or the child's family.'</u>  '<u>(2) Relevant information may be information about—</u>  <u>(a) a relevant child, the child's family or someone else; or</u>  <u>(b) a pregnant woman or her unborn child.'</u>  (3) Relevant information may be comprised of facts or opinion.  (4) Relevant information does not include information about a person's criminal history to the extent it relates to a conviction—  (a) for which the rehabilitation period under the <i>Criminal Law (Rehabilitation of Offenders) Act 1986</i> has expired under that Act; and  (b) that is not revived as prescribed by section 11 of that Act.  '<u>(5) Relevant information does not include information mentioned in subsection</u></p>	<p>Note for practice when seeking an exchange of information under this provision.</p>	<p>NA</p>

<p><u>(1), definition relevant information, paragraph (b)(ii) or (iii) unless the mother of the unborn child or pregnant woman agrees to the information being provided to the other service provider before it is provided.’.</u></p>		
<p>s159D – <b>insert</b></p> <p><b>service provider</b> means—</p> <p>(a) a prescribed entity; or</p> <p>(b) another person providing a service to children or families.</p> <p><u>‘(c) a recognised entity.’.</u></p>	<p>Note the inclusion of the RE as a service provider.</p>	<p>NA</p>
<p>s159F – <b>omit &amp; insert</b></p> <p><b>‘159F Service providers’ responsibilities</b></p> <p><u>‘Service providers must take reasonable steps to coordinate decision-making and the delivery of services to relevant children and their families in order to appropriately and effectively meet the protection and care needs of children and support their families.’.</u></p>	<p>Note for practice.</p>	<p>NA</p>
<p>s159G – <b>omit &amp; insert</b></p> <p><b>159G Chief executive’s responsibilities</b></p> <p>(1) The chief executive is responsible for—</p> <p>(a) ensuring ways exist to coordinate the roles and responsibilities of service providers in promoting the protection of children <u>‘, child protection services and family support services’;</u> and</p> <p>(b) establishing ways to coordinate the roles and responsibilities of service providers relating to—</p> <p>(i) investigating and assessing particular cases of harm to children; and</p> <p>(ii) taking action to secure the protection of children and promote their welfare.</p> <p>(2) One of the ways in which the chief executive is to fulfil the responsibility under subsection (1)(b) is by establishing and participating in the SCAN system under part 3.</p>	<p>Note for practice.</p>	<p>NA</p>
<p>s159M – <b>omit &amp; insert</b></p> <p><b>159M Particular prescribed entities giving and receiving relevant information</b></p> <p>(1) This section applies to the following prescribed entities—</p> <p>(a) the chief executive;</p> <p>(b) an authorised officer;</p> <p>(c) the chief executive of a department that is mainly responsible for any of the following matters—</p> <p>(i) adult corrective services;</p> <p>(ii) community services;</p> <p>(iii) disability services;</p> <p>(iv) education;</p> <p>(v) housing services;</p> <p>(vi) public health;</p> <p>(ca) the chief executive officer of the Mater Misericordiae Health Services Brisbane Ltd (ACN 096 708 922);</p> <p>(d) the police commissioner;</p> <p>(e) the principal of a school that is accredited, or provisionally accredited, under the <i>Education (Accreditation of Non-State Schools) Act 2001</i>.</p> <p>(2) A prescribed entity mentioned in subsection (1) may give relevant information to any other service provider.</p> <p>(3) A service provider may give relevant information to a prescribed entity mentioned in subsection (1).</p> <p><u>‘(4) The chief executive may give, to any other service provider, relevant information mentioned in section 159C(1), definition relevant information, paragraph (c).’.</u></p>	<p>Note for practice that this amendment clarifies that the CE may provide information.</p>	<p>NA</p>
<p>s159O – <b>omit &amp; insert</b></p> <p><b>159O Release of information by a health services designated person</b></p> <p>(1) A health services designated person may, for this Act, give a relevant person or the Childrens Court confidential information if—</p>	<p>NA</p>	<p>NA</p>

<p>(a) for a relevant person or the Childrens Court—the information is relevant to the protection or <u>wellbeing</u> of a child; or</p> <p>(b) for a relevant person who is the chief executive and without limiting paragraph (a)—the information is relevant to the chief executive’s review, or the preparation of a supplementary report, under chapter 7A.</p> <p>(2) Subsection (1)(a) includes the giving of information, before a child is born, that is relevant to the protection or welfare of the child after he or she is born.</p> <p>(3) This section does not limit a power or obligation under this chapter to give relevant information.</p> <p>(4) In this section—  <b>confidential information</b> has the meaning given by the <i>Health Services Act 1991</i>, section 60.  <b>health services designated person</b> means a designated person under the <i>Health Services Act 1991</i>, section 60.  <b>relevant person</b> means—</p> <p>(a) the chief executive; or  (b) an authorised officer; or  (c) a police officer.</p>		
<p>s159R – omit &amp; insert</p> <p><b>159R Interaction with other laws</b></p> <p>(1) This chapter does not limit a power or obligation under another Act or law to give relevant information.</p> <p>(2) This part applies to information despite any other law that would otherwise prohibit or restrict the giving of the information.</p> <p><u>‘Examples of other laws for subsection (2)—</u></p> <ul style="list-style-type: none"> <li>• <u>Education (General Provisions) Act 2006, section 426</u></li> <li>• <u>Health Services Act 1991, section 62A(1)</u></li> <li>• <u>Youth Justice Act 1992, section 288</u></li> <li>• <u>Police Service Administration Act 1990, section 10.1’.</u></li> </ul>	NA	NA
<p>s171 – omit &amp; insert</p> <p><b>171 Application for warrant for apprehension of child</b></p> <p>(1) An authorised officer or police officer may apply to a magistrate for a warrant for apprehension of a child if—</p> <p>(a) under an order, the chief executive has been granted custody or guardianship of the child but has not been able to take the child into custody; or</p> <p>(b) the child has been unlawfully removed from a person’s custody or guardianship under this Act.</p> <p>(2) <u>The officer must prepare a written application that states the grounds on which it is made.</u></p> <p><u>‘(3) The written application must be sworn.’</u></p> <p>(4) The magistrate may refuse to consider the application until the applicant gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.</p> <p><i>Example—</i>  The magistrate may require additional information supporting the application be given by statutory declaration.</p>	Departmental staff need to be aware that an application for a warrant must be written and must be sworn.	NA
<p>s173 – omit &amp; insert</p> <p><b><u>‘173 Application by particular forms of communication and duplicate warrant</u></b></p> <p><u>‘(1) An application under section 171 may be made by phone, fax, radio or another form of communication if the authorised officer or police officer reasonably considers it necessary because of—</u></p> <p>(a) <u>urgent circumstances; or</u></p> <p>(b) <u>other special circumstances (including, for example, the officer’s remote location).</u></p> <p><u>‘(2) The application—</u></p> <p>(a) <u>may not be made before the officer prepares the written application under section 171(2); but</u></p> <p>(b) <u>may be made before the written application is sworn.</u></p> <p><u>‘(3) The magistrate may issue the warrant (the <b>original warrant</b>) only if the</u></p>	Note change in terminology to ‘original warrant’ and ‘duplicate warrant’ when seeking warrants under this provision and the relating requirements.	NA

<p><u>magistrate is satisfied—</u></p> <p><u>(a) it was necessary to make the application under subsection (1); and</u>  <u>(b) the way the application was made under subsection (1) was appropriate.</u></p> <p><u>‘(4) After the magistrate issues the original warrant—</u></p> <p><u>(a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the officer (for example, by sending a copy by fax), the magistrate must immediately give a copy of the warrant to the officer; or</u>  <u>(b) otherwise—</u></p> <p><u>(i) the magistrate must tell the officer the date and time the warrant is issued and the other terms of the warrant; and</u>  <u>(ii) the officer must complete a form of warrant, including by writing on it—</u></p> <p><u>(A) the magistrate’s name; and</u>  <u>(B) the date and time the magistrate issued the warrant; and</u>  <u>(C) the other terms of the warrant.</u></p> <p><u>‘(5) The copy of the warrant mentioned in subsection (4)(a), or the form of warrant completed under subsection (4)(b) (in either case the <b>duplicate warrant</b>), is a duplicate of, and as effectual as, the original warrant.</u></p> <p><u>‘(6) The officer must, at the first reasonable opportunity, send to the magistrate—</u></p> <p><u>(a) the written application complying with section 171(2) and (3); and</u>  <u>(b) if the officer completed a form of warrant under subsection (4)(b)—the completed form of warrant.</u></p> <p><u>‘(7) The magistrate must keep the original warrant and, on receiving the documents under subsection (6)—</u></p> <p><u>(a) attach the documents to the original warrant; and</u>  <u>(b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.</u></p> <p><u>‘(8) Despite subsection (7), if—</u></p> <p><u>(a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and</u>  <u>(b) the original warrant is not produced in evidence; the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.’.</u></p>		
<p><b>s174 – omit &amp; insert</b></p> <p><b>174 Warrants—procedure before entry</b></p> <p>(1) This section applies if an authorised officer or police officer is intending to enter a place under a warrant for apprehension of a child.</p> <p>(2) Before entering the place, the officer must do or make a reasonable attempt to do the following things—</p> <p>(a) identify himself or herself to a person present at the place who is an occupier of the place;  <u>‘(b) give the person a copy of the warrant or, if the entry is authorised by a duplicate warrant under section 173(5), a copy of the duplicate warrant.’;</u>  (c) tell the person the officer is permitted by the warrant to enter and search the place to find the child;  (d) give the person an opportunity to allow the officer immediate entry to the place without using force.</p> <p>(3) For subsection (2)(a), an authorised officer must produce the officer’s identity card to the person for inspection.</p> <p><i>Editor’s note—</i>  For a police officer, see the <i>Police Powers and Responsibilities Act 2000</i>, section 637 (Supplying police officer’s details).</p> <p>(4) However, the officer need not comply with subsection (2) if the officer reasonably believes immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.</p>	NA	NA
<p><b>s186 – omit &amp; insert</b></p> <p><b>186 Confidentiality of notifiers of harm or risk of harm</b></p> <p>(1) This section applies if a person (the <b>notifier</b>) notifies the chief executive, an authorised officer or a police officer that the notifier suspects—</p> <p>(a) a child has been, is being or is likely to be, harmed; or  (b) an unborn child may be at risk of harm after he or she is born.</p> <p>(2) The person who receives the notification, or a person who becomes aware of the identity of the notifier, must not disclose the identity of the notifier to another person unless the disclosure is made—</p> <p>(a) in the course of performing functions under this Act or a child welfare law or</p>	NA	NA

<p>interstate law of another State to another person performing functions under this Act or a child welfare law or interstate law of another State; or</p> <p>(b) under the <i>Child Protection (International Measures) Act 2003</i>, part 6; or</p> <p>(c) to the ombudsman conducting an investigation under the <i>Ombudsman Act 2001</i>; or</p> <p>(d) to the children’s commissioner in compliance with a notice given by the commissioner under the <i>Commissioner’s Act</i> requiring the disclosure; or</p> <p>(e) for the performance by the chief executive (adoptions) of his or her functions under the <i>Adoption Act 2009</i>; or</p> <p>(f) by way of evidence given in a legal proceeding under subsections (3) and (4).</p> <p>Maximum penalty—40 penalty units.</p> <p>(3) Subject to subsection (4)—</p> <p>(a) evidence of the identity of the notifier or from which the identity of the notifier could be deduced must not be given in a proceeding before a court or tribunal without leave of the court or tribunal; and</p> <p>(b) unless leave is granted, a party or witness in the proceeding—</p> <p>(i) must not be asked, and, if asked, can not be required to answer, any question that can not be answered without disclosing the identity of, or leading to the identification of, the notifier; and</p> <p>(ii) must not be asked to produce, and, if asked, can not be required to produce, any document that identifies, or may lead to the identification of, the notifier.</p> <p>(4) The court or tribunal must not grant leave unless—</p> <p>(a) it is satisfied—</p> <p>(i) the evidence is of critical importance in the proceeding; and</p> <p>(ii) there is compelling reason in the public interest for disclosure; or</p> <p>(b) the notifier agrees to the evidence being given in the proceeding.</p> <p>(5) In deciding whether to grant leave, the court or tribunal must take into account—</p> <p>(a) the possible effects of disclosure on the safety or <u>wellbeing</u> of the notifier and the notifier’s family; and</p> <p>(b) the public interest in maintaining confidentiality of notifiers.</p> <p>(6) As far as practicable, an application for leave must be heard in a way that protects the identity of the notifier pending a decision on the application.</p>		
<p>s187 – omit &amp; insert</p> <p><b>187 Confidentiality of information obtained by persons involved in administration of Act</b></p> <p>(1) This section applies to a person who—</p> <p>(a) is or has been—</p> <p>(i) a public service employee, a person engaged by the chief executive, or a police officer, performing functions under or in relation to the administration of this Act; or</p> <p>(ii) a licensee or the executive officer of a corporation that is a licensee; or</p> <p>(iii) a person employed or engaged by a licensee to perform functions under or in relation to the administration of this Act; or</p> <p>(iv) an approved carer or other person in whose care a child has been placed under this Act; or</p> <p>(v) a member of, or person employed or engaged by, a recognised Aboriginal or Torres Strait Islander agency; or</p> <p>(vi) a recognised entity or member of a recognised entity; or</p> <p>(vii) a person attending a case planning meeting or participating in another way in the development of a child’s case plan; or</p> <p>(viii) a person participating in the revision of a child’s case plan; or</p> <p>(ix) a member of the SCAN system, or a representative of a member, performing functions under or in relation to chapter 5A, part 3; or</p> <p>(x) a prescribed entity, or person engaged by a prescribed entity, performing functions under or in relation to chapter 5A, part 4; <u>or</u></p> <p><u>‘(xi) a person allowed to view a document or information under section 113; and’.</u></p> <p>(b) in that capacity acquired information about another person’s affairs or has access to, or custody of, a document about another person’s affairs.</p> <p>(2) The person must not use or disclose the information, or give access to the document, to anyone else.</p> <p>Maximum penalty—100 penalty units or 2 years imprisonment.</p> <p>(3) However, the person may, subject to section 186, use or disclose the</p>	<p>Note for practice inclusion of persons given leave to view material by way of an order under s113.</p>	<p>NA</p>

<p>information or give access to the document to someone else—</p> <p>(a) to the extent necessary to perform the person’s functions under or in relation to this Act; or</p> <p>(b) if the use, disclosure or giving of access is for purposes related to a child’s protection or <u>wellbeing</u>; or</p> <p><i>Example—</i> An approved carer in whose care a child has been placed under this Act may disclose relevant information about the child to a person, including, for example, a school teacher or member of the carer’s immediate family, to help the person understand and meet the child’s needs.</p> <p>(c) if the use, disclosure or giving of access—</p> <p>(i) relates to the chief executive’s function of cooperating with government entities that have a function relating to the protection of children or that provide services to children in need of protection or their families; or</p> <p>(ii) is for the performance by the chief executive (adoptions) of his or her functions under the <i>Adoption Act 2009</i>; or</p> <p>(iii) is otherwise required or permitted under this <u>Act (including, for example, this division or section 159M)</u> or another law.</p> <p>(4) Also, the person may disclose the information or give access to the document—</p> <p>(a) to another person, to the extent that the information or document is about the other person; or</p> <p>(b) to the chief executive or an authorised officer, to enable the proper administration of chapter 4.</p> <p>(5) To remove any doubt, it is declared that a person participating in the development, implementation or revision of a child’s case plan under this Act is performing a function under this Act.</p> <p>(6) In this section— <b>recognised Aboriginal or Torres Strait Islander agency</b> means a recognised Aboriginal or Torres Strait Islander agency under this Act before the commencement of the <i>Child Safety Legislation Amendment Act 2005</i>, section 64.</p>		
<p>s188 – <b>omit &amp; insert</b></p> <p><b>188 Confidentiality of information given by persons involved in administration of Act to other persons</b></p> <p>(1) This section applies if the chief executive, an authorised officer, another prescribed entity, a police officer or anyone else in the course of performing functions under or in relation to the administration of this Act, gives a person (the <b>receiver</b>) information or a document about another person’s affairs.</p> <p>(2) The receiver must not use or disclose the information, or give access to the document, to anyone else. Maximum penalty—100 penalty units or 2 years imprisonment.</p> <p>(3) However, the receiver may, subject to section 186, use or disclose the information or give access to the document to someone else—</p> <p><u>(a) if the use, disclosure or giving of access is authorised by the chief executive under section 189B; or</u></p> <p>(b) if the use, disclosure or giving of access is for purposes directly related to a child’s protection or <u>wellbeing</u>; or</p> <p>(c) if the use, disclosure or giving of access is for purposes directly related to obtaining information requested by the chief executive under section 246C; or</p> <p>(d) if the use, disclosure or giving of access is otherwise required or permitted by law.</p>	<p>Note for practice reference to s189B.</p>	<p>NA</p>
<p>s189A – <b>omit &amp; insert</b></p> <p><b>189A Making information available for Youth Justice Act 1992</b></p> <p>(1) The chief executive may, under arrangements made with the chief executive (youth justice), make information about a person’s affairs, acquired in the administration of this Act, available to officers of the department (<u>youth justice</u>) for the purposes of the <i>Youth Justice Act 1992</i>.</p> <p>(2) However, subsection (1) does not apply to information about the identity of a person mentioned in section 186(1) who notifies the chief executive, an authorised officer or a police officer that the person suspects a matter mentioned in section 186(1)(a) or (b).</p> <p>(3) This section is not limited by, and does not limit, chapter 5A.</p> <p>(4) Section 188 does not apply to information made available under subsection</p>	<p>NA</p>	<p>NA</p>

<p>(1).  (5) In this section—  <b>chief executive (youth justice)</b> means the chief executive of the department (youth justice).  <b>department (youth justice)</b> means the department in which the Youth Justice Act 1992 is administered.  Note—  The <i>Youth Justice Act 1992</i>, part 9, restricts the use, recording and disclosure of stated information.</p>		
<p>s189B – insert</p> <p><b>‘189B Research</b>  <u>‘(1) For the purpose of allowing a person to carry out research, the chief executive may authorise the person to have access to information relating to the administration of this Act, including information from an officer of the department or a client.</u>  <u>‘(2) The chief executive may only authorise the person to have access to the information if the chief executive is satisfied—</u>  (a) the research is consistent with a function of the chief executive under section 7; 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.  <u>‘(3) The chief executive may contact, or authorise the person to contact, a client to ask if they would like to participate in the research being carried out by the person.</u>  <u>‘(4) The chief executive may authorise the person to use or disclose the information, or give access to the information, to someone else.</u>  Note—  Under section 188, the person must not use, disclose or give access to the information unless it is authorised by the chief executive under this section.  <u>‘(5) In this section —</u>  <b>client</b> means any of the following persons—  (a) a child to whom this Act applies;  (b) a person who was a child to whom this Act applied;  (c) a member of the family of a person mentioned in paragraph (a) or (b);  (d) an approved carer under this Act.’.</p>	<p>Note for practice that access to material and contact with clients may be authorised if certain criteria are met.</p>	<p>NA</p>
<p>s195 – omit &amp; insert</p> <p><b>195 Compliance with provisions about explaining and giving documents</b>  (1) This section applies if, under a provision of this Act, the chief executive or an authorised officer or police officer is authorised or required to explain the terms and effects of an order or declaration, or give information or a notice to—  (a) a child; or  (b) a child’s parents, each of a child’s parents or at least 1 of a child’s parents; or  (c) a child’s carer.  (2) Also, this section applies if, under a provision of chapter 7, the chief executive is required to obtain the consent of a parent.  (3) The chief executive or officer need only comply with the provision to the extent that is reasonably practicable in the circumstances.  (4) Without limiting subsection (3), it is not, for example, reasonably practicable to comply with the provision in relation to a child’s parents if, after reasonable inquiries, the parents or their whereabouts can not be ascertained or, if ascertained, can not be contacted.  (5) Also, so far as compliance relates to telling the child about a matter, the chief executive or officer need only comply with the provision to the extent that the chief executive or officer reasonably considers is appropriate in the circumstances having regard to the child’s age or ability to understand the matter.  (6) However, if under the provision an authorised officer is required to give the child’s parents a copy of a document or information in writing, the officer must also give the child the information in writing the officer considers is appropriate in the circumstances having regard to the child’s age or ability to understand the information.  <u>‘(7) In this section—</u>  <b>parent</b> includes a long-term guardian of the child.’.</p>	<p>Note for practice - inclusion of LTG as a parent.</p>	<p>LTG’s will now be available as an event participant and will be available for selection in all forms, where parents / other adults can currently be selected.</p> <p>NOTE: An LTG must be selected as an event participant for these questions to display.</p>

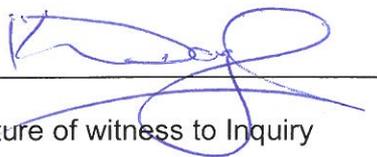
<p>s199 – <b>omit &amp; insert</b></p> <p><b>199 Further guiding principle</b>  (1) This chapter must be administered under the principle that it is desirable for an order relating to the protection of a child to have effect, and to be enforced, in the State in which the child resides.  (2) In exercising its jurisdiction or powers under this chapter, the Childrens Court must observe the principle mentioned in subsection (1).  (3) This section does not limit <u>'the application of chapter 1, part 2, division 1 or section 104'</u>.</p>	<p>Note for practice.</p>	<p>NA</p>
<p>s205 – <b>omit &amp; insert</b></p> <p><b>205 Meaning of parent for ch 7</b>  In this chapter—  <b>parent</b>, of a child, means each of the following persons—  (a) the child's mother or father;  (b) a person in whose favour a residence order or contact order for the child is in operation under the <i>Family Law Act 1975</i> (Cwlth);  <u>'(c) a person, other than the chief executive, having custody or guardianship of the child under—</u>      (i) a law of the State, other than this Act; or      (ii) a law of another State;  <u>(d) a long-term guardian of the child.'</u></p>	<p>Note the inclusion of LTG in the definition of parent.</p>	<p>LTG's will now be available as an event participant and will be available for selection in all forms, where parents / other adults can currently be selected.</p> <p>NOTE: An LTG must be selected as an event participant for these questions to display.</p>
<p>s210 – <b>omit &amp; insert</b></p> <p><b>210 Notice of decision</b>  (1) If the chief executive decides to transfer the order, the chief executive must give a written notice of the decision and a copy of the proposed interstate order to each of the following persons—  (a) the child;  (b) each person whose consent to the transfer is required;  (c) anyone else who the chief executive considers ought to be notified of the decision.  (2) The notice must be given within <u>3 business day</u> after the day the decision is made (the <b>decision day</b>).  (3) The notice must—  (a) state the decision day; and  (b) state that anyone who wishes to make a judicial review application in relation to the decision must make the application, and give notice of the application to the chief executive, within 28 days after the decision day.</p>	<p>Note for practice the change in calculation of timeframes.</p>	<p>NA</p>
<p>s246A – <b>omit &amp; insert</b></p> <p><b>246A Chief executive to review department's involvement with particular children</b>  (1) This section applies if—  (a) a child dies; and  (b) within 3 years before the child's death—      (i) the chief executive—          (A) became aware of alleged harm or alleged risk of harm to the child <u>'in the course of performing functions under or relating to the administration of this Act'</u>; or          (B) took action under this Act in relation to the child; or      (ii) the child was born and, before the child was born, the chief executive reasonably suspected that the child might be in need of protection after he or she was born.  (2) The chief executive must carry out a review about the department's involvement with the child.</p>	<p>Note for practice.</p>	<p>NA</p>

<p>s246C – <b>omit &amp; insert</b></p> <p><b>246C Chief executive may seek information from entities</b>  For the review, the chief executive may ask another entity who the chief executive reasonably considers has information about the child for information about the child that was relevant to the child’s protection or <u>wellbeing</u> while the child was alive.</p>	NA	NA
<p>s246E – <b>omit &amp; insert</b></p> <p><b>246E Protection from liability for giving information to chief executive</b>  (1) This section applies if a person, acting honestly, gives the chief executive information for the review.  ‘(2) <u>The person is not liable, civilly, criminally or under an administrative process, for giving the information.</u>’  (3) Also, merely because the person gives the information, the person can not be held to have—  (a) breached any code of professional etiquette or ethics; or  (b) departed from accepted standards of professional conduct.  ‘(4) <u>Without limiting subsections (2) and (3)—</u>  (a) <u>in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and</u>  (b) <u>if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person—</u>  (i) <u>does not contravene the Act, oath or rule of law or practice by giving the information; and</u>  (ii) <u>is not liable to disciplinary action for giving the information.</u>’.</p>	Note for practice.	NA
<p>Schedule 2 - <b>insert</b></p> <p><u>‘refusing a request to review a case plan under section 51VA</u>  <u>the person making the request</u>’.</p>	Departmental staff need to be aware that there is a new reviewable decision relating to the refusal to review a case plan upon request (pursuant to s51VA).	NA
<p>Schedule 3 – <b>omit &amp; insert</b></p> <p><u>‘charge</u>, of an offence, means a charge in any form, including, for example, the following—  (a) a charge on an arrest;  (b) a notice to appear served under the <i>Police Powers and Responsibilities Act 2000</i>, section 382;  (c) a complaint under the <i>Justices Act 1886</i>;  (d) a charge by a court under the <i>Justices Act 1886</i>, section 42(1A), or another provision of an Act;  (e) an indictment.</p> <p><u>criminal history</u>, of a person, means all of the following—  (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this definition, including spent convictions;  (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this definition;  (c) every disqualification order made under the <i>Commission for Children and Young People and Child Guardian Act 2000</i> in relation to the person, whether before or after the commencement of this definition;  (d) every disqualification order and offender prohibition order made under the <i>Child Protection (Offender Prohibition Order) Act 2008</i> in relation to the person, whether before or after the commencement of this definition.</p> <p><u>long-term guardian</u>, of a child, means a person, other than the chief executive, who is granted long-term guardianship of the child under a child protection order.  <u>Note—</u>  See section 61(f)(i) and (ii).</p>	Note for practice.	NA

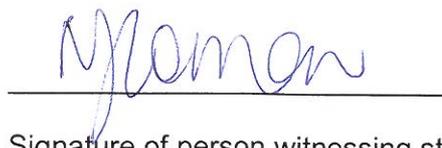
<p><b><u>member</u></b>, of a person's household—</p> <p>(a) includes—</p> <p>(i) someone who lives in the person's home; and</p> <p>(ii) an adult who, because of the nature of their contact with the child in need of protection and the context in which that contact happens, may create an unacceptable level of risk to the child; but</p> <p>(b) does not include a parent of the child living in the person's home if the child was placed in the care of the person under section 82(1).</p> <p><b><u>parent</u></b> for—</p> <p>(a) chapter 2, part 2—see section 23; or</p> <p>(b) chapter 2, part 3—see section 37; or</p> <p>(c) chapter 2, part 3AA—see section 51AA; or</p> <p>(d) chapter 2, part 3A, see section 51F; or</p> <p>(e) chapter 2, part 4—see section 52; or</p> <p>(f) chapter 7—see section 205; or</p> <p>(g) other provisions—see section 11.</p> <p><b><u>Editor's note</u></b>—</p> <p>The definition parent applying to the provisions mentioned in paragraphs (a) to (f) is the same.</p> <p><b><u>prohibiting event</u></b>, for chapter 4, part 2, division 4, subdivision 3, see section 140AB.</p> <p><b><u>relevant child</u></b>, for chapter 5A, see section 159BA.</p> <p><b><u>spent conviction</u></b> means a conviction—</p> <p>(a) for which the rehabilitation period under the <i>Criminal Law (Rehabilitation of Offenders) Act 1986</i> has expired under the Act; and</p> <p>(b) that is not revived as prescribed by section 11 of that Act.</p> <p><b><u>temporary custody order</u></b> means an order under chapter 2, part 3AA.</p> <p><b><u>transition order</u></b> see section 65A(2).<sup>1</sup></p> <p><b><u>carer</u></b>, of a child, means the entity in whose care the child has been placed under section 82(1).</p>		
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### Attachment Marking

The preceding 55 pages is the annexure mentioned and referred to as ATTACHMENT 5b  
in the statement of Kenneth Dagley taken on 25/10/2012



Signature of witness to Inquiry



Signature of person witnessing statement

## COMMUNICATION SCHEDULE ~ TRANSITION PREPARATION & GO-LIVE PHASES

### Phase 2 Child Protection Reform (CP Legislative Amendments)

Communication Channels Communication Groups	Transition Preparation and Data Preparation Phase						Go-live Phase						
	Communication Tools / Channels						Communication Tools / Channels						
	Week beginning 20 June 2011	Week beginning 27 June 2011	Week beginning 4 July 2011	Week beginning 11 July 2011	Week beginning 18 July 2011	Week beginning 25 July 2011	Week beginning 1 August 2011	Week beginning 8 August 2011	Week beginning 15 August 2011	Week beginning 22 August 2011	Week beginning 29 August 2011 29 August = Go-live date	Week beginning 5 Sept 2011	Week beginning 12 Sept 2011
<b>Training / Information activities</b>			<b>5 July:</b> Train-the-Trainer for Learning Facilitators @ Warilda	<b>14 July:</b> Information sessions commence	Staff to attend Information sessions	Staff to attend Information sessions	Staff to attend Information sessions	Staff to attend Information sessions	Staff to attend Information sessions	Staff to attend Information sessions	Staff to attend Information sessions	Go-live support	Court Coordinators Conference
<b>Other preparation activities</b>					Regional ICMS data completion to occur  UAT (Iteration 3)	Regional ICMS data completion to occur	Regional ICMS data completion to occur	Regional ICMS data completion to occur	Regional ICMS data completion to occur	<b>26 August:</b> ICMS data readiness activities completed			
<b>General emails: Updates to relevant stakeholders</b>	<b>UAT Regional Recruitment;</b> UAT update; participants required; dates (TBA) <b>Target Audience;</b> South East and Brisbane Region Directors and Managers <b>Action Officer;</b> Caroline Elder / Marija Joyce		<b>Information Sessions;</b> Training Plan to be distributed to regions <b>Target Audience;</b> Regional Directors, CSSC Managers, CSAHSC Manager <b>Action Officer;</b> Andrea Lauchs / Marija Joyce		<b>ICMS Data cleansing readiness;</b> Data cleansing readiness requirements to be distributed <b>Target Audience;</b> Regional Directors, CSSC Managers, CSAHSC Manager, SSOs <b>Action Officer;</b> Caroline Elder / Marija Joyce ~~~~~ <b>Go-live readiness:</b> Supplementary information provided to Court Co-ordinators to support applications <b>Target Audience:</b> Court Coordinators Court Services <b>Action Officer:</b> Melissa Scott	<b>ICMS Data cleansing readiness;</b> Reminder of data cleansing readiness requirements <b>Target Audience;</b> Regional Directors, CSSC Managers, CSAHSC Manager, SSOs <b>Action Officer;</b> Caroline Elder / Marija Joyce ~~~~~ <b>UAT Regional Recruitment;</b> UAT update; participants required; dates <b>Target Audience;</b> Regional Directors and Managers <b>Action Officer;</b> Caroline Elder / Marija Joyce	<b>Go Live Readiness;</b> Go-live readiness checklists to be distributed <b>Target Audience;</b> Regional Directors, CSSC Manager, CSAHSC Manager <b>Action Officer;</b> Andrea Lauchs/ Marija Joyce ~~~~~ <b>Go Live Support;</b> Information update Website available with resources, provide link <b>Target Audience;</b> Regional Directors, CSSC Managers, CSAHSC Manager, Central Office Managers <b>Action Officer;</b> Marija Joyce / Deidre Mulkerin	<b>RD Teleconferenc;</b> Reminder for RDs of go-live preparation activities <b>Target Audience;</b> Regional Directors <b>Action Officer;</b> Marija Joyce	<b>Go Live Readiness;</b> ICMS shutdown & start-up details to be distributed. YJ changes promoted <b>Target Audience;</b> Regional Directors, CSSC Manager, CSAHSC Manager <b>Action Officer;</b> Caroline Elder / Marija Joyce ~~~~~ <b>Go Live Readiness:</b> Reminder of staff of practice changes (new CSPM, Act etc) <b>Target Audience:</b> All CSS staff <b>Action Officer:</b> Andrea Lauchs/Marija Joyce ~~~~~ <b>Go Live Support;</b> Information update Hotline available from 22 August <b>Target Audience;</b> Regional Directors, CSSC Managers, CSAHSC Manager, Central Office Managers <b>Action Officer;</b> Marija Joyce / Deidre Mulkerin	<b>Go Live Support;</b> Information update re Go-live successful, data readiness successful, supports available, Service desk contact details, acknowledgements <b>Target Audience;</b> Regional Directors, CSSC Managers, CSAHSC Manager, Central Office Managers <b>Action Officer;</b> Marija Joyce / Deidre Mulkerin	<b>Lessons Learnt:</b> Email containing Lessons Learnt template to be distributed <b>Target Audience;</b> Central Office Managers, Service Desk; Regional Directors; Director Court Services, CAAHSC Manager <b>Action Officer;</b> Marija Joyce	<b>Information Session:</b> Child Protection Partnerships Forum – Reform agenda item for NGO engagement <b>Target Audience:</b> Peak Bodies <b>Action Officer:</b> Belinda Mayfield/Marija Joyce	
<b>Infonet: "News &amp; events" (Quick messages for staff)</b>				<b>Infonet:</b> CP Leg Update – key message that staff will begin attending Information sessions							<b>Infonet:</b> Summary message from Senior Executive: Go-live successful.		
<b>Issues papers</b>		Data readiness plan											
<b>Infonet: "Working together articles" (Corporate Comms stories + photos)</b>						<b>Infonet:</b> Preparing for CP Leg article – possibly use UAT photos					<b>Infonet:</b> Go-live successful article		

## Training Plan

# RSDO Implementation of the Phase Two – Child Protection Reform (Legislative Amendments) Implementation

June 2011

<b>Document Owner</b>	Andrea Lauchs, A/Manager, Child Safety Practice Improvement
<b>Program Name</b>	Child Protection Reform Phase 2 (CP Leg Amendments, CSPM changes and HOF initiatives)
<b>Workgroup</b>	Child Safety Practice Improvement, SDIS, RSDO
<b>Document Status:</b>	Final
<b>Product ID</b>	

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<b>Approved By</b>	<b>Signature</b>	<input type="checkbox"/> <b>Endorsed</b>	
	<b>Name:</b> Marija Joyce Director, Child Safety Practice Improvement Service Delivery Improvement & Support, RSDO	<b>Phone</b>	<b>Date</b>
		<b>3404 3383</b>	

## 1 Introduction

### 1.1 Purpose

The purpose of this training plan is to provide details of training deliverables and activities required by the project to ensure impacted users have the required skills so that the project can be successfully delivered and transitioned into operations. This plan should be drafted with the guidance of the Project Senior User. This report describes the project training requirements:

- Scope
- Assumptions, risks, dependencies and constraints
- Objectives
- Approach
- Deliverables
- Delivery methods
- Target audience
- Locations of training
- Curriculum
- Content development
- Training environments
- Quality assurance
- Go-live support
- Resources
- Budget
- Evaluation

### 1.2 Background

- RSDO are accountable for implementation of the tertiary and secondary service delivery components of the Child Protection Reforms (Phase 1 and Phase 2).
- The key aims of the Child Protection Reforms are:
  - To increase the level of secondary sector support available to vulnerable families to improve the wellbeing of children, thus reducing the likelihood of these families entering the tertiary (statutory) child protection system
  - Over time afford the tertiary child protection system greater capacity in enabling quality outcomes for children in out-of-home care
- The reforms will impact on the secondary and tertiary services in the child protection system.

In September 2010 the *Child Protection and Other Acts Amendment Act 2010* was passed in the Queensland Legislative Assembly. The amendments to the *Child Protection Act 1999* support the implementation of Helping Out Families (HOF) initiative, to improve the operation of court orders, enhance the ability of the department to secure children's safety by providing a new, temporary custody order, to recognise the role of suitable long term guardians and to improve decision making.

In October 2010 the amendments that were not dependent on Integrated Client Management System (ICMS) changes were implemented. To allow for development of functionality within

ICMS to support the legislative changes the remaining amendments were to be implemented in July 2011.

The 2010/11 natural disasters throughout Queensland had serious impacts on the department's priorities and resourcing. As a result, the progression of the *Child Protection Legislative Amendments* project was postponed.

The department is currently working towards a 29 August 2011 commencement date for the remaining provisions of the Amendment Act 2010.

## 1.3 Project Definition

The *Phase 2 Child Protection Reforms – (Legislative Amendments) Implementation* project will ensure business readiness by the end of August 2011 for the transition to the amended Child Protection Legislation.

**Procedure:** To ensure the changes to the Child Safety Practice Manual (CSPM), program resources and guidelines support effective practice for service delivery.

**Practice:** To ensure statewide practice supports compliance with current child protection legislation.

**System:** To ensure the ICMS supports current child protection legislation and the updated CSPM.

**People:** To ensure all impacted stakeholders are informed and ready for the transition to the amended child protection legislation through regular consultation and effective communication.

**Outcome:** To enhance the ability of the department to protect children and young people through implementation of the Child Protection Legislative Amendments.

## 1.4 Strategy

Learning Intervention Strategy – Child Protection Reform Agenda – Phase 2

Learning Intervention Strategy – Appendix to CP Reform Agenda – Phase 2

Communication Schedule – Child Protection Reform Agenda – Phase 2 – Legislative Amendments implementation

## 2 Scope

### 2.1 In scope

#### 2.1.1 Stage 1 – July- August 2011

Mandatory training and information sessions will be provided to the following stakeholders in each region:

- Child Safety Officers (CSOs)
- Team Leaders
- Senior Practitioners
- Court Coordinators
- Family Group Meeting Convenors

- Child Safety Support Officers (CSSOs)
- SCAN Team Coordinators
- One Chance at Childhood (OCC) Coordinators and CSOs
- Business Support Officers (BSOs)
- Regional Intake Service (RIS) staff
- Child Safety Service Centre (CSSC) management team
- Placement Services Unit (PSU) staff
- CSS Regional Staff
- CBD staff including Complaints, MOCRU, Court Services, Case Review, Child Protection Development, Child Safety Practice Improvement,
- Housing, Youth Justice, Disabilities Practice Improvement

## 2.1.2 Stage 2 – September - November 2011

- Court Coordinators
- Senior Practitioners
- Team Leaders
- Child Safety Officers (including OCC CSOs)
- CSSC Managers
- OCC Coordinators
- Court Services
- PSU staff

## 2.1.3 Stage 3 – February – March 2012

- To be determined

## 2.2 Exclusions

- Standard CSO training and ICMS core training modules. These will be modified to reflect the legislative, Child Safety Practice Manual and ICMS amendments from 29 August 2011.

## 3 Source documents

The training plan has been developed based on the following documents:

- Project Initiation Documentation
- RSDO Learning Intervention Strategy
- RSDO Communications Schedule

## 4 Risk and issues

All risks and issues will be captured within the RSDO CPR State Wide Project Log and will be reviewed regularly. Critical risks and issues will be regularly reported to the Statewide Implementation Group (SWIG) by the Project Manager. Low-level issues and risks will be managed locally and resolutions are to be coordinated through the Project Manager.

## 5 Deliverables

# Phase 2 - Child Protection Reform Training Plan

The deliverables of the training team are:

Deliverable	Activity
<b>Training and Documentation Plan</b>	Develop and signoff of Training and Development Plan
<b>Curriculum Design</b>	Develop detailed design for each module of training that will be delivered
<b>Documentation Design</b>	Detailed design of the user support material
<b>Training Materials</b>	Develop all training materials required to support training delivery including: scenarios, exercises, content etc
<b>Documentation</b>	Develop user support material including user documentation, quick reference guides etc
<b>Implementation Toolkit</b>	Develop Toolkit which facilitates ability to deliver training solution
<b>Trainers' Toolkit</b>	Develop Toolkit which aids in the delivery of training solution
<b>Coach the trainer Program</b>	Training Program to ensure readiness of trainers to deliver training solution
<b>Training &amp; Documentation Handover Strategy</b>	Develop a model and strategy to ensure ongoing training and development
<b>Training Needs Analysis</b>	Complete training needs analysis to determine Who, What, Why, When, Where and How of the training solution
<b>Training Logistics</b>	Complete room bookings, classroom setup, system log-ins etc
<b>Training Schedule</b>	Schedule users on training courses
<b>Trained Trainers</b>	Ensure readiness of trainers
<b>Trained Users</b>	Training delivered to all end users
<b>Training Evaluation &amp; Assessment Reports</b>	Completed Evaluation Surveys and Assessment Tests
<b>Training Lessons Learnt Report</b>	Conduct activities to gather lessons learnt

## 6 Delivery methods

The delivery method will be in accordance with the Learning Intervention Strategy – Child Protection Reform Agenda – Phase 2.

### 6.1 Training pre-requisites

The end user training sessions have pre-requisites assigned to support and optimise the training experience. Pre-requisites for the Child Protection Reform Agenda Phase 2 are:

- **Stage 1 – Reform Agenda:** Knowledge of purpose and intent of overall reform agenda, including elements of Phase 1 incorporated into child safety practice in late 2010.
- **Stage 2 – Practice Implications:** Attendance at initial reform agenda information session, and application of legislative, procedural and ICMS amendments from “go live” on 29 August 2011
- **Stage 3 – Practice Improvement and Embedding:** Knowledge of reflective practice processes to enhance all staff ability to successfully embed significant practice change in a high demand work environment.

## 7 Quality Assurance

### 7.1 Roles and responsibilities

As outlined in the training strategy, curriculum and training materials will be reviewed by the training sign off group. Instructional design, readability and consistency of training materials remain the responsibility of the training team. Training materials have 3 sign off points:

1. Training/instructional design/quality – ensuring adherence to best principles and standards
2. Content – certifying business process is correct and in line with Department of Communities policy. It is the responsibility of this role or conduit to obtain policy review
3. Technical – certifying the technical writing is correct and in line with functionality

### 7.2 Training Design Principles

<b>Flexibility</b>	<p>Ensure all modules are built in a way to enable tailoring to different audience needs and learning preferences</p> <ul style="list-style-type: none"> <li>• Develop and deliver small, manageable chunks of learning.</li> <li>• Build modular training which allows for content sharing across roles and agencies and for training in agency-specific functionality/scenarios where possible</li> <li>• Provide a multi-tiered curriculum which focuses on business process education and incorporates business scenarios and activities into the process training.</li> <li>• Provide additional training and support to critical locations (eg. locations with the highest volume or activity level)</li> <li>• Provide “Business” Trainers to assist in the contextualisation of training materials to specific audiences/business contexts within service areas</li> </ul>
<b>Relevancy</b>	<p>Ensure that all training is relevant to individual job tasks</p> <ul style="list-style-type: none"> <li>• Delivered to the end users “Just-In-Time” to apply learning to their everyday work.</li> <li>• Maximise interactive, hands-on training. Apply learning by doing strategies to maximise retention.</li> <li>• Provide users with a number of different support mechanisms since individuals differ in terms of the type of support that they find most effective (eg. training, access to Super Users, Help Desk, Hotlines, detailed documentation).</li> <li>• Provide users with an understanding of how new tasks fit into day-to-day job activities.</li> <li>• Build education/communication procedures early in the implementation to ensure that users are sufficiently exposed to project prior to attending end user training.</li> <li>• Provide users with an opportunity to use processes/systems (eg. practice exercises, etc.) to perform their job tasks before implementation.</li> </ul>
<b>Economy</b>	<p>Ensure that the training is effective and efficient through:</p> <ul style="list-style-type: none"> <li>• Focusing on procedures that are high volume, essential to system start-up, difficult or different from existing procedures by prioritising users into 4 groups. These groups will range from high transaction users that must be trained before implementation (priority 1) to occasional users that can be trained after implementation (priority 4)</li> <li>• Minimising periods during which users are out of their jobs for training.</li> <li>• Avoiding over training, end users should only complete training courses that are necessary to perform their individual roles – “Just Enough”</li> <li>• Ensuring education/communication programs prior to training provide a base level of knowledge about project.</li> </ul>
<b>Validity</b>	<p>Ensure that the training solution is relevant to their job tasks through:</p> <ul style="list-style-type: none"> <li>• Developing individual learning paths for each target learner</li> <li>• Utilise a multi-level evaluation method which assesses the target learner immediately after the training and post implementation. This approach, in accordance with Kirkpatrick’s model which allows for the assessment of the</li> </ul>

	effectiveness of the training solution both in the short and long term.
<b>Accessibility</b>	Ensure that the training solutions are available to all targeted learners through: <ul style="list-style-type: none"> <li>• Providing training solutions that are not limited by location or impairment</li> <li>• Provide a post implementation training model which ensures that all future and current end users have access to training and support.</li> </ul>
<b>Consistent</b>	Ensure a consistent approach is taken to the training and development initiative across the sub-programs through: <ul style="list-style-type: none"> <li>• Adopting similar approaches to design, development, delivery, analysis and evaluation of the training initiative</li> <li>• Utilise consistent methodologies, tools and approaches</li> </ul>

## 7.3 Evaluation of materials

Evaluation will occur via the following methods:

- Training Evaluation survey
- Monitoring of operational performance reports (OPR) and dashboard indicators
- Reflective practice tools utilised within each CSSC

## 8 References

### 8.1 Document Consultation

Name	Position	Function
Marija Joyce	Director, Child Safety Practice Improvement	Approve
Caroline Elder	Manager, ICMS Business Development Team, Child Safety Practice Improvement	Support
Jude Harrison	Manager, Learning Solutions Unit	Support
Jan Marshall	Manager, Organisational Change and Training	Support
Erin Flynn	Principal Project Manager - Service Delivery Project Office	Support

### 8.2 Budget

The Phase 2 Child Protection Reforms Child Protection Legislative Amendments Implementation project is being funded within existing resources and does not require any further funding or budget expenditure.

Each region will cover the costs of flights and accommodation for those attending the sessions.

Training will be delivered using existing resources and materials, from within each region.

Venues will be sourced from existing resources from Department of Communities.

Costs of catering for the training will be met by the Region.

## Attachment A – Reform Agenda Training Strategy

### Stage 1

Timing	Stakeholders	Activity	Purpose	Learning Outcomes	Delivery: How, where and by Whom
July – August 2011	<p>All Child Safety Service delivery staff in each region and central office.</p> <p>Recognised Entities should be invited to attend the information sessions.</p>	3 hour Information Session	<p>For Child Safety Service delivery staff to be advised of the Child Protection Reform agenda, including amendments to the <i>Child Protection Act 1999</i>, changes to the Child Safety Practice Manual and outstanding Helping Out Families initiatives (such as the Securing Permanency Project) and to apply this information to their practice.</p> <p>Mandatory attendance required for this session to ensure all staff readiness for “go live” on 29 August 2011.</p>	<ul style="list-style-type: none"> <li>Explain the purpose of the Child Protection Reform agenda, Phase 1 (implemented July- October 2010) and Phase 2.</li> <li>Explain the elements of change to the legislation, Child Safety Practice Manual, ICMS</li> <li>Articulate and explore the key practice value changes to align with learning outcomes (cumulative harm, long-term guardian as a parent, and securing permanency)</li> <li>Provide information packages to all staff with details about all reform areas, including ICMS wireframes, for staff to be familiar with the new environments when they “go live” on 29 August 2011.</li> </ul>	<ul style="list-style-type: none"> <li>Sessions will be delivered by the Client Management Learning Unit learning consultants.</li> <li>Session times and venues will be confirmed locally.</li> </ul>

### Stage 2

Timing	Stakeholders	Activity	Purpose	Learning Outcomes	Delivery; How, where and by Whom
September – November 2011	<p>Court Coordinators</p> <p>Court Services</p>	One day Workshop	Conduct professional conversations with Court Coordinators and Court Services staff about best practice court processes, and the impact of newly introduced orders.	<ul style="list-style-type: none"> <li>Apply specialist knowledge to new court processes and orders.</li> <li>Discuss and evaluate implications on practice for Court Coordinators and child safety staff.</li> <li>Appraise staff practices and decision making.</li> <li>Provide feedback on staff practices and decision making.</li> <li>Establish areas of need for further development to embed the new court processes, resulting in best practice outcomes for children.</li> </ul>	<ul style="list-style-type: none"> <li>Session will be delivered by CSPI</li> <li>Annual Court Coordinators Conference, Brisbane 15 September 2011</li> </ul>

## Phase 2 - Child Protection Reform Training Plan

	Senior Practitioners		Conduct professional conversations with Senior Practitioners about the implementation of Phase 2 reforms and the overall practice impact across the child protection continuum.	<ul style="list-style-type: none"> <li>Appraise staff practices and decision making.</li> <li>Establish areas of need for further development to embed new child protection practices, resulting in better outcomes for children.</li> </ul>	<ul style="list-style-type: none"> <li>Session will be delivered by CSPI</li> <li>Annual Senior Practitioner Forum, Brisbane, October 2011</li> </ul>
September – November 2011	Government and Non-government partner agencies	1 hour Information Sessions	Participants to understand the key changes resulting from Phase 2 of the Child Protection Reform agenda.	<ul style="list-style-type: none"> <li>Understand the key changes to child safety services practice.</li> </ul>	<ul style="list-style-type: none"> <li>Face-to-face</li> <li>With all relevant services within the Regions by nominated staff.</li> <li>With all relevant services by Court Services.</li> </ul>
October – November 2011	Child Safety Service Centre Staff	3 hour workshop	This stage will involve a deeper level of learning and focus on specific staff in designated roles. Activity based learning will be role specific and focus on the implementation of child protection reforms to the various roles along the child protection continuum. It is anticipated that both stages will contribute to a culture of professional practice development in their Child Safety Service Centres.	<ul style="list-style-type: none"> <li>Analyse and assess harm and cumulative harm as part of any child protection response, including ongoing intervention.</li> <li>Assess and formulate rationale for level of intervention including the type of order if applicable and differentiate when engagement is required with a long term guardian as a parent.</li> <li>Evaluate the child's need for emotional stability and security, as part of any child protection response, to deliver effective and timely permanency decisions</li> </ul>	<ul style="list-style-type: none"> <li>Face-to-face</li> <li>Sessions to be facilitated by CMLU learning consultants</li> <li>Support for the sessions will be provided by Senior Practitioners and/or Court Co-ordinators.</li> </ul>

\* Stage 3 to be determined.

## Phase 2 Child Protection Reform Readiness Checklist

<b>Plan distribution list</b>	Regional Director, Director PSU, CSSC Manager
<b>Developed by</b>	Child Safety Practice Improvement
<b>Region/ Work Group completing checklist</b>	

### PLANNING CHECKLIST

LOCAL PREPARATION PHASE		GO-LIVE PHASE		
TRANSITION PREPARATION 4 July – 26 August	TRAINING 12 July – 26 August	GO_LIVE PHASE 29 Aug – 30 October	TRAINING 1 October – 30 November	EMBED and SUSTAIN PHASE Ongoing
<b>Knowledge Management</b> <ul style="list-style-type: none"> <li>• Staff awareness of key changes</li> <li>• Staff receipt of relevant communication supporting go live</li> <li>• Promote benefits of major reforms to key staff</li> <li>• Stage 1 information sessions organised (date and time) by regions for full staff participation</li> <li>• Recognised Entities invited to attend Stage 1 information session</li> <li>• Staff informed of relevant Stage 1 information session to attend</li> <li>• Staff allocated time for Stage 1 information session attendance</li> </ul>	<b>Stage 1 Information Session</b> <ul style="list-style-type: none"> <li>• All staff attendance</li> <li>• Recognised Entity representative attendance</li> </ul>	<b>Knowledge Management</b> <ul style="list-style-type: none"> <li>• Staff awareness of key changes</li> <li>• Staff allocated time for Child Safety Practice Manual reading</li> <li>• Local resources reviewed for accuracy</li> <li>• Locally saved practice resources replaced with updated practice resources</li> <li>• Stage 2 Module training organised (date and time) by regions</li> <li>• Staff allocated time for Stage 2 Module training attendance</li> <li>• Staff receipt of relevant communication associated with CP reform</li> </ul>	<b>Stage 2 Training - Modules</b> <ul style="list-style-type: none"> <li>• Court Coordinator attendance at Court Coordinator Conference</li> <li>• Senior Practitioner attendance at Senior Practitioner Forum</li> <li>• Key staff attended Ongoing Intervention Module training</li> <li>• Key staff attended Harm Module training</li> <li>• Key staff attended Permanency Planning and Timely Decision Making Module training</li> <li>• CP Reform infonet resource page promoted to all staff</li> </ul>	<b>Knowledge Management</b> <ul style="list-style-type: none"> <li>• Senior Practitioners have appropriate knowledge to deliver Modules in CSSC on ongoing basis</li> <li>• All staff have attended Stage 2 Module training</li> <li>• Ongoing promotion of quality practice</li> </ul>

**Phase 2 Child Protection Reform Readiness Checklist**

<ul style="list-style-type: none"> <li>• Staff aware of go-live date for CP Reform</li> <li>• CP Reform infonet resource page promoted to all staff</li> <li>• CP Reform Help Mailbox promoted to all staff</li> </ul> <p><b>Data Readiness</b></p> <ul style="list-style-type: none"> <li>• Data readiness plan received and distributed to staff</li> <li>• Requirements for data readiness and benefit promoted to key staff</li> <li>• Data readiness activities completed by staff</li> </ul>		<ul style="list-style-type: none"> <li>• Managers promoted go-live through celebrative activities</li> </ul>		
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## Phase 2 Child Protection Reform Readiness Checklist

**NOTE:** Identify important activities and dates below.

Area	Key actions	Action by	Action due	Action status
<b>ICMS Readiness Activities</b>	a) Identify key staff within your work group to complete readiness activities	Managers	29/07/11	
	b) Identify and communicate required readiness activities	Managers	29/07/11	
	c) Complete readiness activities for Intake and MOC events, IA Events, OI Events, All Court Events	Team Leaders, CSOs, Court Coordinators, other relevant staff	26/08/11	
Area	Key actions	Action by	Action due	Action status
<b>Training</b>	d) Organise Stage 1 Information Sessions per CSSC	Manager	9/07/11	
	e) Allow time for all staff attendance at Stage 1 information session	Manager	9/07/11	
	f) All Staff have attended Stage 1 information session	Manager	26/08/11	
	g) Identify key staff for Stage 2 Module training	Manager	1/10/11	
	h) Organise attendance of key staff at Stage 2 Module training	Manager	30/11/11	
	i) Key staff attendance at all three modules	Manager	30/11/11	
	j) Ongoing facilitation of Module Delivery through Senior Practitioner	Manager	Ongoing / As required	
Area	Key actions	Action by	Action due	Action status
<b>Go-live Support</b>	k) Staff receipt of key correspondence including communication outlining impacts of additional legislative amendments and practice implications	Management Group	22/08/11	

## Phase 2 Child Protection Reform Readiness Checklist

Area	Key actions	Action by	Action due	Action status
	l) Promote benefits of major reform to key staff	Management Group	Ongoing	
	m) CP Reform infonet resource page promoted to all staff	Management Group	26/08/11	
	n) CP Reform Help Mailbox promoted to all staff	Manager	22/08/11	
Area	Key actions	Action by	Action due	Action status
<b>Promote Quality Practice</b>	o) Discuss key impacts and areas of legislative, policy and practice change	Management Group	26/08/11	
	p) Identify current gaps/barriers which may effect quality practice	Management Group	Ongoing	
	q) Promote local strategies for addressing identified gaps/barriers to effecting quality practice	Management Group	26/08/11	
	r) Staff allocated time for Child Safety Practice Manual reading	Supervisors	30/09/11	
	s) Staff have read CSPM and Practice Resources and can access local support staff	Relevant staff	30/09/11	
	t) Promote the use of Senior Practitioner Case Reads to identify accurate application of CP Reform	Manager	Ongoing	
	u) Promote the use of CS_PPAL to the management group as per usage guidelines	Manager	Ongoing	
Area	Key actions	Action by	Action due	Action status
<b>Evaluation</b>	a) Identify and communicate issues and achievements locally, regionally and to Child Safety Practice Improvement	Manager	Ongoing	
	b) Participate in lessons learnt activities as requested	Identified Staff	As Requested	

# Child Protection Reform Phase 2 Information Presentation

Developed by the Learning Solutions Unit, Child Protection Development and  
Child Safety Practice Improvement 2011  
June 2011 ©

## **Session notes**

Welcome the participants introduce the presentation topic – Child protection reform information presentation.

If facilitator does not know the participants – introduce themselves

Outline housekeeping issues:

- WH&S including emergency exit plan
- Bathrooms
- Mobile phones to silent/vibrate

Outline the method of instruction for the session. In this session we will be using the following methods to provide the learning.

- Face-to-face individual and group work
- Discussion based learning
- Information delivery

The timing of the session will be:

- 1.5 Hours
- 15 min break
- 1.25 Hours

Set up a 'parking lot' for questions that may be raised during the session. Advise participants that they have post-its on the table. Write down any questions and stick them on the parking lot.

## Purpose Statement

To advise Child Safety Service delivery staff of the child protection reform agenda, including amendments to the *Child Protection Act 1999*, changes to the Child Safety Practice manual and outstanding Helping Out Families initiatives (such as the Securing Permanency Project) and to apply this information to their practice from 29 August 2011.

### Session notes

The facilitator should mention:

This information session is the first stage of the second phase of the child protection reforms.

The session will inform staff of the amendments to the *Child Protection Act 1999* and other child protection reforms (such as changes to the I& A outcomes, amendments to the CSPM and ICMS ). Participants will begin to explore the changes so that they will be sufficiently resourced to apply the child protection reforms to their daily practice when they 'GO LIVE'.

There are three tiers of change:

- Legislative amendments
- Policy and procedural updates to reflect the legislative amendments (eg. Child safety Practice manual)
- ICMS

It is likely that through this session you will be thinking "how does this affect me".

It is true that some of the reforms will have a greater impact on specific roles however, it is important that all Child Safety Staff have knowledge of the amendments, as all the changes will impact on all service delivery functions of the Department.

Due to the number of reforms additional supports will be available for you through:

The 'take home' resource materials.

"CP Leg amendments help" mailbox will be open for queries from staff. Mailbox name...

URL site address .....

Web site for FAQ's

## Learning Outcomes

**At the end of this session you will know about the child protection reforms which take effect on the 29th August 2011. These include:**

**Amendments to the *Child Protection Act 1999*:**

- Definitional changes
- Long-term guardianship order to suitable person
- New orders
- Changes to existing orders
- General legislative amendments
- Court proceedings

**Procedural and practice changes (Child Safety Practice Manual) and ICMS modifications**

**Note there will not be any specific ICMS training**

### **Session notes**

Display the learning outcomes and allow participants time to read them.

Facilitator should mention:

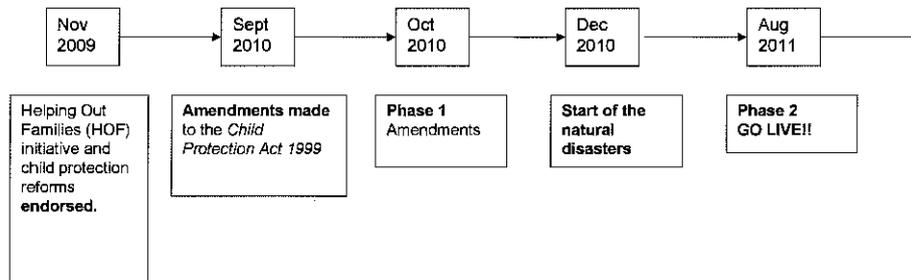
During the session they are going to: engage in concept discussions. These discussions are the primary teaching and learning tool for the session. Through a series of question focused activities we will discover, discuss and share their learning.

The child protection reforms take effect or 'go live' on the 29th August. On this date:

- The provisions of the Child Protection Act 1999 will commence
- The next version of the Child Safety Practice Manual will be released
- The updates to ICMS will be released

It is vital that you are all ready and able to work with these reforms from this date. Throughout the session if you have unanswered questions please write them on a sticky note and put them on the 'parking station'. If they are not answered in the FAQ web page we will endeavour to get an answer and add it to the FAQ page or you can send it through to the mailbox.

## The story so far



### Session notes

This slide provides an overview of the child protection reforms since 2008 to current.

Facilitator to highlight that these changes have been building since June 2008.

Phase 1 of the reforms occurred in October 2010.

In **November 2009**: Helping Out Families (HOF) initiative and Child Protection reforms were endorsed.

In **September 2010**: Amendments to the *Child Protection Act 1999* proclaimed to support the implementation of Helping out Families (HOF) initiative, to improve the operation of court orders, promote the stability and permanency for children in care clarify the status of long-term guardians.

In **October 2010**: Phase 1 Legislative amendments that were not dependant on Integrated Client Management System (ICMS) changes commenced

In **Dec 2010 - Jan 2011**: Natural disasters throughout Queensland seriously impacted on the department's priorities and resourcing

**July 2011: Phase 2 Stage 1** Information session

**Stage 2 Practice implications:** This stage will involve a deeper level of learning and focus on specific staff in designated roles. Activity based learning will be role specific and focus on the implementation of child protection reforms to the various roles along the child protection continuum. It is anticipated that both stages will contribute to a culture of professional practice development in their Child Safety Service Centres.

**Stage 3 Practice Improvement and Embedding:** This stage will involve an overview of permanency planning to all Child Safety Service delivery

## Why are we making these changes?

The legislative amendments and range of revisions to the Child Safety Practice Manual underpin key strategic reforms of the child protection system aimed at achieving better outcomes for children and young people and their families, both at risk of entering the statutory system and subject to ongoing intervention.

Facilitator to read out the slide to the participants

The legislative amendments and range of revisions to the Child Safety Practice Manual underpin key strategic reforms of the child protection system aimed at achieving better outcomes for children and young people and their families, both at risk of entering the statutory system and subject to ongoing intervention. These reforms include:

Initiatives to strengthen early intervention and prevention, including Helping Out Families and the implementation of Aboriginal and Torres Strait Islander Family Support Services

Reducing the overrepresentation of Aboriginal and Torres Strait Islander children and families through the Blueprint for Implementation Strategy

Recognising the cumulative nature of harm, the need for holistic assessments and collaboration and information sharing across service providers

A strengthened focus on engagement and participation of children and their families in decisions impacting on their lives

Goal directed case plans that support timely permanency decisions for children

Improved outcomes for children and young people in out-of-home care through child health passports, education support plans, cultural support plans and transition from care plans for young people 15 – 17 years; each of these incorporated within the individual child's comprehensive case plan

Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle and recording of participation of Recognised Entities in decision making

The child protection reforms relate to state initiatives, together with the Queensland Government's commitment to broader national child protection reforms identified in the range of documents listed below.

Facilitators to refer to the supporting documents:

### State

*Child Protection and Other Acts Amendment Bill 2010*

[www.legislation.qld.gov.au/Bills/53PDF/2010/ChildProOAAmB10.pdf](http://www.legislation.qld.gov.au/Bills/53PDF/2010/ChildProOAAmB10.pdf)

*Blueprint for implementation strategy: Reducing the over-representation of Aboriginal and Torres Strait Islander children in Queensland's child protection system*

<http://www.communities.qld.gov.au/resources/childsafety/child-protection/blueprint-strategy.pdf>

### National

*National Framework for Protecting Australia's Children*

[http://www.communities.qld.gov.au/childsafety/child-protection/about/national-framework\\_page](http://www.communities.qld.gov.au/childsafety/child-protection/about/national-framework_page)

*Protecting Australian children: Analysis of challenges and strategic directions: CDSMC National Approach for Child Protection Project*

<http://www.aifs.gov.au/nch/pubs/reports/cdsamac/protecting.pdf>

*Protecting Children is Everyone's Business: National Framework For Protecting Australia's Children 2009–2020*

[http://www.coag.gov.au/coag\\_meeting\\_outcomes/2009-04-30/docs/child\\_protection\\_framework.pdf](http://www.coag.gov.au/coag_meeting_outcomes/2009-04-30/docs/child_protection_framework.pdf)

## **Aims of the changes**

- Strengthen early intervention and prevention, including Helping Out Families and the implementation of Aboriginal and Torres Strait Islander Family Support Services
- Reduce the overrepresentation of Aboriginal and Torres Strait Islander children

Facilitator to highlight the positive intent of the changes as listed on the slide. Initiatives to strengthen early intervention and prevention, including Helping Out Families and the implementation of Aboriginal and Torres Strait Islander Family Support Services

Reducing the overrepresentation of Aboriginal and Torres Strait Islander through the *Blueprint for Implementation Strategy*

## **Aims of the changes cont.**

- Recognising the cumulative nature of harm, the need for holistic assessments and collaboration and information sharing across service providers
- Improve outcomes for children and young people in out of home care
- Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle and recording of participation of Recognised Entities in decision making

Facilitator to highlight the positive intent of the changes as listed on the slide.

Recognising the cumulative nature of harm, the need for holistic assessments and collaboration and information sharing across service providers

Improved outcomes for children and young people in out-of-home care through child health passports, education support plans, cultural support plans and transition from care plans for young people 15 – 17 years; each of these incorporated within the individual child's comprehensive case plan

Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle and recording of participation of Recognised Entities in decision making

## **Aims of the changes cont.**

- Strengthened focus on engagement and participation of children and their families in decisions impacting on their lives
- Goal directed case plans that support timely permanency decisions for children

Facilitator to highlight the positive intent of the changes as listed on the slide.

A strengthened focus on engagement and participation of children and their families in decisions impacting on their lives

Goal directed case plans that support timely permanency decisions for children

## Stages of learning

Stage 1, child protection reform information session to advise all Child Safety Services staff of the legislative, procedural and systems changes.

Stage 2, focuses on practice improvement and embedding of child protection reforms.

Stage 3, practice implications with a focus on securing permanency.

### **Session notes**

There are three stages to the learning plan that has been developed around this second phase of Child Protection reforms

The first phase of reforms commenced in late 2010. This involved RIS, HOF, FSA pilot in the SE Region, introduction of RIS and SCAN team system reforms.

For this second phase of reforms there is a 3 stage strategy to embed the learning. They are as follows:

- Stage one – This current child protection reform information session to advise all Child Safety Services staff of the legislative, procedural and systems changes (July – August 2011)
- Stage two – 'Practice Implications face to face' (September - November 2011) This stage will involve a deeper level of learning and focus on specific staff in designated roles. Activity based learning will be role specific and focus on the implementation of child protection reforms to the various roles along the child protection continuum. Having been in effect for a period of time this session will focus on practice improvement and embedding the child protection reforms. Exploring the actual practice implications of these reforms
- Stage three – 'Practice Implications (delivery February – March 2012). This will involve activity based learning and will focus on characteristics that contribute to effective permanency outcomes for children. The responsibility of all staff to plan towards permanency across the child protection continuum is emphasised along with any identified issues from stage 2.

At the end of the 3 stages of learning you will be able to implement the following key learning outcomes and practice values:

- Analyse and assess harm and cumulative harm as part of any child protection response, including ongoing intervention.
- Assess and formulate rationale for level of intervention including the type of order if applicable and differentiate when engagement is required with a long term guardian as a parent.
- Evaluate the child's need for emotional stability and security, as part of any child protection response, to deliver effective and timely permanency decisions.

## Definitional changes

### Cumulative harm

How will this affect your clients?

#### **s9 What is harm**

- (1) *Harm, to a child, is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing.*
- (2) *It is immaterial how the harm is caused.*
- (3) *Harm can be caused by—*
  - (a) *physical, psychological or emotional abuse or neglect; or*
  - (b) *sexual abuse or exploitation.*
- (4) *Harm can be caused by—*
  - (a) *a single act, omission or circumstance; or*
  - (b) *a series or combination of acts, omissions or circumstances.*

*Child Protection and other Acts Amendment Act 2010*

#### **Session notes**

Take the participant through the new definitions then generate a large group discussion by asking the participants how these definitional changes will impact on their child protection practice.

Cumulative harm: Refer to supplementary notes # 1 for additional information

Practice resource "Recording your professional assessment about whether the child is in need of protection" Page 29 - 32 Information Session Resources.

Cumulative harm has been common practice language and has appeared in the CSPM for some time, it is now embedded in legislation. The definition of "harm" has been extended so that it is clear that harm can be the cumulative result of a number of incidents of abuse or neglect and can include a series or combination of acts, omissions or circumstances over an extended period of time. The new definition also recognises the cumulative nature of harm, reinforcing that multiple events of harm, which do not individually meet the threshold for statutory intervention, are to be considered collectively in determining whether a child has been harmed.

Depending on the size of the group you might ask participants to discuss the implication of this definitional change – how will this affect your clients, in small groups or with the person next to them prior to engaging in a large group discussion. Alternatively you could use this question to conduct a large group discussion.

## Definitional changes cont.

### Parent

How will this affect your clients?

Definition of parent has expanded to include long-term guardians :

- impacts on rights and responsibilities of long-term guardians
- impacts on responsibilities and obligations of Child Safety Services to long-term guardians and parents

### Session notes

Facilitator to read the new definition's related to parent / long term guardian then generate a large group discussion by asking the participants how these definitional changes will impact on their child protection practice.

Long-term guardians are included in the definition of parent under the *Child Protection Act 1999* (sections 23; 37; 51AA; 51F; 52; 67; 117 and 205).

Parent / Long term guardian: refer to supplementary notes #2 for additional information

### **ICMS example 2 & 3 pages 22 & 23 Information Session Resources**

Rights & responsibilities of long-term guardians (some examples):

- Right to be treated as a parent in the event a notification is made about a child subject to long term guardianship order
- Will be considered a parent in any subsequent applications and court hearings and will have the same rights as a parent
- Additional responsibilities to meet the needs of the child subject to long-term guardian order
- Additional responsibilities to provide information to and contact with the child's family and parents
- Additional responsibilities to inform Child Safety Services, in writing, when a child is no longer living with them, and provide details of where the child is.
- Responsibility to allow Child Safety Services to have face to face contact with the child once every 12 months

Responsibilities and obligations of Child Safety Services staff (some examples):

- Obligation to inform long-term guardian of actions in relation to an I & A, and the outcome
- Information provisions such as advising where a child is placed
- Obligation to serve copies of court documents, including application, affidavit court orders
- Complete a long-term guardianship case plan as soon as practicable after the granting of a long-term order
- Provide opportunities, at least once every 12 months, for the child to make comments or queries, or request a review of, their case plan.
- Complete new ICMS form "LTG contact review report"
- Some transition from care support available, if the child was subject to a custody or guardianship order prior to LTG order being made.

## **LTG other practice implications**

- Additional key items to be included in case plan prior to applying for LTG other order
- New case planning requirements
- Revised procedures & resources for assessing LTG other
- Two new ICMS forms in OI Event
- Child Safety Practice Manual

For further information the participants will need to refer to the CSPM when it is released on 29 August 2011.

## New orders

### Temporary custody order

How will this affect your clients?

- different to a TAO
- child has been assessed as being in need of protection and is at unacceptable risk of being harmed if order is not made

### **Session notes**

Facilitator to read the definitions for the two new orders and then have a discussion as how it will impact on their practice

Temporary custody order: refer to supplementary notes #3 for additional information

– Changes to the specific sections of the Child Protection Act 1999 (see supplementary notes)

Also the **Practice Paper** in the take home kit – Temporary custody orders’ Page 25 Information Session Resources

**ICMS example 3** Temporary custody order page 24 Information Session Resources

The facilitator should inform participants of the following: Changes to the specific sections of the Child Protection Act 1999 (see supplementary notes) A temporary custody order, for up to three business days, may be applied for to allow for the Department to decide the appropriate action to meet the child’s protection and care needs, where the child has already been assessed as being in need of protection. The child needs to be at an unacceptable risk of harm and the action of the TCO is to ensure the immediate safety of the child. The department could apply for a temporary custody order when a child is already known to the department and is assessed as in need of protection. For example, because another child of the family is in the custody or guardianship of the chief executive, or a child is already the subject of a child protection care agreement with the parents but an unacceptable risk to the child becomes immediate and the child needs to be taken into the chief executive’s custody. Application for the TCO is a significant decision, therefore involvement from the recognised entity is required for all Aboriginal or Torres Strait Islander children. Significant additions to ICMS with the introduction of new forms however the process is very similar to TAO application process

A temporary custody order, for up to three business days, may be applied for to allow for the Department to decide the appropriate action to meet the child’s protection and care needs, where the child has already been assessed as being in need of protection. The child needs to be at an unacceptable risk of harm and the action of the TCO is to ensure the immediate safety of the child.

Application for the TCO is a significant decision, therefore involvement from the Recognised Entity is required for all Aboriginal or Torres Strait Islander children.

• Significant additions to ICMS with the introduction of new forms however the process is very similar to TAO application process.

Ask participants - How will a TCO affect your clients?

## New orders cont.

### Transition order

How will this affect your clients?

- provides a period of time (up to 28 days) for the department to prepare and assist a child to return to the care of their parents
- the Court has discretionary power to grant a Transition Order when it does not extend, renew, or revoke a short term order in some circumstances
- Conditions of the existing order continue until the date stated in the Transition Order

### Session notes

Transition order: refer to supplementary notes # 4 for additional information

**ICMS example 7** Transition order page 33 Information Session Resources.

The facilitator should inform participants of the following:

- Transition Order is a new order which provides a period of time (up to 28 days) for the department to prepare and assist a child to return to the care of their parents.
- A transition order can only be granted when the original child protection order was
- Short-term custody to Chief Executive
- Short-term guardianship
- Long-term guardianship to Chief Executive or suitable person

The Transition Order:

- Supports the child
- May reduce the disruption or distress which may be experienced by the child by having a planned transition to the care of their parents.
- Enables the parents the time to prepare and demonstrate their readiness to resume care for the child.

The Court has discretionary power to grant a Transition Order when it does not extend, renew or revokes a short term order. Also when the Court decides an appeal against the making of the order in favour of a person other than the Chief Executive.

## Changes to existing orders

### Temporary assessment order

Implications for your clients?

- extending the term of a temporary assessment order from three days to three business days

### Court assessment order

Implications for your clients?

- the Court must consider Chief Executive's views prior to making provisions about a child's contact with their family

### **Session Notes**

Facilitator to explain the changes to the two existing orders and ask what the practice implications might be:

Temporary Assessment Order: refer to supplementary notes # 5 for additional information

Extending the term of a temporary assessment order from three days to three business days

Ask participants - What are the implications for your clients?

Court Assessment Order: refer to supplementary notes # 6 for additional information  
Changed so that the Court must consider CE's views about contact with family, incl whether contact should be supervised and duration and frequency of contact.

Allows the department to make a submission about supervised family contact when the Court is considering making a court assessment order with supervised family contact

Ask participants - What are the implications for your clients?

## Changes to existing orders cont.

### Extension, variation & revocation of CPO

Implications for your clients?

- court must have regard to the child's need for emotional security and stability before extending or granting another CPO
- consider revoking an order that is no longer appropriate and desirable for the child's protection
- practice change from Crown Law advice that a CPO cannot be extended beyond its maximum duration

### Session notes

Extension, variation & revocation of CPO – refer to supplementary notes #8 for additional information

Change in practice identified through Crown Law advice:

- A CPO cannot be extended beyond its maximum duration (1 year for directive, protective supervision order or 2 yrs for short term custody/guardianship) – s62. If maximum duration has been ordered and a further order is sought as child's care and protection needs have not been resolved, a new application for a cpo must be made prior to expiry of the order. An application to extend can only be made if maximum duration of order was not initially granted.
- A CPO can only be varied within type to modify the type of order. Orders which can be varied are directive, protective supervision, custody and LTG. E.g. LTG C.E. to LTG other

s59 – Amend so that the court must have regard to the child's need for emotional security and stability before extending or granting another CPO.

s65 – Amend so that considerations for revoking an order include that it is no longer "appropriate and desirable for the child's protection" and to take into account the child's need for emotional security and stability. (LTG will have "parent" status for a fresh CPO made at the same time)

Change in practice identified through Crown Law advice:

A CPO cannot be extended beyond its maximum duration (1 year for directive, protective supervision order or 2 yrs for short term custody/guardianship) – s62. If maximum duration has been ordered and a further order is sought as child's care and protection needs have not been resolved, a new application for a cpo must be made prior to expiry of the order. An application to extend can only be made if maximum duration of order was not initially granted.

A CPO can only be varied within type to modify the type of order. Orders which can be varied are directive, protective supervision, custody and LTG.

s99 - Amendment to the order granting custody or guardianship of the child continues until the application is decided unless the Children Court orders an earlier end to the order.

Facilitator to explain that there have been changes made to non parties Sep Rep status and transition orders. Significant practice changes which will impact upon:

- Purposeful case plans
- Casework and completing agreement actions
- Evidence gathering
- Will need to ensure court planning systems and writing skills are embedded in all CSSC's

Refer participants to take home resource for additional information.

Ask participants – What will the implications be for your clients?

## **General legislative amendments**

### **Assessment care agreement**

Implications for your clients?

- an assessment care agreement can be entered into with only one parent of a child
- reasonable effort must be made to locate the other parent
- may not enter into an assessment care agreement if the other parent refuses

### **Session Notes**

Facilitator to read the changes to the assessment care agreement and ask the participants to consider what the practice implications would be.

Assessment Care Agreement: refer to supplementary notes #7 for additional information

Facilitator to read the changes to the assessment care agreement listed below:

- Allowing the department to enter into an assessment care agreement (maximum period 30 days) with only one parent of a child where it is impractical to obtain the other parents consent or reasonable attempts have been made to obtain the other parents consent.
- If only one parent was involved in the agreement reasonable effort must be made to locate the other parent
- May not enter assessment care if the other parent refuses
- All attempts to contact and obtain consent must be recorded.
- Cannot be used when a child is subject to LTG other

Ask participants - What are the implications for your clients?

## **General legislative amendments cont.**

### **Notifying QPS**

- if the chief executive becomes aware of an allegation of harm to a child and reasonably believes it may involve a criminal offence
- whether or not the chief executive suspects the child is in need of protection

### **Case planning and working with families**

- case plan must be approved within 10 business days of being developed

### **Session notes**

Facilitator to inform participants of the legislative general amendments.

Notifying QPS – s14(2) of the Child Protection Act 1999: refer to supplementary notes #9 for additional information

Also reflected in **ICMS example 1** “general updates” page 26 Information Session Resources

This clarifies the department’s obligation to notify the Queensland Police Service if the chief executive becomes aware of an allegation of harm to a child and reasonably believes it may involve a criminal offence whether or not the chief executive suspects the child is in need of protection.

Possible examples may include:

- Conducting an I&A when a parent left their child unsupervised in the car
- Seeing electronic media which indicates child pornography
- When a parent admits that they are dealing / producing drugs

Implications for clients may include informing parents that what they say may be passed onto the police.

Case planning and working with families : refer to supplementary notes #10 for additional information

Amended so that a case plan must be approved within 10 business days of being developed.

Make sure the case plan write up is written into the predictive planner.

## **General legislative amendments cont.**

Orders for dept contact with a child on adjournment of CAO or CPO

- allow the court to make an interim order for an authorised officer or police officer to have contact with a child during the period of adjournment
- includes enter and search powers

### **Session notes**

Orders for dept contact with a child on adjournment of CAO or CPO: refer to supplementary notes #11 for additional information.

Amended to allow the court to make an interim order for an authorised officer or police officer to have contact with a child during the period of adjournment., including enter and search powers. There is a specified need to identify self and provide copy of the order to person involved.

What are the practice implications for this change?

Answers may include:

More contact visits for the CSO

Where not granted custody, adjournment for PSO/DO

Refer participants to take home resource for additional information.

## Other child protection reform changes

Investigation and Assessment outcomes:

- recording of abusive action and resulting harm
- inclusion of failure to protect, harm and unacceptable risk
- inclusion of new outcomes for children already subject to ongoing intervention
- clarification about recording the person most responsible for the harm

**significant changes to the assessment and outcome form in ICMS**

### Session notes

New I&A outcome question; refer to supplementary notes # 12 for additional information

**ICMS example 5** Assessment and Outcome form page 27 - 28 Information Session Resources.

"Is the child already subject to ongoing intervention?"

Revised I & A question

refer to supplementary notes # 13 for additional information

"Is the child at unacceptable risk of harm, with no parent able and willing to protect them from harm?"

New Outcomes of I & A for Ongoing Intervention cases including unborn children: refer to supplementary notes # 14 for additional information

Substantiated – OI continues

Unsubstantiated – OI continues.

Clarification about recording the person most responsible for the serious harm to the child. refer to supplementary notes #15 for additional information

Includes additional options for person responsible:

'not applicable - child under 10 years' when the abusive act was committed by a child under 10 years of age

'not applicable - other person', when the abusive act was committed by:

a child aged 10 years or over who does not have the developmental ability or capacity to understand the consequences of their actions

any person who does not live in the child's home or does not have regular access to the child in the home

'not able to be identified' when it is unclear who was responsible for the abusive action.

Refer participants to take home resource for additional information.

## Harms Table

**Table 1. Record abuse and resulting harm**

D1S1-1=Abusive action	D1S1-2=Resulting harm
emotional	P C E C
physical	P C E C
sexual	P C E C
neglect	P C E C
failure to protect	P C E C

Facilitator to use the following as an explanation of the Harms table:

The 'Record abuse and harm' section includes the abusive action, the person responsible for the abusive action and the resulting harm to the child, including failure to protect.

The 'Record unacceptable risk of harm' section includes the unacceptable risk of harm and the parent responsible for any future risk to the child, including failure to protect.

An incident of abuse resulting in harm to a child is recorded as the 'abusive action'. The abusive action includes acts of commission or omission, as well as failure to protect a child from abuse caused by another person. The 'resulting harm' refers to the impact experienced by the child.

When determining resulting harm consider the information gathered during the I&A process to identify presence of cumulative harm, as this will influence decisions about ongoing intervention.

Refer to Practice paper 'Recording your professional assessment' and link the harms back to cumulative harm

# Harms Table cont.

Table 2. Record unacceptable risk of harm

Unacceptable risk of harm caused by:
<input type="checkbox"/> physical abuse
<input type="checkbox"/> sexual abuse
<input type="checkbox"/> emotional abuse
<input type="checkbox"/> neglect
<input type="checkbox"/> failure to protect from physical abuse
<input type="checkbox"/> failure to protect from sexual abuse
<input type="checkbox"/> failure to protect from emotional
<input type="checkbox"/> failure to protect from neglect
Unacceptable risk of <b>emotional harm</b> caused by:
<input type="checkbox"/> physical abuse
<input type="checkbox"/> sexual abuse
<input type="checkbox"/> emotional abuse
<input type="checkbox"/> neglect
<input type="checkbox"/> failure to protect from physical abuse
<input type="checkbox"/> failure to protect from sexual abuse
<input type="checkbox"/> failure to protect from emotional
<input type="checkbox"/> failure to protect from neglect

## Other key CSPM changes

Additional CSPM changes:

- additional considerations in locating an appropriate placement for an Aboriginal or Torres Strait Islander child – a person who lives near the child's family or a person who lives near the child's community or language group
- reviewable decision regarding respite arrangements

Facilitator to refer participants to these key procedural changes in chapters 5 and 8 and reinforce that these changes are a result of the overarching strategic messages about:

***Aboriginal and Torres Strait Islander Children:*** refer to 'Information Session Resources' #16 for additional information

***Reviewable decisions regarding respite*** refer to 'Information Session Resources' #17 for additional information

## Other key CSPM changes cont.

Additional CSPM changes:

- change in definition to commencement of child health passport
- new requirements regarding the management of psychotropic medication – case planning, reviews, consent

Facilitator to refer participants to these key procedural changes in chapters 5 and 8 and reinforce that these changes are a result of the overarching strategic messages about:

**Child Health Passport:** refer to 'Information Session Resources' #18 for additional information

**Psychotropic medication:** refer to 'Information Session Resources' #19 for additional information

## Other key CSPM changes cont.

Additional CSPM changes:

- changes in decision making for all travel - intrastate, interstate & overseas
- placement of a child with an employee of the Department of Communities
- Application for warrant / special warrant

Facilitator to refer participants to these key procedural changes in chapters 5 and 8 and reinforce that these changes are a result of the overarching strategic messages about:

**Decision making regarding travel:** refer to 'Information Session Resources' #20 for additional information

**Placement of a child with an employee of the Department of Communities:** refer to 'Information Session Resources' #21 for additional information

**Application for warrant / special warrant:** refer to 'Information Session Resources' #22 for additional information

## Where to get additional information

For further information about the child protection reforms:

- refer to your 'Information Session Resources'
- CP Legislative amendments help mailbox  
CS\_Practiceimprovement@communities.qld.gov.au
- ICMS practice resources, FAQs and other practice resources will be on the practice resources webpage...  
URL site address ...

The facilitator should remind the participants that additional information can be obtained from the following sources:

Information Session Resources' URL site address - Including FAQ page & ICMS Quick Reference Guide

**CS\_Practiceimprovement@communities.qld.gov.au** Facilitator to encourage staff to develop strategies and use the forums within the service centre to continue their knowledge and consider the application of these reforms. As well as the new releases on the 29 August

CSPM when it is released ICMS when released (look for the differences from the 29th August)

*Child Protection Act 1999*

## Final questions

### **Session Notes**

Facilitator to revisit any parking lot questions and see if any have been answered.

Any unanswered questions will be forward to Practice Improvement and will be added to the FAQ web site.

Give participants with an opportunity to ask any final questions

The facilitator should allow participants an opportunity to ask any final questions and to clarify any doubtful points. Once again refer participants to the 'Information Session Resources' for additional information.

The facilitator should prompt participants to suggest how they will embed this information prior to "go live". Suggestions may include discussions in team meetings, staff meetings, supervision, regional forums.

## Conclusion

Now that we are at the end of the session you are aware of the child protection reforms which will take effect on the 29<sup>th</sup> August 2011 related to:

### Changes to the *Child Protection Act 1999*:

- Definitional changes
- New orders
- Changes to existing orders
- Legislative general amendments
- Court proceedings

### Changes to the CSPM

### Changes to ICMS

### Session Notes

Facilitator to re-read the learning outcomes and ask participants if they have been achieved.

From these Legislative amendments you will see changes in:

- ICMS
- CSPM
- Policy
- Additional resources
- Implications for your clients
- Your practice

These changes will result in better outcomes for Children.

Facilitator to stress the importance of familiarising themselves with the following on the 29 August:

CSPM when it is released

ICMS when released (look for the differences from the 29<sup>th</sup> August)

CP Act 1999

# Child Protection Reform Phase 2

## Information Session Resources

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## Introduction

In June 2008, Cabinet endorsed the development of a new whole of government strategic statement to improve the protection of children.

In November 2009, Cabinet endorsed the Helping Out Families (HOF) initiative 2009-2010 and Child Protection reforms, designed to reduce child abuse and neglect, reduce subsequent reporting in relation to children who had already had contact with the department, reduce the number of children in out of home care and improve secondary and tertiary responses to children and families. Amendments to current the Child Protection Act 1999 were necessary to support the reforms.

In September 2010 the *Child Protection and Others Acts Amendments ACT 2010* was passed in the Queensland Legislative Assembly. The amendments to the *Child Protection Act 1999* provided the legal framework to improve the operation of court orders, improve decision making, enhance the ability of the department to secure children's safety by providing a new Temporary custody order, recognise the role of suitable long term guardians, and support the implementation of Helping out Families (HOF) initiative.

In October 2010 the amendments that were not dependant on Integrated Client Management System (ICMS) changes were implemented. To allow for development of functionality within ICMS to support legislative changes the remaining amendments were initially to be implemented in July 2010.

The recent natural disasters throughout Queensland seriously impacted on the department's priorities and resourcing. As a result the progression of the Child Protection Legislative Amendments project was postponed. Until now! The remaining amendments, procedural and practice changes will commence on Monday 29 August 2011.

The legislative amendments and range of revisions to the Child Safety Practice Manual underpin key strategic reforms of the child protection system aimed at achieving better outcomes for children and young people and their families, both at risk of entering the statutory system and subject to ongoing intervention. These reforms include:

- Initiatives to strengthen early intervention and prevention, including Helping Out Families and the implementation of Aboriginal and Torres Strait Islander Family Support Services.
- Reducing the overrepresentation of Aboriginal and Torres Strait Islander through the *Blueprint for Implementation Strategy*.
- Recognising the cumulative nature of harm, the need for holistic assessments and collaboration and information sharing across service providers.
- A strengthened focus on engagement and participation of children and their families in decisions impacting on their lives.
- Goal directed case plans that support timely permanency decisions for children.
- Improved outcomes for children and young people in out-of-home care through child health passports, education support plans, cultural support plans and transition from care plans for young people 15 – 17 years; each of these incorporated within the individual child's comprehensive case plan.
- Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle and recording of participation of Recognised Entities in decision making.

# Supplementary Information

Subject	Amendment to the <i>Child Protection Act 1999</i>	Child Safety Practice Manual	Practice Resources	ICMS	Comments
<p><b># 1</b> <b>Cumulative Harm</b></p>	<p><b>s9</b> - The definition has been amended to reflect that "harm" in the CPA may be constituted by a single act, omission or circumstance or through a series or combination of acts, omissions or circumstances.</p>	<p>Inclusion of cumulative harm as a factor in:</p> <ul style="list-style-type: none"> <li>• Determining whether harm reaches the threshold for recording a notification.</li> <li>• Decision making of the outcomes for investigations and assessments.</li> <li>• Decisions about outcomes for matters of concerns.</li> <li>• Determining the nature of ongoing intervention.</li> </ul>	<p>Practice Guide: The assessment of harm and risk of harm.</p>	<p>Rationale to be included in the grounds of the application field in all ICMS court applications.</p>	
<p><b># 2</b> <b>Parents / Long term guardian/s</b></p>	<p><b>s15</b> - Amended so that reasonable steps must be taken to advise parents (subject to considerations) and LTGs about an allegation of harm and outcome of investigation. However discretion is allowed in relation to advising parents of the allegation of harm and outcome of investigation, if the child has a LTG and it is determined not to be in the child's best interest to do so.</p> <p><b>s13</b> - A person granted guardianship of a child, under a Child protection order must also consider the child's wellbeing when making decisions about the child.</p> <p><b>s17</b> - Amended so that if child has a LTG (suitable relative or other person), telling them about contact at school etc. is sufficient for compliance with the section.</p> <p><b>s20</b> - Amended so that in addition to obligation to tell parents, if child has a LTG, officer must take reasonable steps to tell them that child has been taken into custody and if unable to tell parents record full details of actions taken in the attempt.</p> <p><b>s23</b> - Definition of a parent (as it relates to TAOs)</p>	<p>Significant changes in content throughout CSPM Chapters 1, 2, 3 and 9 re:</p> <ul style="list-style-type: none"> <li>• Inform about allegations of harm.</li> <li>• Inform about outcome of investigation and assessment.</li> <li>• All court applications, processes and orders.</li> <li>• Contact with a child during an investigation &amp; assessment – need to inform long-term guardian; no obligation to advise parent.</li> <li>• Serving of court documents.</li> <li>• Child's emotional security</li> </ul>	<p>Responsibilities – long-term guardians</p> <p>Long-term guardianship orders – a comparison.</p> <p>Programs of support – long-term guardians.</p> <p>Long-term guardianship – assessment factors.</p> <p>Additional resource: Checklist for managers.</p>	<p>Significant changes to ICMS to allow LTGs to be added as an event participant in all events and changes to forms for inclusion of LTG, where there is a LTG as an event participant.</p> <p>Information about LTGs will also be populated into the person profile tab so that it can be easily seen by users.</p> <p>If an LTG notifies the</p>	

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	<p>broadened to include Long-term guardians.</p> <p><b>s27</b> – Amended so that Court must consider whether reasonable steps have been taken to obtain “appropriate parental consent” for the things sought to be done under the order. “Appropriate parental consent” means at least one LTG if there is one, otherwise at least one parent (not both LTG and parent).</p> <p><b>s32</b> – Amended so that in addition to the obligation to explain and provide a copy of the order to parents, if the child has a LTG, the applicant for TAO must explain and provide a copy of the order to the LTG as well, and if unable to do so for parents, the officer must record full details of actions taken in the attempt.</p> <p><b>S37</b> – Definition of parent (as it relates to CAOs) broadened to include LTGs.</p> <p><b>s41</b> – Amended so that in addition to obligation to serve copy of order on parents, if child has a LTG, the applicant for CAO must serve LTG and if unable to do so for parents record full details of actions taken in the attempt.</p> <p><b>s51AA</b> – Definition of a parent (as it relates to TCOs) will include LTGs.</p> <p><b>s51V</b> – Amended so that it applies if child does not have a LTG.</p> <p>Insert new <b>s51VA</b>:</p> <ul style="list-style-type: none"> <li>• Applies if child has LTG;</li> <li>• chief executive must contact the child at least every 12 months to discuss case plan;</li> <li>• LTG must allow contact;</li> <li>• Child or LTG may request a case plan review at any time;</li> <li>• CE may decide not to review case plan;</li> <li>• If case plan is reviewed must prepare report under s 51X; and</li> <li>• If the dept declines case plan review, it is a reviewable decision and CE must provide written reasons with</li> </ul>	<p>and stability needs to be balanced with child in need of protection when considering application to revoke a LTG order.</p> <p>Chapter 3:</p> <ul style="list-style-type: none"> <li>• New procedures regarding assessing and determining suitability of an LTG applicant.</li> </ul> <p>Chapter 4:</p> <ul style="list-style-type: none"> <li>• Additional key items for case plan to be submitted to court prior to LTG-other being granted.</li> <li>• New procedures regarding LTG case plan – transfer content to “LTG-case plan” as soon as practicable after the finalising of LTG order.</li> <li>• New procedure regarding contact with the child – every 12months (contact means see and talk with the child).</li> <li>• New procedures regarding case plan review – provide opportunity every 12months.</li> <li>• Complete “LTG-Contact and review report” after contact with the child and/or when case plan review occurs.</li> <li>• Procedural requirements for</li> </ul>		<p>department about harm to a child, they should be recorded under the ‘other notifier’ category (LTG), in the Record of concerns and Additional notified concerns forms.</p> <p>Various information provision questions within ICMS will ask users to record if an LTG was provided with information, if applicable.</p> <p>Two new Case planning forms have been created in ICMS to allow for LTG case planning:</p> <ul style="list-style-type: none"> <li>* Long-term guardianship to a suitable person - Contact and review report</li> <li>* Long-term guardianship to a suitable person - Case plan</li> </ul> <p>These forms will be available in the OI event, when an LTG has been selected as</p>	

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	<p>information about appeal to QCAT.</p> <p><b>S62</b> – Definition of a parent (as it relates to CPOs) broadened to include LTGs.</p> <p><b>s65</b> – Amend so that considerations for revoking an order include that it is no longer “appropriate and desirable for the child’s protection” and to allow the Court to take into account a contravention of the Act or an order and, if it is an LTG order, the child’s need for emotional security and stability. (LTG will have “parent” status for a fresh CPO made at the same time)</p> <p><b>s67</b> – Amend definition of “parent” so that the Court may make a contact order against a LTG.</p> <p><b>s80A</b> – details the obligations of the CE and LTG, if a child is no longer being cared for by their LTG.</p> <p><b>s159</b> - Amend to provide expressly for the Chief Executive to make payments to a LTG and payments for transition to a carer or the child.</p> <p><b>s195</b> – Amend to include LTG as a parent for the purposes of compliance with provisions about explaining and giving documents.</p>	<p>the review of the case plan when LTG receives fostering allowance, HSNA, CRC etc.</p> <ul style="list-style-type: none"> <li>Allows for payments to be made following LTG order. Policy and CSPM is that only those who were approved kinship or foster carers for the child subject to LTG-order, prior to LTG order will be eligible for payment of allowance.</li> <li>May make payments directly to young person who is not yet 18 - might still be subject to CPO under the Act but who has made their own arrangements regarding their accommodation (no longer living with carer or in a care service but still require the department’s support to transition to living independently).</li> </ul>		<p>an event participant.</p> <p>Information about payments to LTGs to be included in the Long-term guardianship to a suitable person – Case plan.</p>	
<p><b># 3</b> <b>Temporary Custody Order</b></p>	<p><b>s18</b> – if s18 is used, officers must apply for either a TAO or a TCO.</p> <p><b>s51AA</b> – Meaning of a parent as it relates to TCOs</p> <p><b>s51AB</b> – Details the purpose of a TCO</p> <p><b>s51AC</b> – An application may only be made by an authorised officer and the application must be made writing</p> <p><b>s51AD</b> – Magistrate may grant order without hearing from parents</p> <p><b>s51AE</b> – Magistrate may made a TCO only if they are satisfied that a child will be at unacceptable risk of harm if the order is not made and the chief executive will be able to</p>	<p>Chapter 3: 9. What if a child is in need of protection &amp; immediate custody is required – use of TCO</p> <p>Chapter 2: 7. What if I&amp;A is for an unborn child.</p> <p>Summary: • Application for TCO when child is assessed as being in need of protection, will be at</p>	<p>Temporary custody order</p>	<p>A new ICMS event – Temporary custody order – has been created. This event will have similar functionality as the existing ICMS court events, with relevant applications, COF’s, Recognised entity participation forms etc. available within</p>	

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	<p>decide the most appropriate action to meet the child's ongoing needs during the period of the order.</p> <p><b>s51AF</b> – TCO may authorise contact and taking a child into custody, medical examination or treatment, non contact or supervised contact with parent and enter and search powers.</p> <p><b>s51AG</b> – TCO for up to 3 business days.</p> <p><b>s51AH</b> – TCO may be extended for 1 business day.</p> <p><b>s51AI</b> – Orders made by special means (telephone/fax/radio/other).</p> <p><b>s51AJ</b> – Procedure before enter and search.</p> <p><b>s51AK</b> – Explanation of TCOs</p> <p><b>s51AL</b> – Variation of TCOs</p> <p><b>s51AM</b> – Impact of TCO on existing CPO (existing CPO ceases to have effect while the TCO is in force)</p> <p><b>s117 &amp; s120</b> – Amended to allow applicant, child or child's parent to appeal against a TCO</p>	<p>immediate risk of unacceptable harm if the order is not made and the department will be able to decide most appropriate action to meet child's ongoing protection and care needs.</p> <ul style="list-style-type: none"> <li>• Can be used for child who is subject to LTG-other</li> <li>• Order for 3 business days, extension for one business day. If applied for extension, must apply for CPO at the end of extension.</li> <li>• Similar provisions to TAO – contact, taking child into custody, medical examination or treatment, non-contact or supervised contact with parent and enter and search powers.</li> </ul>		<p>the event.</p> <p>If s18 is used, officers will record this information in the new Record of interviews / use of powers form in the IA event.</p> <p>Note: The TCO event in ICMS has been developed based closely on the TAO event.</p>	
<p><b># 4</b></p> <p><b>Transition Order</b></p>	<p><b>s65A</b> – if the court refuses to extend an order or grant a new one, revokes an order or decides an appeal against the making of the order in favour of a person other than the Chief Executive, the court may make a Transition order for up to 28 days after the order would have otherwise expired. Transition orders only apply if the original order was an order made under s61(d) (STG orders), s61(e) (STC orders) and s61(f) (LTG orders).</p> <p>The court may grant the order on an application from any party or on its own initiative.</p> <p>if an application for a Transition order is adjourned the CPO order continues in force.</p> <p><b>s65B</b> – The court can make a transition order if it is necessary to allow for the gradual transition of the child to the parent's care in a way that supports the child and</p>	<p>Chapter 3: Section 2.9 - outline provisions, processes and procedures for a transition order.</p> <ul style="list-style-type: none"> <li>• Transition order can only be used where there is a CPO granted under s61(d), 61(e) and 61(f).</li> <li>• Transition order can not be used when the department is applying for a new CPO (1st application), including those circumstances where the matter may have been adjourned over a period of</li> </ul>	<p>New application form for transition order</p>	<p>CPO COFs have been amended to allow for the recording of an application for a Transition order, any adjournment of the application, plus the granting or dismissal of an application.</p> <p>A new form, Transition plan, has also been added to the OI event.</p>	

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	<p>reduces disruption and distress for the child</p> <ul style="list-style-type: none"> <li>- court must have regard to the child's wishes and the parent's readiness and may have regard to any other relevant matter.</li> </ul> <p><b>s65C</b> – If the appellate court stays a transition order, the order ends the day it is stayed.</p> <p><b>s65D</b> – If the court makes a transition order, a transition plan must be made about how the child will be supported.</p>	<p>18mths before final decision. In these situations the adjournments are under s67, which are not eligible for transition order.</p> <ul style="list-style-type: none"> <li>• Applications will be made at court by submission by Court Coordinator after getting direction from CSO and approval from TL. More often going to be a verbal submission by CC.</li> <li>• A new word document – Application for a Transition Order – for when written application is required. This is attached to the CSPM.</li> <li>• Transition plan is to be developed after order is made, however possible that court will adjourn proceedings to have plan developed prior to making of order. In these circumstances, CSO will need to record plan in document linked to manual. After making of order, CSO will need to document plan in ICMS form.</li> </ul>			
<p><b># 5</b> <b>Temporary Assessment Order</b></p>	<p><b>s23</b> – Meaning of a parent as it relates to TAOs <b>s25</b> - Application must be in writing and sworn <b>s29</b> - Extending the term of a Temporary assessment order from three days to three business days <b>s30</b> – Application must be written before an application under this party is made, but may be sworn afterwards.</p>	<p>Chapter 2 2. What if a parent will not consent to actions required – use of TAO 3. What if a parent will not consent to actions required – use of CAO</p>	<p>Assessment orders</p>	<p>ICMS TAO applications and TCOFs have been amended to reflect the new business day timeframe and will not allow the selection of</p>	

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	<p>Introduces concept of "original order" and "duplicate order". Magistrate may make order only if satisfied application is necessary by special communication because of urgency or special circumstances. Magistrate must give the original order and documents to the clerk.</p> <p>s31 – 'Facsimile order' replaced with 'duplicate order'</p> <p>s32 – If a child does not have a LTG, then a copy of the order or duplicate order must be provided to parents. If a child has a LTG, then a copy of the order must be provided to the LTG and reasonable attempts be made to provide the parents with a copy.</p> <p>s34 – Extension cannot be for more than "three business days" in total, if the officer does not intend to apply for a CAO or CPO.</p>	<p>Change to 3 business days.</p>		<p>weekends for the expiry date of an order.</p> <p>Users will need to manually calculate timeframes when public holidays are included within the duration of an order.</p>	
<p><b># 6</b> <b>Court Assessment Order</b></p>	<p>s37 – Meaning of a parent as it relates to CAOs</p> <p>s38 – Change to the purpose of a CAO to state that it is to be made to authorise an assessment that will require more than "three business days"</p> <p>s41 – If a child does not have a LTG, then a copy of the order or duplicate order must be provided to parents. If a child has a LTG, then a copy of the order must be provided to the LTG and reasonable attempts be made to provide the parents with a copy.</p> <p>s45 – Amend so that Court must consider CE's views about contact with family, incl. whether contact should be supervised and duration and frequency of contact.</p> <p>s110 – Amended to clarify that a Separate representative for a child is not a party to a proceeding on an application however must do anything required to be done by a party and may do anything permitted to be done by a party.</p> <p>s113 – Allows non-parties to make submissions in court and to be granted access to view documents on the court file.</p>	<p>Chapter 2: 3. What if a parent will not consent to actions required -- use of CAO</p>	<p>Assessment orders</p>	<p>Changes to the existing COF-s to include the ability to record information about non-parties.</p>	
<p><b># 7</b> <b>Assessment</b></p>	<p>s51ZE - Agreement can be made with one parent, if it is impracticable to obtain the consent of the other parent to</p>	<p>Chapter 2: 10. What if a child needs to be</p>		<p>The Care agreement form in the Placement</p>	

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<p><b>Care Agreement</b></p>	<p>the agreement. After agreement made reasonable effort must be made to locate the other parent. May not enter assessment care agreement if the other parent refuses</p> <p><b>s51ZI</b> – Confirms that even if a parent is not party to a care agreement, they can still end the agreement at any time by giving at least 23 days notice to the parties.</p>	<p>placed under an assessment care agreement.</p> <p>Chapter 6: Minor change to Child Protection care agreement. Summary:</p> <ul style="list-style-type: none"> <li>• Can be entered into with one parent, if impractical to obtain consent of both parents. Ensure that a copy is given to the other parent, and attempt to obtain their consent. Where this is not possible, document attempts.</li> <li>• Can not be made with one parent, if other parent refuses to consent.</li> <li>• Can be ended at any time by parties by giving 2 days notice.</li> <li>• Either parent may end the care agreement.</li> <li>• Assessment care agreement and child protection care agreement can not be used for children subject to a LTG-other.</li> <li>• If the other parent (who was not a party to the care agreement) wishes to end care agreement, the department is obliged to end</li> </ul>		<p>event has been changed to include a question in relation to obtaining a parent's signature.</p>	

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		<p>it; may need to consider other action such as applying for TAO, CAO, TCO or CPO.</p> <p>Assessment care agreement form attached to the CSPM has changed.</p>			
<p><b># 8 Child Protection Orders</b></p>	<p><b>s59</b> – Amend so that the court must have regard to the child's need for emotional security and stability before extending or granting another CPO.</p> <p><b>s61</b> – makes it explicit that a child can be subject to two child protection orders, running concurrently.</p> <p><b>s65</b> – Amend so that considerations for revoking an order include that it is on longer "appropriate and desirable for the child's protection" and to take into account the child's need for emotional security and stability. (LTG will have "parent" status for a fresh CPO made at the same time)</p> <p>A CPO cannot be extended beyond its maximum duration (1year for directive, protective supervision order or 2 years for short term custody/guardianship) – s62. If maximum duration has been ordered and a further order is sought as child's care and protection needs have not been resolved, a new application for a CPO must be made prior to expiry of the order. An application to extend can only be made if maximum duration of order was not initially granted.</p> <p>A CPO can only be varied within type to modify the type of order. Orders which can be varied are directive, protective supervision, custody and LTG.</p> <p><b>s110</b> – Amended to clarify that a Separate representative for a child is not a party to a proceeding on an application however must do anything required to be done by a party and may do anything permitted to be done by a party.</p> <p><b>s113</b> – Allows non-parties to make submissions in court and to be granted access to view documents on the court file.</p>	<p>Chapter 3</p> <p>New section - 2.8 Apply to extend, vary, revoke or revoke and make a new application for a child protection order.</p> <ul style="list-style-type: none"> <li>• Applications to extend and vary can not be for a period more than the maximum duration (s62).</li> <li>• Applications to vary can only be made within specific types of orders.</li> <li>• Applications to extend or for a further short term order must evidence the child's need for emotional security and stability (in application and affidavit material).</li> <li>• Amendments to s99 means that applications to extend, vary and revoke and make new, will be adjourned under s99 with original CPO or assessment order continuing until matter is decided.</li> <li>• s67 and s99 can run concurrently.</li> </ul>		<p>Information in relation to any contravention of an existing or previous CPO should be included within the grounds of the new application.</p> <p>Existing functionality within ICMS allows for concurrent CPOs to be applied for.</p> <p>The rules in forms won't allow for extensions if the time period extends past maximum duration allowed for in S62.</p> <p>The rules in the Form 11 have been changed to allow to vary CPOs – directive orders, protective supervision orders, custody orders and LTG. Rule will be that</p>	

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# 9 Notifying QPS	s14(2) & s14(3) - obligation to inform police of a suspected criminal offence arises whether or not the chief executive suspects the child is in need of protection and takes any action regarding the allegation.	Chapters 1, 2, 3, 5, 6, 7 and 9: <ul style="list-style-type: none"> <li>immediately notify Queensland Police Service of harm to a child that may involve a criminal offence regardless of Child Safety Services response (ie whether it meets threshold for recording a notification).</li> <li>Family Group Meeting convenors will need to advise participants of this obligation prior to the meeting occurring.</li> </ul>	Child concern report – responses and referrals.  Planning the investigation and assessment.	orders can be varied within the same type of order (eg. Directive to directive, STC to CE to STC to other) and extend, as long as maximum duration is not exceeded.  COFs have been updated to allow for the recording of non-parties, Separate representatives and new Interim orders.  Users will now be asked to answer the question relating to advising QPS of child protection concerns, at an earlier stage in the Intake process. The question is now in the Record of concerns form, rather than the Notification form. The question remains in all Additional notified concerns forms, however has been moved to a new position within the form.	
# 10 Case planning	S51F – Amended to include Long-term guardians in the definition of a parent	Chapter 4: <ul style="list-style-type: none"> <li>Change to 10 business days.</li> </ul>	Case planning – an overview	New case plans have been developed for	

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and working with families	<p><b>s51Q</b> – Amended so that a case plan must be approved within 10 business days of being developed</p> <p><b>s51YA</b> – Amended to confirm that anything said in a FGM is inadmissible in a criminal proceeding, unless all the parties consent or the proceeding is for an offence committed during the FGM.</p> <p><b>s51YB</b> – Amended to confirm that anything recorded in a case plan is inadmissible in a criminal proceeding, other than with the consent of all parties mentioned in the case plan.</p>	<ul style="list-style-type: none"> <li>Inclusion of case planning requirements when a child has a long-term guardian (see # 2).</li> </ul>		<p>children subject to LTG orders:</p> <ul style="list-style-type: none"> <li>* LTG to a suitable person – Contact and review report</li> <li>* LTG to a suitable person – Case Plan.</li> </ul> <p>These forms will be accessible through the OI event, when an LTG has been added to the event as an event participant.</p>	
# 11 Orders for Dept contact with a child on adjournment of CAO and CPO	<p><b>s67</b> - Amend to allow the court to make an interim order for an authorised officer or police officer to have contact with a child during the period of adjournment, including enter and search powers.</p> <p><b>s67A</b> –Procedures for entry and search</p>	<p>Chapter 2: 3. What if a parent will not consent to actions required – use of CAO</p> <p>Now have authority to have contact with a child during an adjournment where not granted custody or during adjournment for PSO or DO or application for custody to relative.</p>		<p>ICMS adjournment COFs (Form 9 and Form 16) have been amended to allow for the new interim orders to be recorded, when granted.</p>	

**Other key procedural changes**

Subject	Other key CSPM changes	Child Safety Practice Manual	Practice Resources	ICMS	Comments
<p><b># 12 New I &amp; A Outcome question</b></p>	<p>HOF initiatives regarding investigation and assessment processes New I &amp; A outcome questions: "Is the child already subject to ongoing intervention?" "Is the child at unacceptable risk of harm, with no parent able and willing to protect them from harm?"</p>	<p>Chapter 2: Is the child already subject to ongoing intervention? The child is currently subject to an open ongoing intervention case, as it has previously been assessed that:</p> <ul style="list-style-type: none"> <li>• The child is in need of protection.</li> <li>• The unborn child will be in need of protection following their birth.</li> <li>• The child is not in need of protection, but the level of risk in the family is 'high' or 'very high'.</li> </ul> <p>Is the child at unacceptable risk of harm, with no parent able and willing to protect them from harm:</p> <ul style="list-style-type: none"> <li>• Current factors that place the child at unacceptable risk of harm.</li> <li>• Based on the assessed level and severity of risk</li> <li>• The outcome of the family risk evaluation.</li> <li>• An assessment of the parents ability and willingness to protect the child.</li> </ul> <p>In order to answer this question, assess:</p> <ul style="list-style-type: none"> <li>• Whether at least one parent is both able and willing to protect</li> </ul>	<p>Recording your professional assessment about whether the child is in need of protection.</p>	<p>Various changes to the Assessment and Outcome form in ICMS.</p>	

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<p><b># 13</b> <b>New Outcomes for an I &amp; A</b></p>	<p>HOF initiatives regarding investigation and assessment processes New outcomes for an I &amp; A: Substantiated – OI continues Unsubstantiated – OI continues.</p>	<p>the child.</p> <ul style="list-style-type: none"> <li>The parents capacity, not just intention, to act protectively.</li> <li>The parents ability and motivation to protect the child - in circumstances where a child resides across two households, the ability and willingness of both parents to protect the child needs to be assessed.</li> </ul> <p>Chapter 2: Unsubstantiated – OI Continues:</p> <ul style="list-style-type: none"> <li>no actual harm has occurred and no unacceptable risk of harm has been identified during the current investigation and assessment</li> <li>an unborn child is not at unacceptable risk of harm after birth.</li> </ul> <p>Substantiated – OI continues:</p> <ul style="list-style-type: none"> <li>the child has suffered harm but no unacceptable risk of harm has been identified during the current investigation and assessment</li> <li>the child has suffered harm and is at unacceptable risk of harm, without a parent able and willing to protect the child</li> <li>the child has not suffered harm, but is at unacceptable risk of harm, without a parent able and willing to protect the child</li> </ul>		<p>Various changes to the Assessment and Outcome form in ICMS.</p>	

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<p><b># 14</b>  <b>Clarification about recording the person most responsible for the serious harm to the child</b></p>	<p>HOF initiatives regarding investigation and assessment processes</p>	<p>an unborn child will be at unacceptable risk of harm after birth.</p> <p>Chapter 2:  Clarification of identifying person most responsible:</p> <ul style="list-style-type: none"> <li>• The person responsible is the person who is assessed as being responsible for the abusive act, which includes acts of commission or omission, as well as failure to protect.</li> <li>• Not applicable - child under 10 years - when the abusive act was committed by a child under 10 years of age</li> <li>• Not applicable - other person - when the abusive act was committed by: <ul style="list-style-type: none"> <li>○ a child aged 10 years or over who does not have the developmental ability or capacity to understand the consequences of their actions</li> <li>○ any person who does not live in the child's home or does not have regular access to the child in the home</li> </ul> </li> <li>• Not able to be identified - when it is unclear who was responsible for the abusive action.</li> </ul>		<p>Various changes to the Assessment and Outcome form in ICMS.</p>	

Subject	Other key CSPM changes	Child Safety Practice Manual	Practice Resources	ICMS	Comments
<p><b># 15</b> Harms table</p>	<p>HOF initiatives regarding investigation and assessment processes</p>	<p>Chapter 2:</p> <ul style="list-style-type: none"> <li>The 'Record abuse and harm' section includes the abusive action, the person responsible for the abusive action and the resulting harm to the child, including failure to protect.</li> <li>The 'Record unacceptable risk of harm' section includes the unacceptable risk of harm and the parent responsible for any future risk to the child, including failure to protect.</li> <li>An incident of abuse resulting in harm to a child is recorded as the 'abusive action'. The abusive action includes acts of commission or omission, as well as failure to protect a child from abuse caused by another person. The 'resulting harm' refers to the impact experienced by the child.</li> <li>When determining resulting harm consider the information gathered during the I&amp;A process to identify presence of cumulative harm, as this will influence decisions about ongoing intervention.</li> </ul>		<p>Various changes to the Assessment and Outcome form in ICMS.</p>	
<p><b># 16</b> Aboriginal &amp;</p>	<p>Child Protection Development review.</p>	<p>Chapter 5: Additional considerations in</p>			

Subject	Other key CSPM changes	Child Safety Practice Manual	Practice Resources	ICMS	Comments
Torres Strait Islander Children		<p>locating an appropriate placement for and Aboriginal and Torres Strait Islander child:</p> <ul style="list-style-type: none"> <li>• A person who lives near the child's family.</li> <li>• A person who lives near the child's community or language group.</li> <li>• Determining appropriate respite arrangements.</li> </ul> <p>Throughout CSPM strengthening of content around participation and consultation with recognised entities.</p>			
# 17 Reviewable decisions regarding respite	Updated legal advice.	<p>Chapter 5: Reviewable decision regarding respite arrangements:</p> <ul style="list-style-type: none"> <li>• For a child subject to a child protection order where placement exceeds 6 nights.</li> <li>• Planned and ongoing respite with one carer where it exceeds 6 nights over the case plan review period.</li> <li>• Respite plan needs to be outlined in written advice to parents and the child.</li> </ul>			
# 18 Child Health Passport	Child Protection Development review – to support accurate and timely recording and reporting.	<p>Chapter 5:</p> <ul style="list-style-type: none"> <li>• Change in definition to commencement of child health passport.</li> <li>• Clarification about definitions – relevant health</li> </ul>	Child Health Passports	Changes will be introduced into ICMS in November 2011 to include Child health passport information on the Health tab of the person record.	

Subject	Other key CSPM changes	Child Safety Practice Manual	Practice Resources	ICMS	Comments
# 19 Psychotropic medication	Commission for Children and Young People and Child Guardian - report	<p>professional, health appraisal, health assessment.</p> <p>Chapter 5:</p> <ul style="list-style-type: none"> <li>New requirements regarding the management of psychotropic medication – consultation, case planning, reviews, consent.</li> <li>Inclusion in Education Support Plans.</li> <li>Delegations for decision making regarding the commencement or continuation of medication.</li> </ul>			
# 20 Decision-making regarding travel	MOG changes – changes in delegation and introduction of electronic booking and approval systems.	<p>Chapter 5:</p> <p>Changes in decision making for all travel - intrastate, interstate &amp; overseas.</p>			
# 21 Placement of a child with an employee of the Department of Communities	Child Protection Development - scheduled policy and procedure change.	<p>Chapter 5 &amp; Chapter 8:</p> <ul style="list-style-type: none"> <li>Outlines circumstances when a child who is subject to a care agreement, adoption care agreement or an order granting custody or guardianship to the CE, can be placed with a Department of Communities employee.</li> <li>Outlines assessment, monitoring, support and renewal arrangements.</li> <li>Defines delegation for approval.</li> </ul>			
# 22 Application for warrant / Special	<p>s171 - An application for a warrant must be written and sworn.</p> <p>s173 – An application for a warrant can be made by special mean (eg. Fax/telephone/radio/other) and introduces the</p>	<p>New Chapter 10.22:</p> <ul style="list-style-type: none"> <li>Determining when a warrant is required.</li> </ul>		Required to record an alert in ICMS.	

Subject	Other key CSPM changes	Child Safety Practice Manual	Practice Resources	ICMS	Comments
warrant	<p>concept of duplicate orders.</p> <p>s174 - States that a copy of the duplicate order, if applicable, be provided to authorise entry.</p>	<ul style="list-style-type: none"> <li>• Involvement of recognised entity for Aboriginal and Torres Strait Islander children.</li> <li>• Completing the application</li> <li>• Involving QPS to enact the warrant to remove or recover the child.</li> <li>• Process to enter and search for a child.</li> </ul> <p>Change to word document (order).</p>			



# ICMS Example 2

## Long-term guardians

Long-term guardian is now an event role within ICMS and you will be able to add a Long-term guardian as a participant to an open event. ICMS will also now include specific questions relating to Long-term guardians, which users will see in a variety of forms. Long-term guardians that have been added to the event as a participant will be able to be selected in most drop down lists, where a parent is able to be selected. There are also two new case planning forms for use in relation to children subject to LTS to a suitable person orders: LTS to a suitable person - Contact and review report; and LTS to a suitable person - Case Plan.

The image consists of four screenshots from the ICMS system, each with a callout box explaining a specific feature for Long-term Guardians (LTG):

- Top Left Screenshot:** Shows the 'Personal Information' section of a participant form. A callout box states: "Machiki has a Long-term guardian, this information will display here, together with the name of the LTS and any relationship (familiarily with the child)." The form shows fields for Name, Address, and Phone, with a dropdown menu for 'Relationship' set to 'Long-term guardian'.
- Top Right Screenshot:** Shows a 'Case Plan' form. A callout box states: "Specific questions in relation to Long-term guardians will only display in LTS to a role of LTS has been added to the event." The form includes a 'Role' dropdown menu with 'Long-term guardian' selected.
- Bottom Left Screenshot:** Shows a 'Contact and review report' form. A callout box states: "Change 'Long-term guardian' to include 'Long-term guardian' and will now display up to three significant roles." The form shows a list of roles, with 'Long-term guardian' selected.
- Bottom Right Screenshot:** Shows a 'Case Plan' form. A callout box states: "While adding participants to an event, you will now have the choice of Long-term guardian. And it will look like this!" The form shows a list of participants, with 'Long-term guardian' selected.

A large callout box at the bottom right states: "Information provision following the matter of concern - notification outcome". Below this, it says: "Perhaps to provide a manual for procedures regarding where information provision may be provided." The bottom right screenshot also shows a 'Case Plan' form with a 'Role' dropdown menu set to 'Long-term guardian'.



# ICMS Example 4

## Temporary Custody Order

The new Temporary custody order event will have the same workflow as other court events on ICMS.

of 1  Show

You create a Temporary custody order exactly the same way as you would create other court events

CPO	24/06/2011	Child protection order	Subject child
CPO	24/06/2011	Child protection order	Subject child
CPO	28/06/2011	Child protection order	Other adult
CPO	28/06/2011	Child protection order	Subject child

- Temporary assessment order
- Temporary custody order
- Court assessment order
- Interim order-custody
- Short term custody to CE
- Short term guardianship
- Long term guardianship to CE

### Form 39 - Application for a temporary custody order

**Summary**

Event created: 11/11/2010  
 Date created: 2:00:21 PM  
 Created by: Fiana DAY  
 Created at: Chemside CSSC

Event: Temporary custody order - 1225  
 Form ID: 3901  
 Status: In progress  
 Name of user: Fiana DAY  
 Contact office: Chemside CSSC

**Section A**

**Child details**

**Applicant details**

Name: Fiana DAY  
 Date of birth: Not Supplied, Not Supplied  
 Contact office: An authorised officer under the Child Protection Act 1999

**Application details**

The TCO applications look the same as all other ICMS Court applications

### Assessment of placement information to parents

**Summary**

Event created: 7/12/2010  
 Date created: 10:03:56 AM  
 Created by: Fiana DAY  
 Created at: Chemside CSSC

Event: Placement 123  
 Form ID: 3921  
 Status: In progress  
 Name of user: Fiana DAY  
 Contact office: Chemside CSSC

**Child details**

Name: Taylor Worthington  
 Sex: Female  
 Date of birth: 1/10/2001

Type of Order

- Temporary custody order
- Temporary assessment order
- Court assessment order
- Interim order-custody
- Short term custody to CE
- Short term guardianship
- Long term guardianship to CE

Temporary custody orders have been added into the pick lists wherever you can normally select other court orders

# Practice Resource 1

## Practice Resource

## Temporary custody order

A temporary custody order (TCO) may be applied for when a child is assessed as in need of protection, and is at immediate risk of harm.

### Purpose of a TCO

The purpose of a TCO is to ensure the immediate safety of a child while Child Safety Services decides the most appropriate action to meet the child's ongoing protection and care needs (for example, applying for a child protection order).

### Application for a TCO

When preparing an application for a TCO, the nature of the concerns and the rationale for seeking specific provisions made under the *Child Protection Act 1999* need to be clearly articulated.

An application for a TCO can be made when the child has been assessed as in need of protection and the child will be at unacceptable risk of suffering harm if the order is not made. Within the term of the TCO, Child Safety Services must be able to decide the most appropriate action to meet the child's ongoing protection and care needs, and start taking that action. A TCO application may be made for a child removed under the *Child Protection Act 1999*, section 18.

### Duration and extension of a TCO

Under the *Child Protection Act 1999*, section 51AG, a TCO cannot remain in effect for longer than three business days, from midnight on the date it was decided. This means that if an initial TCO was granted for one or two days, an extension to this order may be granted under the *Child Protection Act 1999*, section 51AH(5), for a further two or one days, respectively.

However, if the magistrate is satisfied that Child Safety Services intends to apply for a child protection order, the TCO can be extended beyond the maximum three business days, once only, to the end of the next business day, under the *Child Protection Act 1999*, section 51AH(4).

### Provisions of a TCO

A TCO is an order sought from a magistrate, not a court, to authorise any of the following actions necessary to ensure the immediate safety of a child while a decision is made about the most appropriate action to meet the child's ongoing protection and care needs (for example, applying for a child protection order):

- have contact with the child
- take the child into, or keep the child in, the custody of the chief executive while the order is in force
- authorise medical examination or treatment
- direct a parent about contact with the child
- enter a residence or premises and search for a child
- remain in the place for as long as necessary
- exercise powers using the force that is reasonable in the circumstances.

Once a TCO is made the applicant must immediately tell the child about the order, and provide at least one of the child's parents with:

- a copy of the order
- an explanation of the terms and effect of the order
- all appeal information.

If the child has a long-term guardian, the applicant must provide the above information to the long-term guardian **and** make reasonable attempts to also advise at least one of the child's parents. If the parents cannot be contacted, the applicant must document full details of the attempts made.

### **Effect of a TCO on existing child protection orders**

Under the *Child Protection Act 1999*, section 51AM, the child protection order, as it relates to the child's custody or guardianship, ceases to have effect while the chief executive's custody of the child continues under the TCO.

# ICMS Example 5

## Assessment and Outcome Form

The Assessment and Outcome form has been updated to include new harm and risk outcomes

Assessment & outcome		IA Outcomes	
Summary		Substantiated - OI continues	
The top half of this form has not been changed		Unsubstantiated - OI continues	
Outcome		Substantiated - child in need of protection	
		Substantiated - child not in need of protection	
		Unsubstantiated - child not in need of protection	
		No IA outcome	

**IA Outcome**

Child: Lily James      Outcome: **Substantiated - OI continues**      Show outcomes:

Was the ICA completed for this child?       Yes     No

Has the child been harmed?       Yes     No

Is the child at unacceptable risk of harm, with no parent able and willing to protect them from harm?  
(Consider the level of risk, the FRK final risk level and your assessment of the parents' capacity, not just intention, to act protectively).       Yes     No

Is the child already subject to ongoing intervention?       Yes     No

**Record abuse and resulting harm**

Abusive action	Resulting harm	Person responsible	Most Serious
Emotional <input checked="" type="checkbox"/>	<input type="radio"/> P <input type="radio"/> E <input checked="" type="radio"/>	Yohan Smith	<input type="checkbox"/>
Physical <input checked="" type="checkbox"/>	<input type="radio"/> P <input checked="" type="radio"/> E <input type="radio"/>	John Mulcahy	<input type="checkbox"/>

Insert abuse

**Record unacceptable risk of harm**

Unacceptable risk of physical harm caused by:	Person responsible	Most Serious
Physical abuse	Yohan Smith	<input type="checkbox"/>
Emotional abuse	John Mulcahy	<input type="checkbox"/>

Insert risk of physical harm

Unacceptable risk of emotional harm caused by:	Person responsible	Most Serious
Neglect	Jessica Smith	<input checked="" type="checkbox"/>
Failure to protect from sexual abuse	Lily Jones	<input type="checkbox"/>

Insert risk of emotional harm

Insert child

The 'Record abuse and resulting harm' section will only display if Yes is selected to the question, 'Has the child been harmed'.

Resulting harm can be either physical (P) or emotional (E).

This section will only display if Yes is selected to the question, 'Is the child at unacceptable risk...'

**Most Serious rule:**  
Only one 'Most serious' checkbox can be selected and it relates to the most serious assessed event

Abusive actions	Unacceptable Risk
Physical	Physical abuse
Sexual	Sexual abuse
Emotional	Emotional abuse
Neglect	Neglect
Failure to protect	Failure to protect from physical abuse
	Failure to protect from sexual abuse
	Failure to protect from emotional abuse
	Failure to protect from neglect

# ICMS Example 6

## Assessment and Outcome Form cont.

**Assessment of harm and risk of harm**

Has the parent/professional assessment agreed whether the child is in need of protection?

Demographic information: **Single parent - female**

---

**Ongoing Intervention**

Where the child is not in need of protection Section 47E will be set to high or very high, based on the nature of attempts to date to reduce the risk and ongoing support services case or referral to another agency. Include the parent's response to the offer of support.

**Refer to Practice resource for additional information**

For each subject child record the appropriate response. Where the child is in need of protection or at risk of harm record the nature of the intervention planned.

Child	Intervention planned

Insert child

Where ongoing intervention is provided, specify the most appropriate type of supervision for the child.

---

**Recognised entity participation**

Are any of the support entities assigned or targeted in the report?  Yes  No

If not selected, please specify the relevant person(s) to ensure the insight is correct, not being selected as it only refers to Person(s) who have participated in fact.

---

**Workflow**

Comments

Author:

Approved:

## Practice Resource 2

### Practice Resource

### Recording your professional assessment about whether the child is in need of protection

### Purpose

This practice resource will assist staff in recording a holistic assessment, analysing harm and risk of harm and providing a clear rationale to support the decision about the child's need for protection.

The assessment is recorded in the 'Assessment of harm and risk of harm' section in the 'Assessment and Outcome' form in ICMS.

### Recording tips

- It is important to record information which is factual, concise and relevant.
- The use of headings and dot points provides structure to the document and allows the reader to easily locate information.
- Including quotes from the *Child Protection Act 1999* or the *Child Safety Practice Manual* to explain thresholds or definitions is unnecessary and makes recording and reading more onerous.
- It is not necessary to cut and paste the safety assessment or the family risk evaluation into the document however, it is pertinent to refer to the safety decision and the final risk level (both automatically appear on the assessment and outcome form) in the text of the assessment.
- It is important to update all records with correct names, dates of birth, cultural identity, roles, relationships and addresses.
- As part of the investigation and assessment, it is important to consider whether information gathered warrants any child (not originally recorded as a subject child) to be recorded as a subject child in the investigation and assessment event.

### Assessment of harm and risk of harm

The assessment is based on your professional judgement of all information gathered, including the child protection history and the final risk level from the family risk evaluation. Below are suggested headings for structuring your assessment.

#### Notified concerns

Record the date of the notification and use dot points to summarise the key child protection concerns. Exclude information not directly related to the concerns. This information is already contained in other documents so it is not essential to include here, but it may assist in checking that all concerns are included in the assessment.

#### Child protection history

Record an **analysis** of the child protection history summarising significant trends and issues, along with the frequency of involvement by Child Safety Services. For example, "There have been six notifications in the past two years in relation to the mother's alcohol misuse having an impact on her ability to protect the child. This has resulted in risk of physical harm to the child on two occasions when the mother has fallen asleep for extended periods leaving the child to wander the apartment

unsupervised". This places the current concerns in context and demonstrates that the history has been considered although an analysis of how the history impacts on the current concerns, including consideration of cumulative harm, where relevant, still needs to be included in the assessment section below.

## **Assessment summary**

The purpose of this section is to pull together all the relevant information that informs the outcome of the investigation and assessment. Refer to the 'Practice guide: The assessment of harm and risk of harm' for detailed information about completing the analysis of harm and risk of harm.

Include significant observations of the home environment, the child and parents (including their interaction), key information gathered through interviews of all relevant people and information gathered from child protection records, the police and SCAN records. The level of detail recorded depends on the complexity of the case and whether harm or risk has been identified. In general, if the outcome is 'substantiated - child in need of protection', a more detailed assessment would be required compared to an outcome of 'unsubstantiated - child not in need of protection'.

The **analysis** of information should cover the three areas outlined below, which includes questions to prompt consideration of relevant factors. These factors should not be recorded merely as a list. It is important to link the risk and protective factors and analyse whether the existing protective factors sufficiently mitigate the identified risk and ultimately determine whether the child has suffered harm, is at unacceptable risk of future harm and has a parent able and willing to protect them from harm in the future.

### **1. Assessment of Harm**

- Does the information gathered and observations made refute or confirm the allegations?
- Are there any additional harms identified for the child?
- Has the child been subject to cumulative harm?
- Does the harm identified meet the legislative threshold of 'a detrimental effect of a significant nature on the child's physical, psychological and emotional well-being'?

### **2. Assessment of Risk**

#### **Risk factors**

- Are there any significant risk factors for the child taking into account the notified concerns, other concerns identified during the investigation and assessment as well as risks identified from previous child protection history?
- Are any of the following parental factors present - mental illness, intellectual or physical disability, domestic violence, alcohol and drug use, stress, unrealistic expectations, poor attachment, poor parenting skills, parents' young age or parental history of child abuse?
- Are there environmental risk factors present, such as homelessness, financial hardships or social isolation?
- How vulnerable is the child to harm?
- Has a pattern of harm been identified?
- Is harm escalating over time?

### **Protective factors**

- Are there any protective factors (not just strengths) identified that are able to **adequately** protect the child, that is, do they mitigate risk? It is important to differentiate between factors which may provide immediate safety for the child and those which reduce the overall likelihood of future harm.
- Is there a parent both able **and** willing to protect the child? Does the parent acknowledge the harm, take responsibility for change and/or have the capacity to prevent future harm?
- Does the child have skills and abilities that provide a degree of self-protection? Have these been demonstrated in the past?
- What family supports exist for the child?
- Are there any professional services currently involved with the family? Are they aware of the concerns? How frequently do they have contact with the family? Are they working on the same issues as identified by Child Safety Services? Does their involvement with the family sufficiently reduce the risk to the child so that further intervention by child safety is not required? Are they likely to recontact Child Safety Services if risk to the child increases?

### **Analysis of risk and protective factors**

- What is the risk of harm occurring to the child in the future?
- Is the risk of harm probable, that is, more likely than not, or is it just possible?
- Is it likely that the harm will occur in the near future? Unacceptable risk refers to a probable risk of harm occurring in the near future
- What type of harm is likely to occur in the future, and to what degree?
- Have the parents given inconsistent explanations or minimised the concerns?
- Are there sufficient protective factors to ensure the child's safety?
- What is the outcome of the family risk evaluation?
- Do your observations and assessment support the outcome of the family risk evaluation?
- Are there any other risk factors present that were not raised in the family risk evaluation?
- Have risk factors been identified that do not meet the legislative threshold of unacceptable risk of harm? Ensure these are clearly documented - although they are not included in the harms table in ICMS and are not reflected in the outcome of the investigation and assessment, - they should be considered in the future when assessing the child protection history for the child, including cumulative harm.

### **3. Parents ability and willingness to protect the child**

- Is the parent able and willing to protect the child? A parent may be willing and have the intention to protect a child, but not have the means or the capacity to do so. Even when their inability is beyond their control it still means they are 'unable'. Alternatively, a parent may have the means and capacity to protect a child, but may not do so.
- What is the parent's motivation and ability to protect their child? Has this been demonstrated in the past?
- Have you assessed the ability and willingness of both parents to protect their child (if they are separated)?

Ensure there is a clear distinction between protective factors and what are an individual or family's strengths. Protective factors influence or reduce the likelihood of future harm, whereas strengths are positive characteristics that do not mitigate against the risk. It is important not to confuse the two as protective factors decrease the risk to the child but strengths do not (for further information refer to the 'Practice guide: The assessment of harm and risk of harm').

An assessment of unacceptable risk where there is no parent able and willing to protect the child means that Child Safety Services must intervene to reduce the risk - that is, the child is in need of protection (by Child Safety Services) and an outcome of 'substantiated - child in need of protection' must be recorded and ongoing intervention is to occur.

# ICMS Example 7

## Transition Plan

Transition plan	
<p><b>Summary</b></p> <p>Date created: 30/11/2010 Time created: 9:23:01 AM Created by: Fiona DAY Created at: Charnside CSSC</p> <p>Event: Ongoing intervention 3746 Event ID: 9039 Status: In progress Current user: Fiona DAY Group: Charnside CSSC</p>	
<p><b>Child details</b></p> <p>Name: Ben Snowden Date of birth: 24/09/1999 (11 yrs 2 mths) Sex: Male Age group: Other Ethnicity:</p>	
<p><b>Transition plan</b></p> <p>This form is only to be completed when the court has granted a transition order in relation to the child.</p> <p> <input type="checkbox"/> Date transition order granted <input type="text"/> </p> <p> <input type="checkbox"/> Date transition order expires <input type="text"/> </p> <p> <input type="checkbox"/> Date of transition plan <input type="text"/> </p>	
<p><b>Participants in the development of the transition plan</b></p> <p> <input type="checkbox"/> Social worker <input type="text"/> </p> <p> <input type="checkbox"/> Psychologist <input type="text"/> </p> <p> <input type="checkbox"/> Child's best interests participant <input type="text"/> </p> <p> <input checked="" type="checkbox"/> Parent participant                  Name: <input type="text"/>                  Role: <input type="text"/>                  Did child best interests participant consent? <input type="checkbox"/> </p> <p> <input type="checkbox"/> Insert participant                  Here the views of the child's parents and comments: <input type="text"/> </p>	
<p><b>Transition plan details</b></p> <p>Outline the support needs and transition plan for the child: <input type="text"/></p> <p> <input type="checkbox"/> Times (What has to be done?) <input type="text"/> When will it be done? <input type="text"/> Date to be completed <input type="text"/> </p> <p> <input type="checkbox"/> Insert action <input type="text"/> </p>	
<p><b>Print options</b></p> <p><input type="checkbox"/> Print summary only</p>	

A new Transition plan will be available in the OI event and will be completed when the Court has granted a Transition order

# Go Live Support

## Where can I look to get further information?

1. Refer to your Information Session resources
2. FAQs, ICMS resources and practice resources will be on the practice resources webpage... URL site address ...

## Who can I contact for additional support?

3. Child Protection Reform Help Mailbox : [CS\\_Practiceimprovement@communities.qld.gov.au](mailto:CS_Practiceimprovement@communities.qld.gov.au)

# **Child Protection Reform Phase 2 Information Presentation**

**Developed by the Learning Solutions Unit, Child Protection Development and  
Child Safety Practice Improvement 2011  
June 2011 ©**

## **Purpose Statement**

To advise Child Safety Service delivery staff of the child protection reform agenda, including amendments to the *Child Protection Act 1999*, changes to the Child Safety Practice Manual and outstanding Helping Out Families initiatives (such as the Securing Permanency Project) and to apply this information to their practice from 29 August 2011.

# Learning Outcomes

At the end of this session you will know about the child protection reforms which take effect on the 29th August 2011. These include:

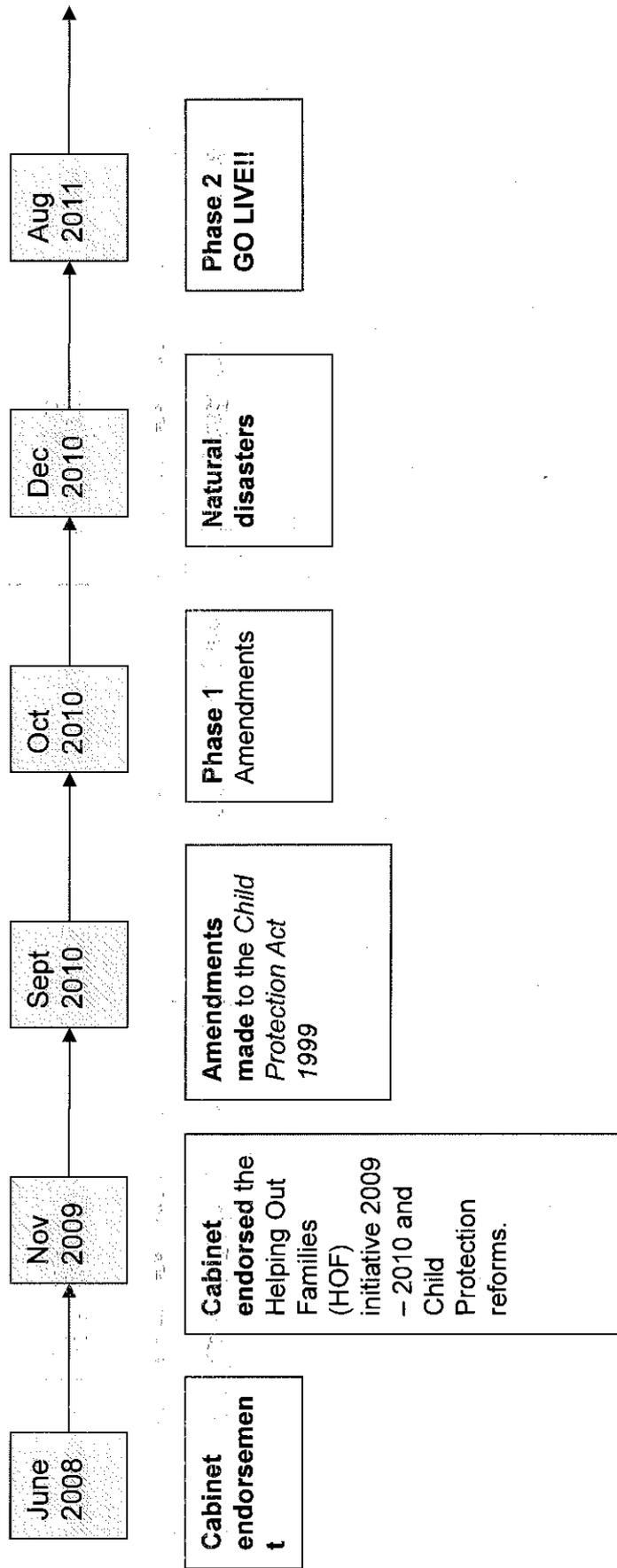
## Amendments to the *Child Protection Act 1999*:

- Definitional changes
- Long-term guardianship order to suitable person
- New orders
- Changes to existing orders
- General legislative amendments
- Court proceedings

## Procedural and practice changes (Child Safety Practice Manual) and ICMS modifications

Note there will not be any specific ICMS training

# The story so far



# **Why are we making these changes?**

The legislative amendments and range of revisions to the Child Safety Practice Manual underpin key strategic reforms of the child protection system aimed at achieving better outcomes for children and young people and their families, both at risk of entering the statutory system and subject to ongoing intervention.

# **Aims of the changes**

- Strengthen early intervention and prevention
- Reduce the overrepresentation of Aboriginal and Torres Strait Islander children

## **Aims of the changes cont.**

- Improve outcomes for children and young people
- Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle and recording of participation of Recognised Entities in decision making

## **Aims of the changes cont.**

- Engagement and participation of children and their families
- Goal directed case plans

# Stages of learning

Stage 1, child protection reform information session to advise all Child Safety Services staff of the legislative, procedural and systems changes.

Stage 2, focuses on practice improvement and embedding of child protection reforms.

Stage 3, practice implications with a focus on securing permanency.

# Definitional changes

## Cumulative harm

How will this affect your clients?

### **s9 What is harm**

*(1) Harm, to a child, is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing.*

*(2) It is immaterial how the harm is caused.*

*(3) Harm can be caused by—*

*(a) physical, psychological or emotional abuse or neglect; or*

*(b) sexual abuse or exploitation.*

*(4) Harm can be caused by—*

*(a) a single act, omission or circumstance; or*

*(b) a series or combination of acts, omissions or circumstances.'*

# Definitional changes cont.

## Parent

How will this affect your clients?

Definition of parent has expanded to include long-term

guardians:

- impacts on rights and responsibilities of long-term guardians
- impacts on responsibilities and obligations of Child Safety Services to long-term guardians and parents

# **LTG other practice implications**

- Additional key items to be included in case plan prior to applying for LTG other order
- New case planning requirements
- Revised procedures & resources for assessing LTG other
- Two new ICMS forms in OI Event
- Chapters 3 & 4 – Child Safety Practice Manual

# New orders

## Temporary custody order

How will this affect your clients?

- different to a TAO
- child has been assessed as being in need of protection and is at unacceptable risk of being harmed if order is not made

# New orders cont.

## Transition order

How will this affect your clients?

- provides a period of time (up to 28 days) for the department to prepare and assist a child to return to the care of their parents
- the Court has discretionary power to grant a Transition Order when it does not extend, renew, or revoke a short term order in some circumstances
- conditions of the existing order continue until the date stated in the Transition Order

# Changes to existing orders

## Temporary assessment order

Implications for your clients?

- extending the term of a temporary assessment order from three days to three business days

## Court assessment order

Implications for your clients?

- the Court must consider Chief Executive's views prior to making provisions about a child's contact with their family

# Changes to existing orders cont.

## Extension, variation & revocation of CPO

Implications for your clients?

- court must have regard to the child's need for emotional security and stability before extending or granting another CPO
- consider revoking an order that is no longer appropriate and desirable for the child's protection
- practice change from Crown Law advice that a CPO cannot be extended beyond its maximum duration

# General legislative amendments

## Assessment care agreement

Implications for your clients?

- an assessment care agreement can be entered into with only one parent of a child
- reasonable effort must be made to locate the other parent
- may not enter into an assessment care agreement if the other parent refuses

## **General legislative amendments cont.**

### **Notifying QPS**

- if the chief executive becomes aware of an allegation of harm to a child and reasonably believes it may involve a criminal offence
- whether or not the Chief Executive suspects the child is in need of protection

### **Case planning and working with families**

- case plan must be approved within 10 business days of being developed

## **General legislative amendments cont.**

Orders for dept contact with a child on adjournment of  
CAO or CPO

- allow the court to make an interim order for an authorised officer or police officer to have contact with a child during the period of adjournment
- includes enter and search powers

# Other child protection reform changes

Investigation and Assessment outcomes:

- recording of abusive action and resulting harm
- inclusion of failure to protect, harm and unacceptable risk
- inclusion of new outcomes for children already subject to ongoing intervention
- clarification about recording the person most responsible for the harm

**significant changes to the assessment and outcome form in ICMS**

# Harms Table

Table 1. Record abuse and resulting harm

LigM = Aboligseation	LigM = Resolving
emotional	P C E C
physical	P C E C
sexual	P C E C
neglect	P C E C
failure to protect	P C E C

# Harms Table

Table 2. Record unacceptable risk of harm

Unacceptable risk of physical harm caused by:
<input type="checkbox"/> physical abuse
<input type="checkbox"/> sexual abuse
<input type="checkbox"/> emotional abuse
<input type="checkbox"/> neglect
<input type="checkbox"/> failure to protect from physical abuse
<input type="checkbox"/> failure to protect from sexual abuse
<input type="checkbox"/> failure to protect from emotional
<input type="checkbox"/> failure to protect from neglect

Unacceptable risk of emotional harm caused by:
<input type="checkbox"/> physical abuse
<input type="checkbox"/> sexual abuse
<input type="checkbox"/> emotional abuse
<input type="checkbox"/> neglect
<input type="checkbox"/> failure to protect from physical abuse
<input type="checkbox"/> failure to protect from sexual abuse
<input type="checkbox"/> failure to protect from emotional
<input type="checkbox"/> failure to protect from neglect

# Other key CSPM changes

## Additional CSPM changes:

- additional considerations in locating an appropriate placement for an Aboriginal and Torres Strait Islander child – a person who lives near the child's family or a person who lives near the child's community or language group
- reviewable decision regarding respite arrangements

## **Other key CSPM changes cont.**

Additional CSPM changes:

- change in definition to commencement of child health passport
- new requirements regarding the management of psychotropic medication – case planning, reviews, consent

## **Other key CSPM changes cont.**

Additional CSPM changes:

- changes in decision making for all travel - intrastate, interstate & overseas
- placement of a child with an employee of the Department of Communities
- Application for warrant / special warrant

# Where to get additional information

For further information about the child protection reforms:

- refer to your 'Information Session Resources'
- CP Legislative amendments help mailbox  
[CS\\_Practiceimprovement@communities.qld.gov.au](mailto:CS_Practiceimprovement@communities.qld.gov.au)
- ICMS practice resources, FAQs and other practice resources will be on the practice resources webpage...  
URL site address ...

# Final questions

# Conclusion

Now that we are at the end of the session you are aware of the child protection reforms which will take effect on the 29<sup>th</sup> August 2011 related to:

## **Amendments to the Child Protection Act 1999:**

- Definitional changes
- Long-term guardian orders to suitable person
- New orders
- Changes to existing orders
- General legislative amendments
- Court proceedings

## **Procedural and practice changes (Child Safety Practice Manual) and ICMS modifications**

# Child Protection Reform Phase 2 Information Presentation

Child Safety Services  
June 2011 ©

## **Session notes**

Welcome the participants introduce the presentation topic – Child protection reform information presentation.

If facilitator does not know the participants – introduce themselves

Outline housekeeping issues:

- WH&S including emergency exit plan
- Bathrooms
- Mobile phones to silent/vibrate

Outline the method of instruction for the session. In this session we will be using the following methods to provide the learning.

- Information delivery

## **Purpose Statement**

To provide an overview of the child protection reform agenda, including amendments to the *Child Protection Act 1999*, changes to the Child Safety Practice manual and Helping Out Families initiatives.

To provide the partner agencies with an understanding of the key areas of legislative and practice changes being introduced into Child Safety Services.

### **Session notes**

The facilitator should mention:

This information session is the first stage of the second phase of the child protection reforms.

Participants will begin to explore the changes so that they will be sufficiently resourced to apply the child protection reforms to their daily practice when they 'GO LIVE'.

The tiers of change:

- Legislative amendments
- Policy and procedural updates to reflect the legislative amendments (eg. Child safety Practice manual)
- Database changes

## **Overview**

**The child protection reforms take effect on the 29<sup>th</sup> August 2011. These include:**

**Amendments to the *Child Protection Act 1999*:**

- Definitional changes
- Long-term guardianship order to suitable person
- New orders
- Changes to existing orders
- General legislative amendments
- Court proceedings

**Procedural and practice changes (Child Safety Practice Manual).**

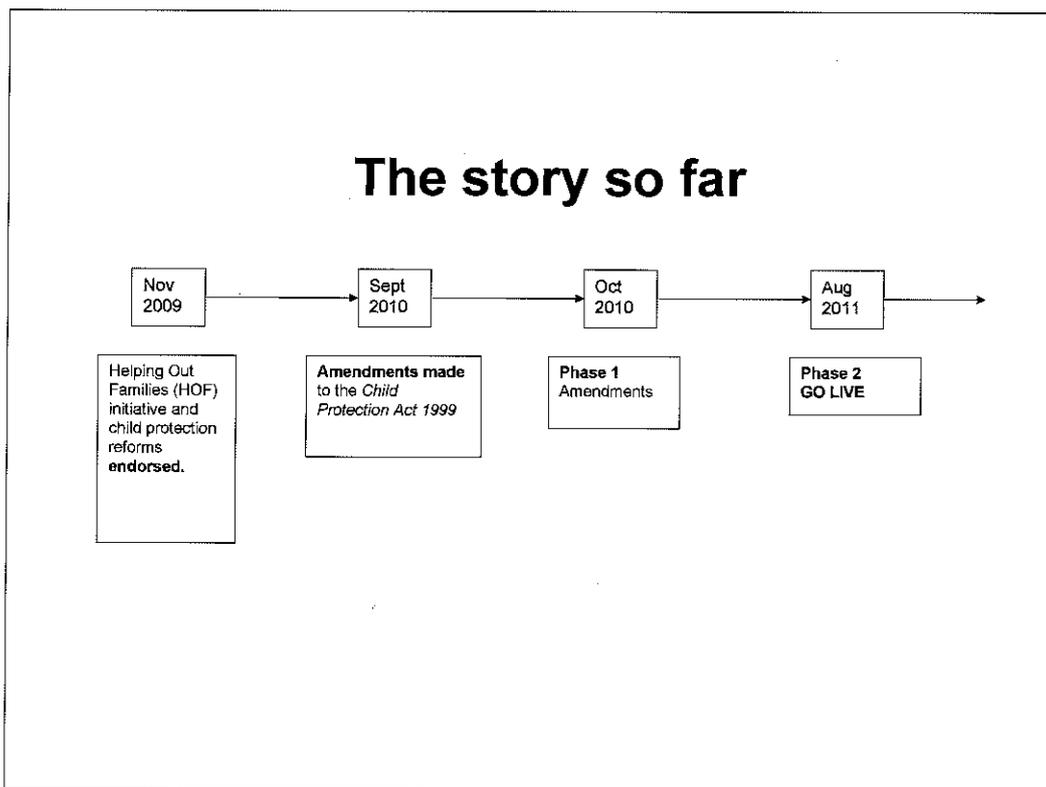
### **Session notes**

Display the overview and allow participants time to read them.

Facilitator should mention:

The child protection reforms took effect or 'go live' on the 29th August 2011. On this date:

- The provisions of the Child Protection Act 1999 commenced
- The next version of the Child Safety Practice Manual was released
- The updates to the database occurred



### **Session notes**

This slide provides an overview of the child protection reforms since 2008 to current.

Facilitator to highlight that these changes have been building since June 2008.

Phase 1 of the reforms occurred in October 2010.

In **November 2009**: Helping Out Families (HOF) initiative and Child Protection reforms were endorsed.

In **September 2010**: Amendments to the *Child Protection Act 1999* proclaimed to support the implementation of Helping out Families (HOF) initiative, to improve the operation of court orders, promote the stability and permanency for children in care clarify the status of long-term guardians.

In **October 2010**: Phase 1 Legislative amendments that were not dependant on database commenced - Integrated Client Management System (ICMS)

In **Dec 2010 - Jan 2011**: Natural disasters throughout Queensland seriously impacted on the department's priorities and resourcing

**July – August 2011: Phase 2 Stage 1** Information session

**August 2011:** Go live

**Stage 2 Practice implications:** This stage will involve a deeper level of learning and focus on specific staff in designated roles. Activity based learning will be role specific and focus on the implementation of child protection reforms to the various roles along the child protection continuum. It is anticipated that both stages will contribute to a culture of professional practice development in their Child Safety Service Centres.

**Stage 3 Practice Improvement and Embedding:** This stage will involve an

## Why are we making these changes?

These current legislative and practice changes underpin key strategic reforms of the child protection system aimed at achieving better outcomes for children and young people and their families, both at risk of entering the statutory system and subject to ongoing intervention.

The child protection reforms relate to state initiatives, together with the Queensland Government's commitment to broader national child protection reforms.

Facilitator to read out the slide to the participants

The legislative amendments and range of revisions to the Child Safety Practice Manual underpin key strategic reforms of the child protection system aimed at achieving better outcomes for children and young people and their families, both at risk of entering the statutory system and subject to ongoing intervention. These reforms include:

Initiatives to strengthen early intervention and prevention, including Helping Out Families and the implementation of Aboriginal and Torres Strait Islander Family Support Services

Reducing the overrepresentation of Aboriginal and Torres Strait Islander children and families through the Blueprint for Implementation Strategy

Recognising the cumulative nature of harm, the need for holistic assessments and collaboration and information sharing across service providers

A strengthened focus on engagement and participation of children and their families in decisions impacting on their lives

Goal directed case plans that support timely permanency decisions for children

Improved outcomes for children and young people in out-of-home care through child health passports, education support plans, cultural support plans and transition from care plans for young people 15 – 17 years; each of these incorporated within the individual child's comprehensive case plan

Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle and recording of participation of Recognised Entities in decision making

The child protection reforms relate to state initiatives, together with the Queensland Government's commitment to broader national child protection reforms identified in the range of documents listed below.

Facilitators to refer to the supporting documents:

### **State**

***Child Protection and Other Acts Amendment Bill 2010***

[www.legislation.qld.gov.au/Bills/53PDF/2010/ChildProOAAmb10.pdf](http://www.legislation.qld.gov.au/Bills/53PDF/2010/ChildProOAAmb10.pdf)

***Blueprint for implementation strategy: Reducing the over-representation of Aboriginal and Torres Strait Islander children in Queensland's child protection system***

<http://www.communities.qld.gov.au/resources/childsafety/child-protection/blueprint-strategy.pdf>

### **National**

***National Framework for Protecting Australia's Children***

<http://www.communities.qld.gov.au/childsafety/child-protection/about/national-framework.page>

***Protecting Australian children: Analysis of challenges and strategic directions: CDSMC National Approach for Child Protection Project***

<http://www.aifs.gov.au/nch/pubs/reports/cdsamac/protecting.pdf>

***Protecting Children is Everyone's Business: National Framework For Protecting Australia's Children 2009–2020***

[http://www.coag.gov.au/coag\\_meeting\\_outcomes/2009-04-30/docs/child\\_protection\\_framework.pdf](http://www.coag.gov.au/coag_meeting_outcomes/2009-04-30/docs/child_protection_framework.pdf)

## Aims of the changes

- Strengthen early intervention and prevention, including Helping Out Families and the implementation of Aboriginal and Torres Strait Islander Family Support Services
- Reduce the overrepresentation of Aboriginal and Torres Strait Islander children through the *Blueprint for Implementation Strategy*

Facilitator to highlight the positive intent of the changes as listed on the slide. Initiatives to strengthen early intervention and prevention, including Helping Out Families and the implementation of Aboriginal and Torres Strait Islander Family Support Services

Reducing the overrepresentation of Aboriginal and Torres Strait Islander through the *Blueprint for Implementation Strategy*

## **Aims of the changes cont.**

- Recognising the cumulative nature of harm, the need for holistic assessments and collaboration and information sharing across service providers
- Improve outcomes for children and young people in out of home care through child health passports, education support plans, cultural support plans and transition from care plans
- Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle and recording of participation of Recognised Entities in decision making

Facilitator to highlight the positive intent of the changes as listed on the slide.  
Recognising the cumulative nature of harm, the need for holistic assessments and collaboration and information sharing across service providers

Improved outcomes for children and young people in out-of-home care through child health passports, education support plans, cultural support plans and transition from care plans for young people 15 – 17 years; each of these incorporated within the individual child's comprehensive case plan

Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle and recording of participation of Recognised Entities in decision making

## **Aims of the changes cont.**

- Strengthened focus on engagement and participation of children and their families in decisions impacting on their lives
- Goal directed case plans that support timely permanency decisions for children

Facilitator to highlight the positive intent of the changes as listed on the slide.  
A strengthened focus on engagement and participation of children and their families in decisions impacting on their lives

Goal directed case plans that support timely permanency decisions for children

## Definitional changes

### Cumulative harm

- now embedded in legislation

#### **s9 What is harm**

- (1) *Harm, to a child, is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing.*
- (2) *It is immaterial how the harm is caused.*
- (3) *Harm can be caused by—*
  - (a) *physical, psychological or emotional abuse or neglect; or*
  - (b) *sexual abuse or exploitation.*
- (4) *Harm can be caused by—*
  - (a) *a single act, omission or circumstance; or*
  - (b) *a series or combination of acts, omissions or circumstances.*

*Child Protection and other Acts Amendment Act 2010*

Cumulative harm has been common practice language and has appeared in the CSPM for some time, it is now embedded in legislation. The definition of "harm" has been extended so that it is clear that harm can be the cumulative result of a number of incidents of abuse or neglect and can include a series or combination of acts, omissions or circumstances over an extended period of time. The new definition also recognises the cumulative nature of harm, reinforcing that multiple events of harm, which do not individually meet the threshold for statutory intervention, are to be considered collectively in determining whether a child has been harmed.

Depending on the size of the group you might ask participants to discuss the implication of this definitional change – how will this affect your clients, in small groups or with the person next to them prior to engaging in a large group discussion. Alternatively you could use this question to conduct a large group discussion.

## Definitional changes cont.

### Parent

Long-term guardians are included in the definition of parent under the *Child Protection Act 1999* sections 23; 37; 51AA; 51F; 52; 67; 117 and 205

### Definition of parent has expanded to include long-term guardians :

- impacts on rights and responsibilities of long-term guardians
- impacts on responsibilities and obligations of Child Safety Services to long-term guardians and parents

### Session notes

Long-term guardians are included in the definition of parent under the *Child Protection Act 1999* (sections 23; 37; 51AA; 51F; 52; 67; 117 and 205).

Rights & responsibilities of long-term guardians (some examples):

- Right to be treated as a parent in the event a notification is made about a child subject to long term guardianship order
- Will be considered a parent in any subsequent applications and court hearings and will have the same rights as a parent
- Additional responsibilities to meet the needs of the child subject to long-term guardian order
- Additional responsibilities to provide information to and contact with the child's family and parents
- Additional responsibilities to inform Child Safety Services, in writing, when a child is no longer living with them, and provide details of where the child is.
- Responsibility to allow Child Safety Services to have face to face contact with the child once every 12 months

Responsibilities and obligations of Child Safety Services staff (some examples):

- Obligation to inform long-term guardian of actions in relation to an

## **New orders**

### **Temporary custody order (TCO)**

- Can be used when a child has already been assessed as being in need of protection and is at unacceptable risk of being harmed if order is not made
- A TCO, for up to three business days, may be applied for to allow for the Department to decide the appropriate action to meet the child's protection and care needs

### **Session notes**

Facilitator to read the definitions for the two new orders and then have a discussion as how it will impact on their practice

The facilitator should inform participants of the following: temporary custody order, for up to three business days, may be applied for to allow for the Department to decide the appropriate action to meet the child's protection and care needs, where the child has already been assessed as being in need of protection. The child needs to be at an unacceptable risk of harm and the action of the TCO is to ensure the immediate safety of the child. The department could apply for a temporary custody order when a child is already known to the department and is assessed as in need of protection. For example, because another child of the family is in the custody or guardianship of the chief executive, or a child is already the subject of a child protection care agreement with the parents but an unacceptable risk to the child becomes immediate and the child needs to be taken into the chief executive's custody. Application for the TCO is a significant decision, therefore involvement from the recognised entity is required for all Aboriginal or Torres Strait Islander children.

A temporary custody order, for up to three business days, may be applied for to allow for the Department to decide the appropriate action to meet the child's protection and care needs, where the child has already been assessed as being in need of protection. The child needs to be at an unacceptable risk of harm and the action of the TCO is to ensure the immediate safety of the child.

## **New orders cont.**

### Transition order

- provides a period of time (up to 28 days) for the department to prepare and assist a child to return to the care of their parents
- the Court has discretionary power to grant a Transition Order when it does not extend, renew, or revoke a short term order in some circumstances
- Conditions of the existing order continue until the date stated in the Transition Order

### **Session notes**

The facilitator should inform participants of the following:

- Transition Order is a new order which provides a period of time (up to 28 days) for the department to prepare and assist a child to return to the care of their parents.
- A transition order can only be granted when the original child protection order was
- Short-term custody to Chief Executive
- Short-term guardianship
- Long-term guardianship to Chief Executive or suitable person

The Transition Order:

- Supports the child
- May reduce the disruption or distress which may be experienced by the child by having a planned transition to the care of their parents.
- Enables the parents the time to prepare and demonstrate their readiness to resume care for the child.

The Court has discretionary power to grant a Transition Order when it does not extend, renew or revokes a short term order. Also when the Court decides an appeal against the making of the order in favour of a

## **Transition order cont.**

The Transition Order:

- Supports the child
- May reduce the disruption or distress which may be experienced by the child by having a planned transition to the care of their parents.
- Enables the parents the time to prepare and demonstrate their readiness to resume care for the child.

## **Changes to existing orders**

### **Temporary assessment order**

- extending the term of a temporary assessment order from three days to three business days

### **Court assessment order**

- the Court must consider Chief Executive's views prior to making provisions about a child's contact with their family
- Allows the department to make a submission about supervised family contact when the Court is considering making a court assessment order with supervised family contact

### **Session Notes**

Facilitator to explain the changes to the two existing orders and ask what the practice implications might be:

Extending the term of a temporary assessment order from three days to three business days

Court Assessment Order:

Changed so that the Court must consider CE's views about contact with family, include whether contact should be supervised and duration and frequency of contact.

Allows the department to make a submission about supervised family contact when the Court is considering making a court assessment order with supervised family contact

## Changes to existing orders cont.

### Extension, variation & revocation of CPO

- court must have regard to the child's need for emotional security and stability before extending or granting another CPO
- consider revoking an order that is no longer appropriate and desirable for the child's protection
- a CPO cannot be extended beyond its maximum duration

### Session notes

Extension, variation & revocation of CPO – refer to supplementary notes #8 for additional information

Change in practice identified through Crown Law advice:

- A CPO cannot be extended beyond its maximum duration (1 year for directive, protective supervision order or 2 yrs for short term custody/guardianship) – s62. If maximum duration has been ordered and a further order is sought as child's care and protection needs have not been resolved, a new application for a cpo must be made prior to expiry of the order. An application to extend can only be made if maximum duration of order was not initially granted.
- A CPO can only be varied within type to modify the type of order. Orders which can be varied are directive, protective supervision, custody and LTG. E.g. LTG C.E. to LTG other

s59 – Amended so that the court must have regard to the child's need for emotional security and stability before extending or granting another CPO.

s65 – Amended so that considerations for revoking an order include that it is no longer "appropriate and desirable for the child's protection" and to take into account the child's need for emotional security and stability. (LTG will have "parent" status for a fresh CPO made at the same time)

Change in practice identified through Crown Law advice:

A CPO cannot be extended beyond its maximum duration (1 year for directive, protective supervision order or 2 yrs for short term custody/guardianship) – s62. If maximum duration has been ordered and a further order is sought as child's care and protection needs have not been resolved, a new application for a cpo must be made prior to expiry of the order. An application to extend can only be made if maximum duration of order was not initially granted.

A CPO can only be varied within type to modify the type of order. Orders which can be varied are directive, protective supervision, custody and LTG.

s99 - Amendment to the order granting custody or guardianship of the child continues until the application is decided unless the Children Court orders an earlier end to the order.

Facilitator to explain that there have been changes made to non parties Separate Representatives status and transition orders. Significant practice changes which will impact upon:

- Purposeful case plans
- Casework and completing agreement actions
- Evidence gathering

## **General legislative amendments**

### **Assessment care agreement**

- an assessment care agreement can be entered into with only one parent of a child
- reasonable effort must be made to locate the other parent
- may not enter into an assessment care agreement if the other parent refuses

### **Session Notes**

#### **Assessment Care Agreement:**

Facilitator to read the changes to the assessment care agreement listed below:

- Allowing the department to enter into an assessment care agreement (maximum period 30 days) with only one parent of a child where it is impractical to obtain the other parents consent or reasonable attempts have been made to obtain the other parents consent.
- If only one parent was involved in the agreement reasonable effort must to made to locate the other parent
- May not enter assessment care if the other parent refuses
- All attempts to contact and obtain consent must be recorded.
- Cannot be used when a child is subject to LTG other

## **General legislative amendments cont.**

### Notifying QPS

- if the chief executive becomes aware of an allegation of harm to a child and reasonably believes it may involve a criminal offence
- whether or not the chief executive suspects the child is in need of protection

### Case planning and working with families

- A case plan must be approved within 10 business days of being developed

### **Session notes**

Notifying QPS – s14(2) of the Child Protection Act 1999:

This clarifies the department's obligation to notify the Queensland Police Service if the chief executive becomes aware of an allegation of harm to a child and reasonably believes it may involve a criminal offence whether or not the chief executive suspects the child is in need of protection.

Possible examples may include:

- Conducting an Investigation & Assessment when a parent left their child unsupervised in the car
- Seeing electronic media which indicates child pornography
- When a parent admits that they are dealing / producing drugs

Implications for clients may include informing parents that what they say may be passed onto the police.

Case planning and working with families : Amended so that a case plan must be approved within 10 business days of being developed.

## **General legislative amendments cont.**

Orders for dept contact with a child on adjournment of CAO or CPO

- allow the court to make an interim order for an authorised officer or police officer to have contact with a child during the period of adjournment
- includes enter and search powers

### **Session notes**

Orders for dept contact with a child on adjournment of CAO or CPO: [Child Protection Act 1997](#)

Amended to allow the court to make an interim order for an authorised officer or police officer to have contact with a child during the period of adjournment., including enter and search powers. There is a specified need to identify self and provide copy of the order to person involved.

## **Other key CSPM changes**

Additional CSPM changes:

- additional considerations in locating an appropriate placement for an Aboriginal or Torres Strait Islander child – a person who lives near the child's family or a person who lives near the child's community or language group
- Planned respite arrangements exceeding a specified time is now a reviewable decision

## **Other key CSPM changes cont.**

Additional CSPM changes:

- new requirements regarding the management of psychotropic medication – to be included in case planning, dates for review of medication, consents- who can consent?

## **Resources**

- **State**
- ***Child Protection and Other Acts Amendment Bill 2010***
- ***Blueprint for implementation strategy: Reducing the over-representation of Aboriginal and Torres Strait Islander children in Queensland's child protection system***
- **National**
- ***National Framework for Protecting Australia's Children***
- ***Protecting Australian children: Analysis of challenges and strategic directions: CDSMC National Approach for Child Protection Project***
- ***Protecting Children is Everyone's Business: National Framework For Protecting Australia's Children 2009–2020***



## STAFF COMMUNIQUE

### Temporary custody order – further amendments necessary

On 29 August 2011, amendments to the *Child Protection Act 1999* (the Act) will commence. This will include a new Part 3AA, temporary custody orders, in Chapter 2 of the Act.

The provisions enabling the Court to make a temporary custody order were inserted into the Act when it was amended by the Legislative Assembly in September 2010. Since then, further technical amendments to the Act have been identified as necessary to give full effect to the policy intent of the order. Those further amendments will not be made by 29 August 2011.

Staff training for the introduction of the amendments to the Act commenced on 12 July 2011. This information session does include training about the temporary custody order.

**However, it has been determined that until the further amendments have been made to the Act authorised officers will not apply to the Court for a temporary custody order for a child.**

Information will be provided to staff as soon as a commencement date for the further amendments is known and when authorised officers may begin to apply for a temporary custody order for a child in accordance with the provisions in the Act.

Part 3AA will enable an authorised officer to apply for, and the Court to make, a temporary custody order for the chief executive to have custody of a child for up to three business days. The Court could make the order if it is satisfied that the child will be at unacceptable risk of harm without the order and, during the term of the order, the chief executive will be able to decide the appropriate action to meet the child's ongoing protection and care needs and start taking the action.

Once advised that applications for temporary custody orders may be made, an authorised officer might apply for a temporary custody in circumstances when they are satisfied that a child is in need of protection, no assessment is necessary, and the child should be taken into custody to secure the child's immediate safety. For example, an authorised officer who has been working with a pregnant woman may be satisfied when the child is born that the child is in need of protection immediately. Alternatively, the circumstances of a child who is the subject of a supervision order or a child protection care agreement may change so that the child is unacceptably at risk if they are not taken into custody immediately.

28 July 2011



## Learning Intervention Strategy – Child Protection Reform Agenda – Phase 2

Unit responsible for Learning Intervention Strategy design:

Learning Solutions Unit

Workgroup responsible for training delivery:

Various

Due date:

People involved in the consultation/development process:

**Name:**

**Unit:** Learning Solutions Unit

**Phone/email:**

Child Protection Development Branch

Child Safety Practice Improvement Unit

**Organisational objective:**

All Child Safety Service delivery staff.

**Audience:** (Who are the critical people to be trained?)

**Purpose:**

For Child Safety Service delivery staff to be advised of the Child Protection Reform agenda, including amendments to the *Child Protection Act 1999*, changes to the *Child Safety Practice Manual and outstanding Helping Out Families initiatives (such as the Securing Permanency Project)* and to apply this information to their practice.

**Learning outcomes:** (Learning outcomes should be SMART and state what participants will be able to DO or know as a result of the training – Learning Outcomes provide the direction in the planning of training activities).

1. Analyse and assess harm and cumulative harm as part of any child protection response, including ongoing intervention.
2. Assess and formulate rationale for level of intervention including the type of order if applicable and differentiate when engagement is required with a long term guardian as a parent.
3. Evaluate the child's need for emotional stability and security, as part of any child protection response, to deliver effective and timely permanency decisions.

**Learning Intervention Strategy**

This learning intervention strategy consists of a phased rollout addressing multiple topics as part of overarching child protection changes. Stage 1 of this rollout identifies the child protection reforms. Stage 2 has a greater focus on practice implications. Stage 3 focuses on practice improvement and embedding of child protection reforms.

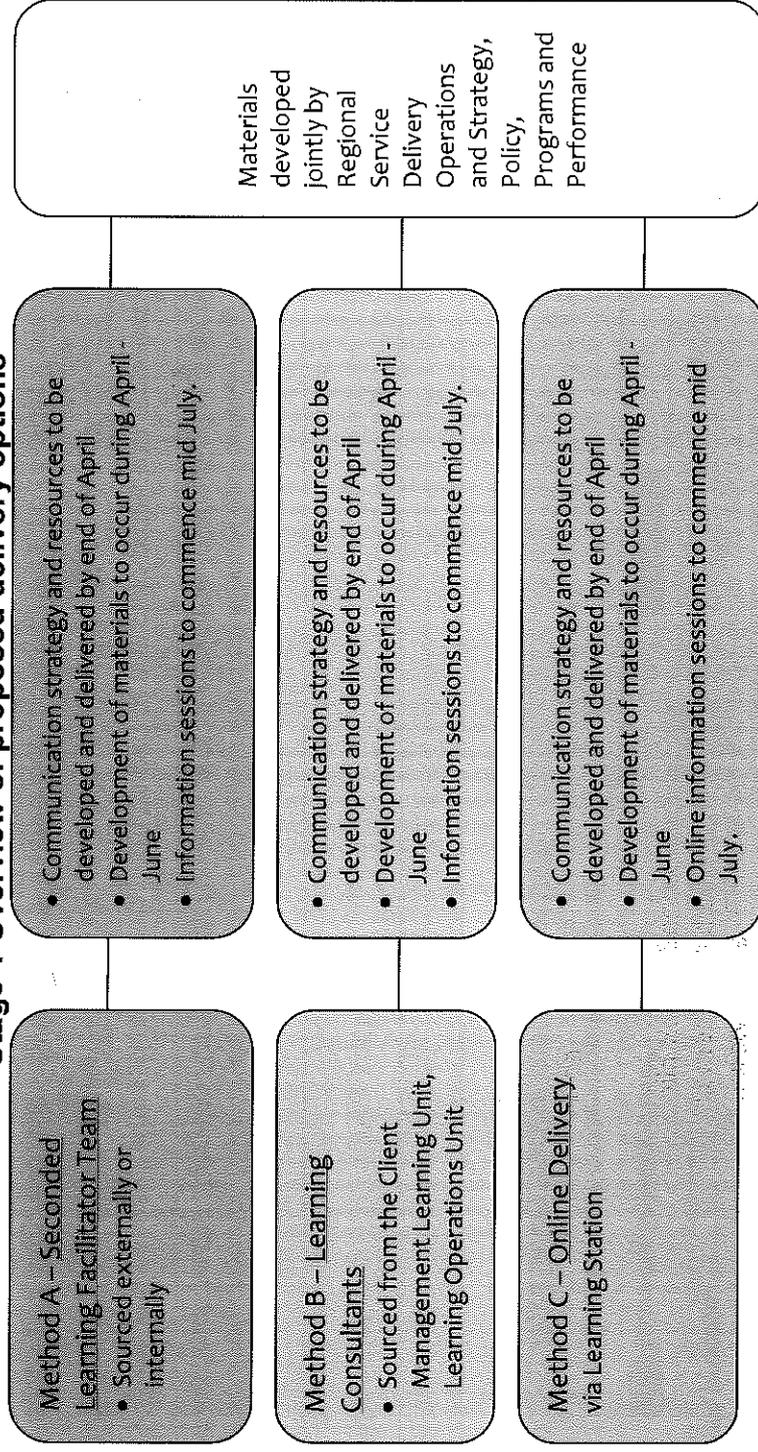
Participants are pre-existing Child Safety Service staff. All new staff commencing Child Safety Officer Entry Level Training Program after the implementation date will not be required to undertake this training as child protection reforms will be incorporated into Child Safety Officer Entry Level Training Program.

**Overview of Stage 1, Stage 2 and Stage 3**

**Stage 1: Reform Agenda**

Stage 1 consists of information delivery of the child protection reforms. There are three methods proposed to achieve this.

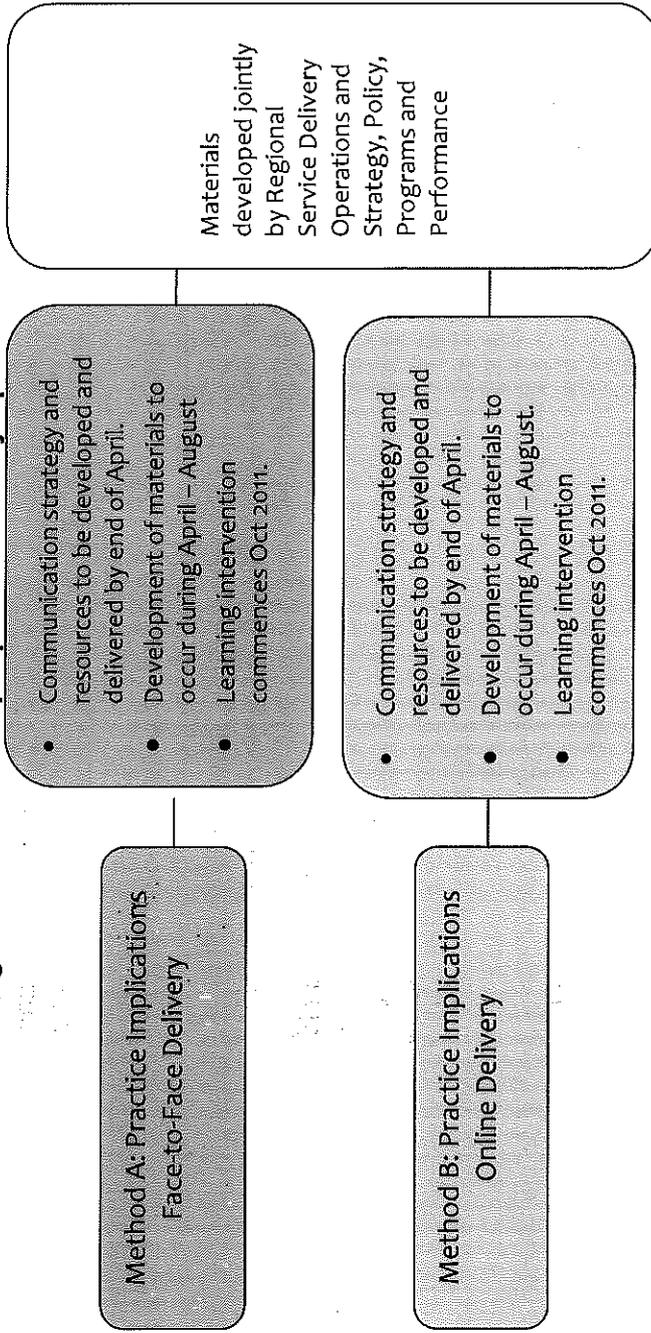
**Stage 1 Overview of proposed delivery options**



**Stage 2: Practice Implications (post September 2011 implementation).**

This stage will involve a deeper level of learning and focus on specific staff in designated roles. Activity based learning will be role specific and focus on the implementation of child protection reforms to the various roles along the child protection continuum. It is anticipated that both stages will contribute to a culture of professional practice development in their Child Safety Service Centres.

### Stage 2: Overview of proposed delivery options



### Stage 3: Practice Improvement and Embedding (post February 2012 implementation)

This stage will involve an overview of permanency planning to all Child Safety Service delivery staff. This will involve activity based learning and will focus on characteristics that contribute to the effective permanent placement of children. The responsibility of all staff to plan towards permanency across the child protection continuum is emphasised.

Delivery options for the implementation of stage 3 have not yet been identified.

\* Other practice improvement modules may be identified during Stage 2 and these will be developed accordingly.

	<p><b>Communication Strategy</b></p> <p>Before any learning intervention options are implemented, a communication plan that includes the writing of information resources to be placed on the departmental intranet is required. These resources will be used as a knowledge platform that all child safety staff will need in order to productively negotiate the child protection reforms and the proposed learning interventions.</p>
<p><b>Stragglers' Strategy</b></p>	<p>Staff not able to attend Stage 1 or 2 will have the opportunity to complete Stage 2, Method B (online) that addresses the child protection reforms and the impact of these changes upon practice.</p> <p>The online course will be available and accessible on Learning Station indefinitely.</p>
<p><b>Points to consider</b></p>	<ul style="list-style-type: none"> <li>• Should representatives from the local Recognised Entities attend stage 1 of the child protection reforms?</li> <li>• Should representatives from the local Recognised Entities attend stage 2 of the child protection reforms?</li> <li>• Should representatives from the local non-government organisations attend stage 1 of the child protection reforms?</li> <li>• Should representatives from the local non-government organisations attend stage 2 of the child protection reforms?</li> </ul> <p>Note: Should representatives from Recognised Entities and non-government organisations be required to attend elements of this roll out, a discrete learning strategy would be required as the impact upon the proposed options above would affect all elements identified including timeframes, required staffing, indicative costs and delivery strategy.</p>
<p>Is assessment required?  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>No formal assessment is required of the options within the Learning Intervention Strategy. The use of Learning Station will verify completion of learning.</p>
<p>Is evaluation required?  <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	

**Timeline for stage 2 of the CP Reform Learning Strategy**

	Week Jul - 22 Jul	Week Jul - 29 Jul	Week 1 Aug - 5 Aug	Week 8 Aug - 12 Aug	Week 15 Aug - 19 Aug	Week 22 Aug - 26 Aug	Week 29 Aug - 2 Sep	Week 5 Sep - 9 Sep	Week 12 Sep - 16 Sep	Week 19 Sep - 23 Sep	Week 26 Sep - 30 Sep	Week 3 Oct - 7 Oct	Week 10 Oct - 14 Oct	Week 17 Oct - 21 Oct	Week 24 Oct - 28 Oct
<p><b>Ongoing Intervention Module</b>  <i>Learning outcome:</i> Assess and formulate rationale for level of intervention including the type of order, if applicable. Differentiate when engagement is required with the LTG as a parent</p>					SWIG to sign off on the training content and any final amendments to be made prior to handover to LSU	22 Aug: LSU to receive final copy of key messages and materials from CSPI	LSU to provide CSPI with draft learning resources to present to the working party. Feedback to be provided to LSU to develop final copy 2 Sept		15/9 Court Coord conference				LSU to conduct Train the Trainer sessions with CMLU 13 Oct	CMLU to begin roll out in CSSCs	CMLU to complete roll out to CSSCs
<p><b>Harm (I&amp;A and Cumulative) module</b>  <i>Learning outcome:</i> Analyse and assess harm and cumulative harm as part of any child protection response including ongoing intervention.</p>		1) 25/7 LSU to give presentation of the reflective practice tool to SWIG for signoff. 2) LSU to present reflective practice tool to working parties. 3) Working parties to meet to develop content and materials for individual modules.						SWIG to sign off on the training content and any final amendments to be made prior to handover to LSU	12 Sept: LSU to receive final copy of key messages and materials from CSPI	LSU to provide CSPI with draft learning resources to present to the working party.	CSPI to provide LSU with comments and feedback on resources & LSU to develop final copy by 30 Sept		10/10 & 11/10 Snr Prac Forum Train the Trainer sessions with CMLU 13 Oct	CMLU to begin roll out in CSSCs	CMLU to complete roll out to CSSCs
<p><b>Permanency Planning and Decision Making module</b>  <i>Learning outcome:</i> Evaluate the child's need for emotional stability and security as part of any child protection response to deliver effective and timely permanency decisions.</p>								SWIG to sign off on the training content and any final amendments to be made prior to handover to LSU	12 Sept: LSU to receive final copy of key messages and materials from CSPI	LSU to provide CSPI with draft learning resources to present to the working party.	CSPI to provide LSU with comments and feedback on resources & LSU to develop final copy 30 Sept		10/10 & 11/10 Snr Prac Forum Train the Trainer sessions with CMLU 13 Oct	CMLU to begin roll out in CSSCs	CMLU to complete roll out to CSSCs

Working party representation will come from Child Protection Development, Child Safety Practice Improvement, Court Services & Strategic Policy. Note LSU will not attend every working party meeting but will attend to provide input on a regular basis. It is the responsibility of CSPI to have the content of the materials for the modules signed off by SWIG prior to handing over the materials to LSU. In line with the above timeline SWIG would need to sign off for the materials on the following dates:

**Module 1:** Ongoing Intervention week of the 15th August

**Module 2:** Harm (I&A and Cumulative) module week of the 5th September

**Module 3:** Permanency Planning and Decision Making module week of the 5th September

LSU will conduct a train the trainer session with CMLU staff on 19 Sept with anticipated delivery to commence 26 September - 3 October.

LSU will provide a train the trainer for modules 2 & 3, week beginning 3 October - 10 October. As the same learning structure and reflective practice tool will be used it is envisaged that this will not be an expensive train the trainer session. CMLU will commence delivery of modules 2 & 3 to CSSCs week beginning 17 October

**CMLU – Delivery Schedule  
Phase 2 – Stage 2 - Child Protection Legislation Amendments**

<b>Region</b>	<b>Service Centre</b>	<b>Delivery Date</b>	<b>Completed Phase 2 – Stage 2 CP Legislation Amendments Modules</b>
Far Northern Qld	Cairns North	17 – 19 Oct 2011	Joint training sessions for these offices Yes – All three modules
	Cairn South (Edmonton)		
	Cape York North and Torres Strait Islands	24 – 25 Oct 2011	Re-Scheduled for outstanding staff Yes - Harms & On Going Intervention modules only
	Cape York South and Torres Strait Islands	28 – 29 Dec 2011	Re-Scheduled for outstanding staff - No staff attended
	Regional Intake Services Placement Support Unit	5 Dec 2011	Re-Scheduled for outstanding staff - No staff attended
	Innisfail	26 Oct 2011	Yes – Harms & On Going Intervention modules only
		6 Dec 2011	Yes – Permanency Planning module only
	Thursday Island	27 Oct 2011	Yes – All three modules
	Weipa	31 Oct - 1 Nov 2011	Yes – All three modules
	Cooktown Branch Office Atherton	6 Dec 2011 15 Dec 2011	Yes – All three modules Yes – All three modules
<b>Total no. of service centres trained: 11</b>			
<b>Total no. of training sessions held: 11</b>			
<b>Total no. of remaining service centres to be trained: 0</b>			
<b>Region</b>	<b>Service Centre</b>	<b>Delivery Date</b>	<b>Completed Phase 2 – Stage 2 CP Legislation Amendments Modules</b>
North Qld	Mackay	16 – 17 Nov 2011	Yes – All three modules
	Mount Isa & Gulf	22 – 23 Nov 2011	Yes – All three modules
	Townsville	24 – 25 Nov 2011	Yes – All three modules
	Aitkenvale	28 – 29 Nov 2011	Yes – All three modules
	Bowen	1 Dec 2011	Yes – All three modules
	Regional Intake Services	2 Dec 2011	Yes – Harm and On Going Intervention modules only
	Thuringowa	5 & 8 Dec 2011	Yes – All three modules
<b>Total no. of services centre trained: 8</b>			
<b>Total no. of training sessions held: 12</b>			
<b>Total no. of remaining service centres to be trained: 0</b>			
<b>Region</b>	<b>Service Centre</b>	<b>Delivery Date</b>	<b>Completed Phase 2 – Stage 2 CP Legislation Amendments Modules</b>
Central Qld	Rockhampton North	28 Oct 2011	Yes – All three modules
	Emerald	1 Nov 2011	Yes – All three modules

**CMLU – Delivery Schedule  
Phase 2 – Stage 2 - Child Protection Legislation Amendments**

<b>Region</b>	<b>Service Centre</b>	<b>Delivery Date</b>	<b>Completed Phase 2 – Stage 2 CP Legislation Amendments Modules</b>
Central Qld cont.	Gladstone	3 Nov 2011	Yes – All three modules
	Rockhampton South	4 Nov 2011 & 13 Dec 2011	Yes – All three modules
	Bundaberg	8 Nov 2011	Yes – All three modules
	Kingaroy & Murgon	9 Nov 2011	Yes – All three modules
	Maryborough	10 Nov 2011 & 6 Dec 2011	Yes – All three modules
	South Burnett	7 Dec 2011	Yes – All three modules
<b>Total no. of service centres trained: 9</b>			
<b>Total no. of training sessions held: 10</b>			
<b>Total no. of remaining service centres to be trained: 0</b>			
<b>Region</b>	<b>Service Centre</b>	<b>Delivery Date</b>	<b>Completed Phase 2 – Stage 2 CP Legislation Amendments Modules</b>
North Coast	Caboolture	9 – 10 Nov 2011	Yes – All three modules
	Redcliffe	1 – 2 Feb 2012	PENDING
	Caloundra	23 – 24 Feb 2012	PENDING
	Gympie	2 & 5 Mar 2012	PENDING
	Strathpine	20 – 12 Mar 2012	PENDING
	Maroochydore	26 – 27 Mar 2012	PENDING
<b>Total no. of service centres trained: 1</b>			
<b>Total no. of training sessions held: 2</b>			
<b>Total no. of remaining service centres to be trained: 5</b>			
<b>Region</b>	<b>Service Centre</b>	<b>Delivery Date</b>	<b>Completed Phase 2 – Stage 2 CP Legislation Amendments Modules</b>
Brisbane	Chermside	25 Nov 2011	Yes – All three modules
	Mt Gravatt	22 Nov 2011	Yes – All three modules
	Wynnum	29 Nov 2011	Yes – All three modules
	Inala	7 – 8 Feb 2012	PENDING
	Alderley & Brisbane RIS	27 – 28 Feb 2012	PENDING
	Stones Corner	29 Feb 2012 & 1 Mar 2012	PENDING
	Fortitude Valley	8 – 9 Mar 2012	PENDING
	Forest Lake	28 – 29 Mar 2012	PENDING
<b>Total no. of service centres trained: 3</b>			
<b>Total no. of training sessions held: 3</b>			
<b>Total no. of remaining service centres to be trained: 5</b>			

**CMLU – Delivery Schedule  
Phase 2 – Stage 2 - Child Protection Legislation Amendments**

<b>Region</b>	<b>Service Centre</b>	<b>Delivery Date</b>	<b>Completed Phase 2 – Stage 2 CP Legislation Amendments Modules</b>
South East (North)	Woodridge	18 Oct 2011	Yes – All three modules
	Loganlea	19 Oct 2011	Yes – All three modules
	Browns Plains	26 Oct 2011	Yes – All three modules
	Logan Central	21 Nov 2011	Yes – All three modules
	Beaulesert	9 – 10 Feb 2012	<b>PENDING</b>
<b>Total no. of service centres trained: 4</b>			
<b>Total no. of training sessions held: 4</b>			
<b>Total no. of remaining service centres to be trained: 1</b>			
<b>Region</b>	<b>Service Centre</b>	<b>Delivery Date</b>	<b>Completed Phase 2 – Stage 2 CP Legislation Amendments Modules</b>
South East (South)	Beenleigh	6 Dec 2011	Yes – All three modules
	Nerang	13 – 14 Feb 2012	<b>PENDING</b>
	Mermaid Beach	15 – 18 Feb 2012	<b>PENDING</b>
	Labrador	21 – 22 Feb 2012	<b>PENDING</b>
	Cleveland	Have not nominated a date	-
<b>Total no. of service centres trained: 1</b>			
<b>Total no. of training sessions held: 1</b>			
<b>Total no. of service centres to be trained: 4</b>			
<b>Region</b>	<b>Service Centre</b>	<b>Delivery Date</b>	<b>Completed Phase 2 – Stage 2 CP Legislation Amendments Modules</b>
South West	Roma/Charleville	23 – 24 Nov 2011	Yes – All three modules
	Ipswich North	3 & 6 Feb 2012	<b>PENDING</b>
	Goodna	17 & 20 Feb 2012	<b>PENDING</b>
	Toowoomba North	6 – 7 Mar 2012	<b>PENDING</b>
	Ipswich South	12 – 13 Mar 2012	<b>PENDING</b>
	Toowoomba South	14 – 15 Mar 2012	<b>PENDING</b>
<b>Total no. of service centres trained: 1</b>			
<b>Total no. of training sessions held: 2</b>			
<b>Total no. of service centres to be trained: 5</b>			



**CMLU – Delivery Schedule  
Phase 2 – Stage 2 - Child Protection Legislation Amendments**

<b>Region</b>	<b>Service Centre</b>	<b>Delivery Date</b>	<b>Completed Phase 2 – Stage 2 CP Legislation Amendments Modules</b>
Far Northern Qld	Cairns North	17 – 19 Oct 2011	Joint training sessions for these offices Yes – All three modules
	Cairn South (Edmonton)		
	Cape York North and Torres Strait Islands	24 – 25 Oct 2011	Re-Scheduled for outstanding staff Yes - Harms & On Going Intervention modules only
	Cape York South and Torres Strait Islands	28 – 29 Dec 2011	Re-Scheduled for outstanding staff - No staff attended
	Regional Intake Services Placement Support Unit	5 Dec 2011	Re-Scheduled for outstanding staff - No staff attended
	Innisfail	26 Oct 2011	Yes – Harms & On Going Intervention modules only
	Thursday Island	6 Dec 2011	Yes – Permanency Planning module only
	Weipa	27 Oct 2011	Yes – All three modules
	Cooktown Branch Office	31 Oct - 1 Nov 2011	Yes – All three modules
	Atherton	6 Dec 2011	Yes – All three modules
		15 Dec 2011	Yes – All three modules
<b>Total no. of service centres trained: 11</b>			
<b>Total no. of training sessions held: 11</b>			
<b>Total no. of remaining service centres to be trained: 0</b>			
<b>Region</b>	<b>Service Centre</b>	<b>Delivery Date</b>	<b>Completed Phase 2 – Stage 2 CP Legislation Amendments Modules</b>
North Qld	Mackay	16 – 17 Nov 2011	Yes – All three modules
	Mount Isa & Gulf	22 – 23 Nov 2011	Yes – All three modules
	Townsville	24 – 25 Nov 2011	Yes – All three modules
	Aitkenvale	28 – 29 Nov 2011	Yes – All three modules
	Bowen	1 Dec 2011	Yes – All three modules
	Regional Intake Services	2 Dec 2011	Yes – Harm and On Going Intervention modules only
	Thuringowa	5 & 8 Dec 2011	Yes – All three modules
<b>Total no. of services centre trained: 8</b>			
<b>Total no. of training sessions held: 12</b>			
<b>Total no. of remaining service centres to be trained: 0</b>			
<b>Region</b>	<b>Service Centre</b>	<b>Delivery Date</b>	<b>Completed Phase 2 – Stage 2 CP Legislation Amendments Modules</b>
Central Qld	Rockhampton North	28 Oct 2011	Yes – All three modules
	Emerald	1 Nov 2011	Yes – All three modules

**CMLU – Delivery Schedule  
Phase 2 – Stage 2 - Child Protection Legislation Amendments**

<b>Region</b>	<b>Service Centre</b>	<b>Delivery Date</b>	<b>Completed Phase 2 – Stage 2 CP Legislation Amendments Modules</b>
Central Qld cont.	Gladstone	3 Nov 2011	Yes – All three modules
	Rockhampton South	4 Nov 2011 & 13 Dec 2011	Yes – All three modules
	Bundaberg	8 Nov 2011	Yes – All three modules
	Kingaroy & Murgon	9 Nov 2011	Yes – All three modules
	Maryborough	10 Nov 2011 & 6 Dec 2011	Yes – All three modules
	South Burnett	7 Dec 2011	Yes – All three modules
<b>Total no. of service centres trained: 9</b>			
<b>Total no. of training sessions held: 10</b>			
<b>Total no. of remaining service centres to be trained: 0</b>			
<b>Region</b>	<b>Service Centre</b>	<b>Delivery Date</b>	<b>Completed Phase 2 – Stage 2 CP Legislation Amendments Modules</b>
North Coast	Caboolture	9 – 10 Nov 2011	Yes – All three modules
	Redcliffe	1 – 2 Feb 2012	PENDING
	Caloundra	23 – 24 Feb 2012	PENDING
	Gympie	2 & 5 Mar 2012	PENDING
	Strathpine	20 – 12 Mar 2012	PENDING
	Maroochydore	26 – 27 Mar 2012	PENDING
<b>Total no. of service centres trained: 1</b>			
<b>Total no. of training session held: 2</b>			
<b>Total no. of remaining service centres to be trained: 5</b>			
<b>Region</b>	<b>Service Centre</b>	<b>Delivery Date</b>	<b>Completed Phase 2 – Stage 2 CP Legislation Amendments Modules</b>
Brisbane	Chermside	25 Nov 2011	Yes – All three modules
	Mt Gravatt	22 Nov 2011	Yes – All three modules
	Wynnum	29 Nov 2011	Yes – All three modules
	Inala	7 – 8 Feb 2012	PENDING
	Alderley & Brisbane RIS	27 – 28 Feb 2012	PENDING
	Stones Corner	29 Feb 2012 & 1 Mar 2012	PENDING
	Fortitude Valley	8 – 9 Mar 2012	PENDING
	Forest Lake	28 – 29 Mar 2012	PENDING
<b>Total no. of service centres trained: 3</b>			
<b>Total no. of training sessions held: 3</b>			
<b>Total no. of remaining service centres to be trained: 5</b>			

**CMLU – Delivery Schedule  
Phase 2 – Stage 2 - Child Protection Legislation Amendments**

<b>Region</b>	<b>Service Centre</b>	<b>Delivery Date</b>	<b>Completed Phase 2 – Stage 2 CP Legislation Amendments Modules</b>
South East (North)	Woodridge	18 Oct 2011	Yes – All three modules
	Loganlea	19 Oct 2011	Yes – All three modules
	Browns Plains	26 Oct 2011	Yes – All three modules
	Logan Central	21 Nov 2011	Yes – All three modules
	Beaudesert	9 – 10 Feb 2012	<b>PENDING</b>
<b>Total no. of service centres trained: 4</b>			
<b>Total no. of training sessions held: 4</b>			
<b>Total no. of remaining service centres to be trained: 1</b>			
<b>Region</b>	<b>Service Centre</b>	<b>Delivery Date</b>	<b>Completed Phase 2 – Stage 2 CP Legislation Amendments Modules</b>
South East (South)	Beenleigh	6 Dec 2011	Yes – All three modules
	Nerang	13 – 14 Feb 2012	<b>PENDING</b>
	Mermaid Beach	15 – 18 Feb 2012	<b>PENDING</b>
	Labrador	21 – 22 Feb 2012	<b>PENDING</b>
	Cleveland	Have not nominated a date	-
<b>Total no. of service centres trained: 1</b>			
<b>Total no. of training sessions held: 1</b>			
<b>Total no. of service centres to be trained: 4</b>			
<b>Region</b>	<b>Service Centre</b>	<b>Delivery Date</b>	<b>Completed Phase 2 – Stage 2 CP Legislation Amendments Modules</b>
South West	Roma/Charleville	23 – 24 Nov 2011	Yes – All three modules
	Ipswich North	3 & 6 Feb 2012	<b>PENDING</b>
	Goodna	17 & 20 Feb 2012	<b>PENDING</b>
	Toowoomba North	6 – 7 Mar 2012	<b>PENDING</b>
	Ipswich South	12 – 13 Mar 2012	<b>PENDING</b>
	Toowoomba South	14 – 15 Mar 2012	<b>PENDING</b>
<b>Total no. of service centres trained: 1</b>			
<b>Total no. of training sessions held: 2</b>			
<b>Total no. of service centres to be trained: 5</b>			

1000

1000

1000

1000

1000

1000

**Child Protection Training 2011 - Schedule for each region**

<b>Child Safety Service Centre</b>	<b>Date/s of training</b>
Aitkenvale	28/7/11 & 29/7/11
Bowen	3/08/11
Gulf	9/08/11
Mackay	26-27/7/11
Mt Isa	8/08/11
RIS & PSU NQ	13/7/11 & 19/7/11
Thuringowa	28/7/11 & 4/8/11
Townsville	14/7/11 & 21/7/11

**Child Protection Training 2011 - Schedule for each region**

<b>Child Safety Service Centre</b>	<b>Date/s of training</b>
Bundaberg	16/08/11
Emerald	23/08/11
Gladstone	18/08/11
Maryborough	25/08/11
RIS CQ	25/08/11
Rockhampton North	15/07/11
Rockhampton South	19/08/11
South Burnett	24/08/11

**Child Protection Training 2011 - Schedule for each region**

<b>Child Safety Service Centre</b>	<b>Date/s of training</b>
Alderley & PSU	20/07/11
Chermside	22/07/11
Forest Lake	25/07/11
Fortitude Valley	18/08/11
Inala	2/08/11
Mount Gravatt	27/07/11
RIS Brisbane	20/07/11
Stones Corner	10/08/11
Wynnum	15/08/11
Court Services & CSAHS	22/07/11
CSAHS & Complaints	21/07/11

**Child Protection Training 2011 - Schedule for each region**

<b>Child Safety Service Centre</b>	<b>Date/s of training</b>
Beaudesert	12/7/11 or 16/07/2011
Beenleigh	26/07/2011
Browns Plains	13/07/2011 or 10/8/11
Labrador	25/07/2011
Logan Central	11/07/2011
Loganlea	9/08/2011
Mermaid Beach	25/07/2011
Nerang	27/07/2011
PSU South East	26/07/2011
Cleveland	2/08/2011
RIS & KFC South East	28/07/2011
Woodridge	18/07/2011

**Child Protection Training 2011 - Schedule for each region**

<b>Child Safety Service Centre</b>	<b>Date/s of training</b>
Charleville	28/07/2011
Goodna	2/8/11 & 9/08/2011
Ipswich North	1/08/2011 & 3/8/11
Ipswich South	1/08/2011 & 3/8/11
RIS South West	16/08/2011
Roma	29/07/2011
Toowoomba North	9/08/2011
Toowoomba South	10/08/2011

**Child Protection Training 2011 - Schedule for each region**

<b>Child Safety Service Centre</b>	<b>Date/s of training</b>
Caboolture	27/07/2011
Caboolture PSU	27/07/2011
Caloundra	10/08/2011
Gympie	4/08/2011
Maroochydore	1/08/2011
Pine Rivers	25/07/2011
Redcliffe	26/07/2011
RIS North Coast	10/08/2011

Child Protection Training 2011 - Schedule for each region

<b>Child Safety Service Centre</b>	<b>Date/s of training</b>
Atherton	21/07/2011 (TBC)
Cairns	10-Aug-11
Cairns South/Edmonton	27-Jul-11
CYTSI North	25-Aug-11
Weipa	12-Jul-11
CYTSI South	18-Aug-11
Innisfail	23-Aug-11
RIS FNQ	(will attend a CSSC session as above)
Mop-up session	26-Aug-11

## Version Modification History

### Specialist Skills – Facilitators Guide:

Version	Release date	Comments	Consultation for learning guide development
V001	26 September 2011	•	•
V Final	6 October 2011	• Incorporating feedback from Child Safety Practice Improvement and Child Protection Development	• Child Protection Development • Child Safety Practice Improvement

<b>Topic</b>	<b>Child Protection Reform Stage 2 Training</b>
<b>Title</b>	<b>Harm Module</b>
<b>Learning guide developed by</b>	Learning Solutions Unit
<b>Date developed</b>	September 2011
<b>Running time</b>	3 hours
<b>Audience</b>	All CSSC staff across the child protection continuum
<b>Content Summary</b>	<p><b>Session Processes</b></p> <p>Throughout the session</p> <ul style="list-style-type: none"> <li>Participants will work through one scenario that has been divided into 3 parts. For each of the 3 parts of the scenario participants need complete a two step process:</li> </ul> <p><b>Step 1: List the relevant information. (Small group activity)</b></p> <ul style="list-style-type: none"> <li>List relevant information contained in the scenario;</li> <li>List relevant child protection reforms from the CSPM, <i>Child Protection Act 1999</i> and ICMS to address the issues identified in the scenario; and</li> <li>Answer specific questions to identify the practice procedures that they will apply to be inline with the child protection reforms.</li> </ul> <p>Ensure all the relevant information is covered from the first step of the process before moving on to the linking discussion (Step 2). All of the relevant information is listed in the Facilitator Notes.</p> <p><b>Step 2: Analyse the lists to identify the links between the knowledge of the reforms and the enhanced practice processes. (Large group activity)</b></p> <ul style="list-style-type: none"> <li>It is important to make the links between the knowledge of the CP reforms. Participants are to answer the following questions: <ul style="list-style-type: none"> <li>What are the positive outcomes for practice?</li> <li>When will I use this practice?</li> <li>How will these outcomes be achieved?</li> </ul> </li> </ul>

	<p>This step is to encourage participants to expand their thinking beyond knowledge and comprehension towards application and analysis.</p> <p>Being able to apply and analyse the knowledge of the CP reforms and the new practice procedures, participants will develop a greater understanding of the importance of the reforms and how they will achieve better outcomes for their clients.</p> <ul style="list-style-type: none"> <li>• The 3 parts of the scenario will be completed in mixed team groups to allow each participant to consider the impact for their specific role and functions. This will afford Team Leaders and other senior officers an opportunity to work with staff through the debrief process.</li> <li>• The Court Coordinator and Senior Practitioner will support the CMLU facilitator throughout the Ongoing Intervention module. The Court Coordinators and Senior Practitioner have been provided with specific information related to the court process that they will be able to contribute to the discussions.</li> <li>• Child Safety Service staff are currently visited and supported by learning consultants from the Client Management Learning Unit, Learning Operations. In ongoing visits, the learning consultants can review the ongoing use of the reflective practice tool with the Team Leader. Continued use of this tool will assist learners to embed the legislative changes into their practice.</li> </ul>
<p><b>Purpose</b></p>	<p>The purpose of the Child Protection Reform Stage 2 training is to offer a deeper level of learning focused on specific roles. Activity based learning will be used to support the implementation of the child protection reform agenda in various roles along the child protection continuum.</p>

<p><b>Learning outcomes</b></p>	<p>At the end of the sessions participants will be able to:</p> <ul style="list-style-type: none"> <li>• Evaluate the child's need for emotional stability and security as part of any child protection response to deliver effective and timely permanency decisions.</li> </ul>
<p><b>Additional comments</b></p>	<p><b>Participant to bring to the session</b></p> <ul style="list-style-type: none"> <li>▪ Information session resources handout;</li> <li>▪ <i>Child Protection Act 1999</i> Reprint 7A.</li> </ul> <p><b>Facilitator to bring to the session</b></p> <ul style="list-style-type: none"> <li>▪ CSPM – version with changes highlighted. Hardcopy is preferred, or on laptop for participants to refer to.</li> <li>▪ Clear message: <u>see key messages in the Facilitator Notes</u></li> <li>▪ Lollies for prizes.</li> </ul> <p>The purpose of the training is to engage in professional discussion and debate. The participants will be able to take notes as they require for themselves in relation to the changes to the CSPM and <i>Child Protection Act 1999</i>.</p> <p>Participants will be provided with one take home resources for the ICMS changes related to this module.</p> <p><b>Support in the Service Centres</b></p> <p>The delivery of the Stage 2 CP Reform training will be supported by Senior Practitioners and Court Coordinators. These people will act as 'champions' of the Child Protection Reforms in the Child Safety Services Centres post training.</p> <p>LSU and Child Safety Practice Improvement facilitated workshops for Court Coordinators (15 September 2011) and Senior Practitioners (10 October 2011) to provide information about the reflective practice tool and the training session.</p> <p><b>Reflective Practice Tool</b></p> <p>The Stage 2 CP Reform training will use a reflective practice tool to debrief the learning activities. The reflective practice tool is the</p>

	<p>'meta narrative' that sits behind the design of the session. The following information about the reflective practice tool is for CMLU facilitator's knowledge and does not need to be presented at the Stage 2 CP Reform training sessions.</p> <p><b>Overview – development of the tool</b></p> <p>The tool was originally developed in collaboration with staff from Griffith University for use as an assessment tool for the CSSO/CSO pilot evaluation. The tool has been adapted for suitability as a reflective practice tool for Stage 2 of the CP Reforms learning intervention.</p> <p>The tool has been developed using three educational frameworks:</p> <ul style="list-style-type: none"> <li>• Blooms taxonomy;</li> <li>• SOLO taxonomy;</li> <li>• Dreyfus and Dreyfus.</li> </ul> <p>For further information about the educational frameworks used to develop the reflective practice tool, contact Learning Solutions Unit.</p>
<b>Materials</b>	<b>Learning Guide</b>
	<p><b>1. Welcome &amp; Introductions</b></p> <p>Welcome the participants and introduce the presentation topic – Stage 2 CP Reform training - Harm Module.</p> <p>Outline housekeeping issues:</p> <ul style="list-style-type: none"> <li>• WH&amp;S including emergency exit plan;</li> <li>• Bathrooms;</li> <li>• Mobile phones to silent/vibrate.</li> </ul>
	<p><b>2. Explanation of Stage 2 CP Reforms</b></p> <p>Facilitator to explain the purpose of the Stage 2 CP Reform training - to encourage a deeper level of learning which focuses on specific staff in designated roles. Stage 2 consists of three separate modules :</p> <ul style="list-style-type: none"> <li>• Harm (I&amp;A and Cumulative) this module</li> <li>• Ongoing Intervention;</li> </ul>

- Permanency planning and decision making - this module.

All staff will **not** be required to attend all of the module trainings.

This module **will not cover all the changes of the CP reforms** only those specific to the learning outcomes for this module.

The learning outcome is to:

- Analyse and assess harm and cumulative harm as part of any child protection response, including ongoing intervention.

### 3. Explain the format of the training

Participants will explore a 3 part child protection scenario. The CP reforms cut across the whole of the CP continuum, to encourage professional discussion and debate the larger group will be divided into smaller groups that contain members of different CSSC teams.

Participants should have with them the Information Session Resource given at the Information Presentation that they attended earlier in the year. This will contain most of the information needed to complete the learning activities.

If they did not bring their copy they may want buddy up with someone who has brought their copy to refer to.

It will be helpful for them to continue to add to their own comments, so if they are not familiar with the changes to the sections of the CP Act, CSPM or ICMS this can be recorded for them to look up when they return to their work.

Participants will be given 4 handouts:

- Handout 1 – Model and Instructions;
- Handout 2 – 3 Part Scenario'
- Handout 3 – Table to complete as part of scenario 3; and
- Handout 4 – Final Debrief.

They will write notes on the handouts for discussion.

Through group discussions participants will identify issues in the scenarios that relate to the child protection reforms and identify the relevant changes to the *Child Protection Act 1999*, CSPM and ICMS. Participants will then apply this knowledge to the scenario and discuss how the knowledge of the CP reforms will impact on their practice in this specific situation.

If general practice issues are raised, get the participant to write the question down for further discussion within the CSSC.

#### **4. Experience in the room**

Participants will have previously attended an Information Session in July / August 2011 and should have had discussions in Service Centres about the reforms prior to the 'Go Live' date of 29 August 2011. Have a discussion with the group around how the child protection reforms have impacted on their practice since 'Go Live'.

#### **Discussion questions:**

***How have the reforms impacted on your practice since 'Go Live'?***

***How often have you been required to use the new sections of the CP Act, new procedures in the CSPM or completed the new forms / questions in ICMS?***

This discussion will provide the facilitator with the level of knowledge and experience in the group. People with significant experience and exposure to the CP reforms are likely to be more vocal in the group activities.

#### **5. Getting started**

<p><b>Handout 1: Instructions and Model</b></p>          <p><b>Handout 2: Participant Scenarios – Scenario Part 1</b></p>          <p><b>Facilitator answers for scenarios (p.1)</b></p>	<p>Provide participants with <b>handout 1</b> and explain how the process will work.</p> <p>Participants will complete lists and take notes on handout 1 – Instructions and Model</p> <p>Give participants <b>handout 2</b> and give them time to read the Scenario Part 1</p> <p><b>Quick run through of the process</b></p> <p>In a large group ask them to identify the type of information they would list from the scenario. Get 2 – 3 pieces of information.</p> <p>Then ask them to identify the specific CP reforms that are relevant to the information they have listed. Again get 2 – 3 pieces of information from the <i>Child Protection Act 1999</i>, CSPM &amp; ICMS.</p> <p>Participants will then answer the specific questions listed in the relevant bubble. These questions will get the participants to identify some of the practice procedures that have resulted from the CP reforms.</p>
	<p><b>6. Scenario Part 1 – Step 1 Listing Knowledge</b></p> <p>Once you have taken the participants through this process get them to work in mixed role groups to complete the lists.</p> <ul style="list-style-type: none"><li>- Identify the scenario information;</li><li>- Identify the CP reform knowledge they would access;</li><li>- Identify the implication the CP reforms would have on practice.</li></ul> <p>The Court Coordinators and Senior Practitioner can support the groups to develop these lists.</p> <p><b>Note: For the purpose of this activity participants do not need to identify specific sections of the <i>Child Protection Act 1999</i> and CSPM. They should be able to identify the specific ICMS changes.</b></p>

**Facilitator answers for scenarios (p.1)**

**However if participants are able to identify the specific sections of the CSPM or *Child Protection Act 1999* that have been changed they deserve a prize.**

**Note:** *Do not allow the participants to get bogged down in the content of the scenarios. The main process occurs when participants engage in professional discussion and debate around the links between the CP reforms and the enhancements made to practice.*

Before moving onto the linking questions make sure that participants have identified all the information required.

If participants were not able to identify all the changes make sure that they write down the knowledge that they did not recall - they will be able to look this up when they return to their desk.

Refer them to the Information Session Resource:

- **# 1 cumulative harm;**
- **#12 new I & A outcome question; and**
- **#13 new outcome for an I & A.**

**Facilitator answers for scenarios (p.2)**

**Spend enough time during this process to ensure participants are able to analyse and apply the CP reforms.**

**7. Scenario Part 1 – Step 2 Linking of the Knowledge**

In the large group the CMLU facilitator will debrief the process by asking the participants to build the links between the new practices and the CP reforms.

There is no need to re-convene in the larger groups, just get participants to participate from the small group positions.

Get participants to consider the reasons why the CP reforms are changing practice.

***What are the positive outcomes for practice?***

***How will these outcomes be achieved?***

	<p>This discussion can occur in the larger group.</p> <p><b><i>Ask the group to consider if there will be any particular local challenges that they will have to overcome to implement the reforms.</i></b></p>
<p><b>Handout 3 – record abuse and resulting harm</b></p> <p>During scenario part 3 provide handout record abuse and resulting harm for participants to complete</p>	<p><b>8. Complete Steps 1 &amp; 2 for the remaining 2 parts of the scenario.</b></p> <p>CP reforms information for scenario part 2 are identified in the S.15, s.17 s.27 &amp; s.41 <i>Child Protection Act 1999</i></p> <p>CP reforms information for scenario part 3 are identified in the Information Session resource:</p> <ul style="list-style-type: none"> <li>• # 1 cumulative harm;</li> <li>• # 12 new I &amp; A outcome question; and</li> <li>• # 13 new outcome for an I &amp; A.</li> </ul>
<p><b>Handout 4: Aims of the CP Reforms</b></p>	<p><b>9. Module 1 Debrief</b></p> <p><b>CMLU facilitator to provide participants with handout 3.</b></p> <p>Complete the session by getting the participants to reflect back over the 3 scenarios covered and identify which of the overarching aims of the CP reforms they relate to.</p> <p><b>Note:</b> this module does not cover all of the overarching aims. Over the course of the three modules all of the aims will be covered.</p> <p>Participants are also to explain how the CP reforms address the overarching aims.</p>
	<p><b>10. Final questions</b></p>

## Scenario – Part 1- Facilitator Notes – Step 1 Listing of Information

### Scenario information

- 3 x CCRs received on the child from the age of six to ten.
- Concerns relate to the Fa yelling, swearing and calling the child names. The Fa left the child on two occasions, for 6 months and 18 months with a family member and a partner without a formal arrangement and did not have contact with the child during these times.
- A notification was recorded on the child at age 12. It is alleged the father and child are often heard yelling and swearing at each other for up to an hour. The father is regularly heard to call the child a slut, whore and a bitch. The child swears at the father in response and calls him a fucking bastard and loser. The father is described as having a “short-fuse” and has been heard to swear at neighbours and at a teacher at the child’s school. The fighting and yelling has been ongoing since the father resumed care of the child 6 months ago. The child has stated that she is sad and is often observed crying. The child stated that she does not feel her father loves her and she would be “better off dead”.
- An IPA case has been opened following ‘substantiated child in need of protection’ emotional harm of a 12 y.o. girl by Mo and Fa over a number of years.
- While on CP care agreement the child has o/n contact with parents. On return the child is upset and angry. The child reported that she argued with younger sibling and Mo. The child was called ‘bitch and slut’ and told ‘wished you had not been born’ and was locked in her room o/n.
- The child was scared and thought Mo was going to hurt her – notification was recorded.
- During I & A
  - The child had a fight with 3 y.o. sibling and pulled hair and broke her toys
  - The child punched hole in the lounge room wall and threw Mo phone in the pool
  - Consequence – 30 min time out in bedroom forbidden from attending church dance
  - The child acknowledged that she exaggerated the story as she was angry not being allowed to see her friends at the dance.
- Outcome of the I & A - the child did not experience harm and is not at unacceptable risk of future harm.

CP Reform Knowledge		
CSPM	CP ACT	ICMS
<p>Practice Resource: Assessment of Harm.</p> <p>Significant changes in CSPM re I&amp;A: Outcomes:</p> <ul style="list-style-type: none"> <li>• Merging of 2 questions to one “Is the child at unacceptable risk of harm with no parent able and willing to protect them from harm”</li> <li>• New question “Is the child already subject to ongoing intervention?”</li> <li>• Recording of abusive action and resulting harm and person responsible for abusive action.</li> <li>• Inclusion of failure to protect in the record of abuse and resulting harm, and record of unacceptable risk of harm tables. Include parent responsible for unacceptable risk of harm.</li> <li>• Outcomes to allow for OI cases: unsubstantiated OI continues or substantiated OI continues.</li> </ul> <p>Assessment of harm &amp; risk:</p> <ul style="list-style-type: none"> <li>• Record your professional assessment for a child in need of protection.</li> <li>• Record your professional assessment, including any risk factors identified, for a child not in need of protection.</li> </ul> <p>Ongoing intervention:</p> <ul style="list-style-type: none"> <li>• Where the child is not in need of the protection and the FRE risk level is high or very high record other</li> </ul>	<p>Section 9 – Amendment of the definition of “harm” in the CPA to clarify that harm may be constituted by a single act, omission or circumstance or accumulated through a series of acts, omissions or circumstances. This includes actions or omissions by different people in the child’s life.</p>	<p>Removal of I&amp;A Plan as a specific form.</p> <p>New form, ‘Record of use of powers/ interviews – combining two previous forms. An ‘apply date’ button has been added to this form – it important to use this to allow commencement dates to be known in ‘real time’.</p> <p>Label changes in Safety Assessment HOF included (Helping Out Families) Significant changes to Assessment and outcome form in ICMS.</p> <p>I&amp;A outcome questions have changed to reflect changes in CSPM.</p> <p>New sections ‘Record of abuse and resulting harm’ and ‘record unacceptable risk of harm’ to reflect changes in CSPM, including new drop-down options for person responsible:</p> <ul style="list-style-type: none"> <li>- Not applicable - child under 10yrs</li> <li>- Not applicable - other person</li> <li>- Not able to be determined</li> </ul> <p>Text boxes have also changed to reflect CSPM changes, such as record of professional assessment and ongoing intervention considerations.</p>

<p>actions or attempts made to reduce the risk e.g opening a support service case or referral to another agency. Include the parents response to the offer of support.</p> <ul style="list-style-type: none"> <li>• Where the child is in need of protection, ongoing intervention will commence or, for current OI matters, will continue. Record the intended type of ongoing OI that will commence or continue.</li> <li>• Why is this type of ongoing intervention the most appropriate intervention for the child?</li> <li>• Intervention types: Support service (unborn); Intervention with parental agreement; IPA and directive CPO</li> <li>• Child protection order</li> </ul>		
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Practice Implications	
<p><b>Key messages</b></p> <ul style="list-style-type: none"> <li>○ cumulative harm</li> <li>○ new I&amp;A outcomes</li> </ul>	
<p><b>Question:</b> Consider how the amended definition of harm is relevant to the child in need of protection outcome in the first investigation and assessment?</p>	
<p><b>Answer:</b> The definition of harm in the <i>Child Protection Act 1999</i> (s.9) has been broadened to include cumulative harm. Subsection 4 now states “Harm can be caused by: (a) a single act, omission or circumstance; or (b) a series or combination of acts, omissions or circumstances”.</p>	
<p><b>Question:</b> If a decision had been made that ongoing intervention was best met with an application for a short term child protection order rather than an IPA – what information would the CSO have needed to provide to the court to demonstrate cumulative harm?</p>	
<p><b>Answer:</b> It is noted that cumulative harm has always been a consideration for departmental officers when assessing whether or not a child is suffering harm, at risk of suffering harm and/or in need of protection. The difference now is that as a result of the amendments, the Court has to give clear consideration to this type of harm. As it relates to evidence to put before the Court, the departmental officer should detail the harms recorded in relation to the child, including CCRs and CPNs, drawing the links between the number of harms and the resulting impact on the child in terms of a cumulation of harm. For example, identifying the 9 CCRs recorded in relation to the child over the period of 3 years and the impact this series of harms has on the child despite, on an individual basis, they might be considered minor.</p>	
<p><b>Question:</b></p>	

**What outcome should be recorded for the child in the investigation and assessment regarding the contact visit? Why?**

- A) unsubstantiated – child not in need of protection
- B) unsubstantiated – child in need of protection
- C) unsubstantiated – ongoing intervention continues
- D) substantiated – child not in need of protection
- E) substantiated – child in need of protection
- F) substantiated – ongoing intervention continues

**Answer:**

**C) unsubstantiated – ongoing intervention continues**

The matter should be unsubstantiated because it is assessed that the child has not experienced harm and is not at unacceptable risk of harm as a result of the issues assessed during the current investigation and assessment. The outcome will automatically reflect ongoing intervention continues when you answer 'yes' to the question in the assessment and outcome form – "Is the child already subject to ongoing intervention?" It is yes because the IPA case is currently open.

**Note:** the focus of the investigation and assessment outcome is on the current alleged concerns not on an overall assessment of whether the child is in need of protection – because clearly that has been assessed previously and has led to the current IPA case.

**Note:** B) 'unsubstantiated – child in need of protection' is not a valid outcome as you cannot unsubstantiate harm and unacceptable risk of harm then have a child in need of protection!

Scenario – Part 1- Facilitator Notes – Step 2 Linking of Knowledge and Practice

<b><i>What are the positive outcomes of the reforms?</i></b>	<b><i>How will these outcomes be achieved?</i></b>
<ul style="list-style-type: none"> <li>• Definition of Harm                Broadened to include cumulative harm so that Court must give consideration to this.</li> </ul>	<p>Departmental officers to detail evidence of cumulative harm within affidavit material for Court purposes and Court Coordinators to draw the Court's attention to this type of harm and the amendment to the definition of harm at s9.</p>

Scenario – Part 2 - Facilitator Notes – Step 1 Listing of Information

Scenario information		
Part 1	<ul style="list-style-type: none"> <li>• Child under LTG to Other.</li> <li>• Child has close relationship with Mo. and has regular contact.</li> <li>• Mo unable to care for child due to chronic alcohol abuse.</li> <li>• Fa deceased.</li> <li>• 12 months after order – notification recorded alleging sexual abuse of child by LTG.</li> <li>• Child was interviewed at school.</li> </ul>	
Part 2	<ul style="list-style-type: none"> <li>• During interview child discloses sexual abuse by LTG.</li> <li>• Child distressed at returning to care of LTG.</li> <li>• Assessed child cannot return to care of LTG – taken into custody of CE pursuant to s18.</li> <li>• Application for a TAO is made and granted.</li> <li>• Application for CAO is made and granted for 2 weeks.</li> <li>• IA outcome – substantiated ongoing intervention.</li> </ul>	
CP Reform Knowledge		
CSPM	CP ACT	ICMS
<p>CSPM Update – Chs 1, 2, 3, 5, 6, 7 &amp; 9:</p> <ul style="list-style-type: none"> <li>• Report suspected criminal offence, even if harm does not</li> </ul>	<p>Amendments to the Act specifically around LTGs:</p> <ul style="list-style-type: none"> <li>• s.15, s.17, s.23, s.27, s.37 &amp; s.41.</li> </ul>	<p>Inclusion of 14(2) question in:</p> <ul style="list-style-type: none"> <li>• record of concerns;</li> </ul>

<p>meet threshold for notification or whether child is in need of protection.</p> <p>Changes to Chapters</p> <ul style="list-style-type: none"> <li>• 1, 2, 3 &amp; 9:</li> <li>• Inform about allegations of harm;</li> <li>• Inform about outcome of I&amp;A;</li> <li>• All Court applications, processes and orders;</li> <li>• Contact with a child during an I&amp;A – need to inform LTG; no obligation to advise parent;</li> <li>• Serving of Court documents;</li> <li>• Child's emotional security and stability.</li> </ul> <p>CSPM changed to 3 business days – ch 2 and practice resource for TAOs/CAOs. CSPM updated (Ch 2 – what if #3) to advise staff they can seek an order for contact with a child under a CAO.</p> <p>CSPM updated to advise staff that Court must consider department's views about contact prior to making a CAO.</p>	<p>Section 14(2).</p> <p>Section 67(1)(c). NB amendment to s99 to enable orders under s67 and s99 to run concurrently.</p> <p>Section 45(2)(a)-(b)</p>	<ul style="list-style-type: none"> <li>• ANC forms;</li> <li>• MOC record of concerns.</li> </ul> <p>(Moved from Notification form)</p> <p>The Long Term Guardian role will have the same functionality as the Parent role. There will be changes to all forms regarding this. Some forms relevant to long term guardians are only available if a long term guardian is an event participant. For example, as per scenario;</p> <ul style="list-style-type: none"> <li>• Changes to application for TAO and CAO and TAO and CAO order to allow for LTG.</li> <li>• Information provision to parents form has been updated to include an information provision specifically related to LTGs.</li> </ul> <p>As mentioned above, the new form – 'record of use of powers/interviews' – is available which combines the previous 'record of use of powers' and 'record of interviews forms'. This form can include LTGs where relevant.</p> <p>The period for TAOs is now calculated in business days and users will need to calculate the expiry date of order and record these in ICMS as there is no 'live' calendar, ie. ICMS cannot sufficiently account for public holidays. Similar rules apply for extensions,</p>
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<b>Practice Implications</b>
<p><b>Key messages</b></p> <ul style="list-style-type: none"><li>○ Amendments to s.15, s.17, s.23, s.27, s.37 &amp; s.41 re: LTG and additional obligations placed on the department when a LTG in place.</li><li>○ Requirement to report suspected criminal offence even if harm does not meet threshold.</li></ul>
<p><b>Question: Scenario - Part 2.1</b> <b>Who must be advised of contact with the child at school under s.17 of the <i>Child Protection Act 1999</i>?</b></p>
<p><b>Answer:</b> The long-term guardian only. Amendment to section 17 does not oblige the chief executive to tell the child's parent of the use of s17 when there is an order for a long-term guardian.</p>
<p><b>Question: Scenario - Part 2.2</b> <b>Who must be advised that the child has been taken into custody under s.18 of the <i>Child Protection Act 1999</i>?</b></p>
<p><b>Answer:</b> Both the long-term guardian and the child's parent must be advised – refer to s.20.</p>
<p><b>Question: Scenario - Part 2.2</b> <b>When deciding the TAO application, does the Magistrate need to be satisfied that reasonable attempts have been made to obtain the consent of at least 1 of the child's parents as well as the consent of at least 1 of the long-term guardians?</b></p>
<p><b>Answer:</b> No – where a long-term guardian has been ordered, only the consent of at least 1 of the long-term guardians is required – refer to s.27.</p>

<p><b>Question: Scenario – Part 2.2</b> <b>As soon as the application for a CAO is filed, who must be personally served a copy of the application?</b></p>
<p><b>Answer:</b> Each of the long-term guardians and each of the child's parents - refer to s.41.</p>
<p><b>Question: Scenario - Part 2.2</b> <b>Who must be advised of the alleged harm and the outcome of the investigation and assessment?</b></p>
<p><b>Answer:</b> Both the long-term guardian and the child's parent – refer to s.15.</p> <p><u>Additional information:</u> The decision about what type of ongoing intervention will be appropriate will be based on the assessment of the long-term guardian's ability and willingness to protect the child.</p>
<p><b>Question: Scenario – Part 2.2 (read to participants)</b> <b>Immediately after a temporary assessment order is made for the child, the applicant for the order must give a copy of the order to _____ and inform _____ of the right of appeal.</b></p>
<p><b>Answer:</b> Immediately after a temporary assessment order is made for the child, the applicant for the order must give a copy of the order to <u>the child's parents and the child's long term guardians</u> and inform <u>the child's parents and the long term guardians</u> of the right of appeal – refer to s.31.</p>

Scenario 2- Facilitator notes – Step 2 Linking of knowledge and practice

<p><b>What are the positive outcomes of the reforms?</b></p>	<p><b>How will these outcomes be achieved?</b></p>
<ul style="list-style-type: none"> <li>• Advising parent/LTG of allegation of harm, investigation &amp; outcome. Ensuring that where an LTG has been ordered, they are advised as to the allegation of harm, investigation &amp; outcome with a discretion around the advising of the child's parent.</li> </ul>	<p>This ensures that the departmental officers advise the child's LTG in relation to the allegation of harm, investigation and outcome as the child's primary guardian/parent.</p>
<ul style="list-style-type: none"> <li>• Advising an LTG that a child has been taken into custody.</li> </ul>	<p>Ensures that departmental officers advise the child's LTG that the child has been taken into custody and the reasons why. It is noted that there is also an onus on the department to advise the child's parents or make reasonable attempts to do so.</p>
<ul style="list-style-type: none"> <li>• Where a child subject to LTG to Other – amendments to ensure that department obtain consent, provide information and serve relevant documentation to the child's LTG.</li> </ul>	<p>Ensures that departmental officers attempt to seek the consent of at least one of the child's LTG where one is ordered to the doing of things sought to be authorised under a TAO; provide the child's LTG with information after the making of a TAO and serves the child's LTG with relevant documentation in relation to an application for a CAO.</p>

Scenario Part 3- Facilitator Notes – Step 1 Listing of Information

Scenario information		
CP Reform Knowledge		
CSPM	CP ACT	ICMS
<ul style="list-style-type: none"> <li>• I &amp; A conducted in relation to sexual abuse of 12 y.o. by maternal uncle.</li> <li>• Same uncle has previously sexually abused the child's Mo.</li> <li>• Outcome of the I &amp; A – substantiated.</li> <li>• Mo does not accept the risk posed by uncle towards the child for further sexual abuse.</li> <li>• The child is withdrawn, anxious and has started self harming.</li> <li>• Decision made to apply for a short-term CPO.</li> </ul>	<ul style="list-style-type: none"> <li>• Section 14(2).</li> </ul>	<p>Removal of I&amp;A Plan as a specific form.</p> <p>New form, 'Record of use of powers/ interviews – combining two previous forms. An 'apply date' button has been added to this form – it important to use this to allow commencement dates to be known in 'real time'.</p> <p>Label changes in Safety Assessment HOF included (Helping Out Families) Significant changes to Assessment and outcome form in ICMS:</p> <p>I&amp;A outcome questions have changed to reflect changes in CSPM.</p> <p>New sections 'Record of abuse and resulting harm' and 'record unacceptable risk of harm' to reflect changes in CSPM, including new drop-down options for person</p>

<p>New I&amp;A outcomes for OI cases – update to Ch 2:</p> <ul style="list-style-type: none"> <li>• Substantiated – OI continues</li> <li>• Unsubstantiated – OI continues.</li> </ul> <p>New I&amp; A outcome questions – update to Ch 2:</p> <ul style="list-style-type: none"> <li>• 'is the child already subject to OI?'</li> <li>• 'is the child at unacceptable risk of harm, with no parent able and willing to protect them from harm?'</li> </ul> <p>Clarification about recording the person most responsible for the serious harm to the child. Includes additional options for person responsible – update to Ch 2:</p> <ul style="list-style-type: none"> <li>• 'not applicable – child under 10 years when the abusive act was committed by a child under 10 years of age</li> <li>• 'not applicable – other person' when the abusive act was committed by:             <ul style="list-style-type: none"> <li>○ A child aged 10 years or over who does not have the developmental ability or capacity to understand the consequences of their actions</li> <li>○ Any person who does not live in the child's home or does not have regular access to the child in the home.</li> </ul> </li> <li>• 'not able to be identified' when it is unclear who was responsible for the abusive action</li> </ul>	<p>responsible:</p> <ul style="list-style-type: none"> <li>- Not applicable - child under 10yrs</li> <li>- Not applicable - other person</li> <li>- Not able to be determined</li> </ul> <p>Text boxes have also changed to reflect CSPM changes, such as record of professional assessment and ongoing intervention considerations.</p>
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	Practice implications																								
<p><b>Key messages</b></p> <p>Scenario 3 – changes to the I&amp;A form to support recording of abuse as separate to recording of unacceptable risk of harm and the new I&amp;A outcomes.</p>																									
<p>Question: Scenario – Part 3.1          Complete the following sections of the assessment and outcome form. Don't forget to complete the 'next actions'.</p>																									
<p>Record abuse and resulting harm</p>																									
<table border="1"> <thead> <tr> <th data-bbox="802 114 906 1115">Abusive action</th> <th data-bbox="802 1115 906 1489">Resulting harm</th> <th data-bbox="802 1489 906 1854">Person responsible</th> <th data-bbox="802 1854 906 2170">Next actions</th> </tr> </thead> <tbody> <tr> <td data-bbox="906 114 959 1115">emotional</td> <td data-bbox="906 1115 959 1489">P C E C</td> <td data-bbox="906 1489 959 1854"></td> <td data-bbox="906 1854 959 2170"></td> </tr> <tr> <td data-bbox="959 114 1011 1115">physical</td> <td data-bbox="959 1115 1011 1489">P C E C</td> <td data-bbox="959 1489 1011 1854"></td> <td data-bbox="959 1854 1011 2170"></td> </tr> <tr> <td data-bbox="1011 114 1064 1115">sexual</td> <td data-bbox="1011 1115 1064 1489">P C E C</td> <td data-bbox="1011 1489 1064 1854">John Smith</td> <td data-bbox="1011 1854 1064 2170"></td> </tr> <tr> <td data-bbox="1064 114 1117 1115">neglect</td> <td data-bbox="1064 1115 1117 1489">P C E C</td> <td data-bbox="1064 1489 1117 1854"></td> <td data-bbox="1064 1854 1117 2170"></td> </tr> <tr> <td data-bbox="1117 114 1169 1115">failure to protect</td> <td data-bbox="1117 1115 1169 1489">P C E C</td> <td data-bbox="1117 1489 1169 1854">Stephanie Smith</td> <td data-bbox="1117 1854 1169 2170"></td> </tr> </tbody> </table>	Abusive action	Resulting harm	Person responsible	Next actions	emotional	P C E C			physical	P C E C			sexual	P C E C	John Smith		neglect	P C E C			failure to protect	P C E C	Stephanie Smith		
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<p>Stephanie Smith</p>	<p>YES</p>	

**Additional information:**

- Only one most serious can be selected from all the harm/ unacceptable harm types.

**Question :**

**A new CSO has commenced in your CSSC. They ask you why the first table includes person responsible and the second table has parent responsible. They also ask you to give an example of situation where you would record an unacceptable risk of emotional harm caused by failure to protect from emotional. How would you answer these questions?**

**Answer:**

The first table focuses on the whether the child has been harmed – and who is responsible for the abusive action that led to harm. In this scenario the mother is responsible for the abusive action (or inaction) of failing to protect the child which has led to emotional harm and the uncle is responsible for the abusive action of sexual abuse resulting in emotional harm.

When it comes to the second table documenting the future unacceptable risk of harm – the focus moves solely to the parents because Child Safety's role is to assess whether the child is in need of protection and the ability and willingness to protect the child from future harm is the parents' responsibility. Therefore, in the scenario the mother is responsible for the unacceptable future risk to the child due to the likelihood of her repeating her previous behaviour of failing to protect the child from sexual abuse in the future. This places the child at risk of both emotional harm and physical harm from sexual abuse in the future.

**Answer:** Emotional harm caused by failure to protect from emotional abuse.

**Example:** A father fails to protect his daughter from the mother's ongoing and severe derogatory remarks and degradation of the child. This has resulted in emotional harm to the child demonstrated by self harming and poor self esteem. The father does not see the mother's behaviour as abusive.

It is recorded that the father is the parent responsible for future unacceptable risk of emotional harm to the child caused by his failure to protect the child from the emotional abuse by the mother.

**Additional information:**

In this situation you would also need to record the mother as responsible for future unacceptable risk of emotional harm to the child caused by the emotional abuse.

### Scenario Part 3 - Facilitator Notes – Step 2 Linking of Knowledge and Practice

<b><i>What are the positive outcomes of the reforms?</i></b>	<b><i>How will these outcomes be achieved?</i></b>
<ul style="list-style-type: none"><li>Recording of unacceptable risk as a separate to abusive action and harm.</li></ul>	Ensures that departmental staff are able to differentiate between an unacceptable risk of harm and the person responsible and abusive action and harm and the person responsible so that each can be recorded independently.



## Child Protection Reforms Stage 2 – Harm Module Instructions and Model

### **Instructions:**

You will be provided with 3 scenarios for each of these scenarios you will:

- Step 1) List the key relevant information contained in the scenario.
- Step 2) List the relevant parts of the child protection reforms (*CSPM, Child Protection Act 1999 and ICMS*) that you would need to know to address the issues you identified in the scenario.
- Step 3) Answer the questions about the new practice procedures you would now use to be inline with the child protection reforms.

These lists will then be discussed to ensure that all aspects have been covered.

- Step 4) List the linkages as to why have these child protection reforms have been developed to enhance current child protection service delivery. To help with this process ask yourself:
  - What are the positive outcomes for practice?
  - When will I use these new practices?
  - How will these outcomes be achieved?

## Scenario Part 1

List the key information identified from the scenario.

### Scenario Information

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List the relevant parts of the child protection reforms (CP Act, CSPM & ICMS).

### CP Reform Knowledge

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What are the positive outcomes for practice?  
How will these outcomes achieved?

### Linking Questions

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○ Consider how the amended definition of harm is relevant to the child in need of protection outcome in the first investigation and assessment?

○ If a decision had been made that ongoing intervention was best met with an application for a short-term child protection order rather than an IPA – what information would the CSO have needed to provide to the court to demonstrate cumulative harm?

○ What outcome should be recorded for the child in the investigation and assessment regarding the contact visit? Why?

### Practice Implications

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**Scenario Part 2**

List the key information identified from the scenario.

**Scenario Information**

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List the relevant parts of the child protection reforms (CP Act, CSPM & ICMS).

**CP Reform Knowledge**

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What are the positive outcomes for practice?  
 How will these outcomes achieved?

**Linking Questions**

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- o Who must be advised of contact with the child at school under s.17 of the *Child Protection Act 1999*?
- o Who must be advised that the child has been taken into custody under s.18?
- o When deciding on a TAO application, does the Magistrate need to be satisfied that reasonable attempts have been made to obtain the consent of at least 1 of the child's parents as well as the consent of at least 1 of the long-term guardians?
- o Why has a TAO been applied for and not a TCO?
- o As soon as the application for a CAO is filed, who must be personally served a copy of the application?
- o Who must be advised of the alleged harm and the outcome of the investigation and assessment?

**Practice Implications**

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### Scenario Part 3

List the key information identified from the scenario.

#### Scenario Information

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List the relevant parts of the child protection reforms (CP Act, CSPM & ICMS).

#### CP Reform Knowledge

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A new CSO has commenced in your CSSC. They ask you why the first table includes person responsible and the second table has parent responsible. They also ask you to give an example of a situation where you would record an unacceptable risk of emotional harm caused by failure to protect from emotional harm. How would you answer these questions?

#### Practice Implications

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What are the positive outcomes for practice?  
How will these outcomes achieved?

#### Linking Questions

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**SCENARIO PART 1**

3 x CCRs received on the child from the age of six to ten. Concerns relate to the father yelling, swearing and calling the child names. The father left the child on two occasions, for 6 months and 18 months with a family member and a partner without a formal arrangement and did not have contact with the child during these times.

A notification was recorded on the child at age 12. It is alleged the father and child are often heard yelling and swearing at each other for up to an hour. The father is regularly heard to call the child a slut, whore and a bitch. The child swears at the father in response and calls him a fucking bastard and loser. The father is described as having a "short-fuse" and has been heard to swear at neighbours and at a teacher at the child's school. The fighting and yelling has been ongoing since the father resumed care of the child 6 months ago. The child has stated that she is sad and is often observed crying. The child stated that she does not feel her father loves her and she would be "better off dead".

An intervention with parental agreement case is opened following a 'substantiated - child in need of protection' investigation and assessment regarding emotional harm of a 12 year old girl caused by a series of acts of emotional abuse by her mother and father over a number of years.

Whilst the child is placed under a child protection care agreement the parents have an overnight contact visit. When the child returns from the contact visit she is very angry and upset and tells the carer that she had argued with her parents and younger sibling and the mother called her a bitch and a slut and told her that she wished she had never been born. She then locked her in her room overnight. The child said she was scared and thought her mother was going to hurt her. A notification is recorded.

During the investigation and assessment it becomes evident that there had been an argument between the parents and the 12 year old child as a result of the child pulling her 3 year old sibling's hair and breaking her toys. The 12 year old then yelled at the mother, punched a hole in the lounge room wall and threw her mother's phone into the pool. As a consequence the child was sent to time out in her room for 30 minutes and forbidden from attending a church dance that night. During the investigation the 12 year old said she had exaggerated the story about what the mother had done and the time out because she was so angry at not being allowed to see her friends at the dance.

It is assessed that **as a result of the incident that occurred during the contact visit** the child did not experience harm and is not at unacceptable risk of future harm.

**SCENARIO 2 – Part 1**

A child is subject to an order granting long term guardianship to his foster carer. The child has a close relationship, including regular contact, with his mother who is unable to care for him due to her chronic alcohol abuse. The child's father is deceased.

Twelve months after the order is made a notification is recorded regarding sexual abuse of the child by the long term guardian. He is interviewed at school as part of the investigation and assessment.

**SCENARIO 2 – Part 2**

During the school interview the child makes significant disclosures of sexual abuse by the long term guardian. The child is clearly distressed and afraid of returning to the care of the guardian. It is assessed that the child cannot return to the guardian's care at that time and is at immediate risk of harm. The child is taken into custody of the chief executive under s.18 and an application for a temporary assessment order (TAO) is made and granted to allow for the assessment of the child's protective needs. Prior to the expiry of the TAO, an application for a court assessment order (CAO) is made. A CAO is granted for two weeks.

At the completion of the investigation and assessment an outcome of 'substantiated – ongoing intervention' is recorded.

**SCENARIO PART 3**

An investigation and assessment (I&A) is conducted in relation to sexual abuse of a 12 year old girl by her maternal uncle Jake Smith (who years before had sexually abused the child's mother). The child's mother Stephanie Smith has allowed the uncle to have contact with the child.

From the information that you have gathered during the I&A process, harm to the child is to be substantiated. You have assessed that the mother does not accept the risk posed by the uncle towards the child for further sexual abuse. The child is withdrawn, anxious and has started self harming. She has no physical injuries resulting from the sexual abuse.

In consultation with your Team Leader, a decision is made to apply for a short term child protection order, as the most appropriate form of ongoing intervention to meet the care and protection needs for this child.

**Record abuse and resulting harm**

Abusive action	Resulting harm	Person responsible	Most serious
emotional	P <input type="checkbox"/> E <input type="checkbox"/>		
physical	P <input type="checkbox"/> E <input type="checkbox"/>		
sexual	P <input type="checkbox"/> E <input type="checkbox"/>		
neglect	P <input type="checkbox"/> E <input type="checkbox"/>		
failure to protect	P <input type="checkbox"/> E <input type="checkbox"/>		

**Record unacceptable risk of harm**

Unacceptable risk of harm	Parent responsible	Most serious
Unacceptable risk of <b>physical harm</b> caused by: <input type="checkbox"/> physical abuse <input type="checkbox"/> sexual abuse <input type="checkbox"/> emotional abuse <input type="checkbox"/> neglect <input type="checkbox"/> failure to protect from physical abuse <input type="checkbox"/> failure to protect from sexual abuse <input type="checkbox"/> failure to protect from emotional <input type="checkbox"/> failure to protect from neglect		
Unacceptable risk of <b>emotional harm</b> caused by: <input type="checkbox"/> physical abuse <input type="checkbox"/> sexual abuse <input type="checkbox"/> emotional abuse <input type="checkbox"/> neglect <input type="checkbox"/> failure to protect from physical abuse <input type="checkbox"/> failure to protect from sexual abuse <input type="checkbox"/> failure to protect from emotional <input type="checkbox"/> failure to protect from neglect		

**Module 1 Harm**

**Learning outcome:** Analyse and assess harm and cumulative harm as part of any child protection response, including ongoing intervention.

**Instructions:** Using the table below reflect on the scenarios that were discussed during the session and identify which of the overarching aims of the child protection reforms were addressed by the introduction of new processes and practice. Then provide a brief explanation of how the new processes and practice addresses the aim of the child protection reform.

<b>Overarching aims of the child protection reforms</b>	<b>S1</b>	<b>S2</b>	<b>S3</b>	<b>How is this aim addressed?</b>
<i>Strengthen early intervention and prevention, including Helping Out Families and the implementation of Aboriginal and Torres Strait Islander Family Support Services.</i>				
<i>Reduce the overrepresentation of Aboriginal and Torres Strait Islander children.</i>				
<i>Recognising the cumulative nature of harm, the need for holistic assessments and collaboration and information sharing across service providers.</i>				
<i>Improved outcomes for children and young people in out-of-home care through child health passports, education support plans, cultural support plans and transition from care plans for young people 15 – 17 years; each of these incorporated within the individual child's comprehensive case plan.</i>				
<i>Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle and recording of participation of Recognised Entities in decision making.</i>				
<i>Strengthened focus on engagement and participation of children and their families in decisions impacting on their lives.</i>				
<i>Goal directed case plans that support timely permanency decisions for children.</i>				

## Version Modification History

### Specialist Skills– Facilitators Guide:

Version	Release date	Comments	Consultation for learning guide development
V001	19 August 2011	•	•
Final	5 September 2011	• Feedback from Child Safety Practice Improvement and Child Protection Development	•

<b>Topic</b>	<b>Child Protection Reform Stage 2 Training</b>
<b>Title</b>	<b>Ongoing Intervention Module</b>
<b>Learning guide developed by</b>	Learning Solutions Unit
<b>Date developed</b>	August 2011
<b>Running time</b>	3 hours
<b>Audience</b>	All CSSC staff across the child protection continuum
<b>Content Summary</b>	<p><b>Session Processes</b></p> <p>Throughout the session</p> <ul style="list-style-type: none"> <li>Participants will work through one scenario that has been divided into 4 parts. For each of the 4 parts of the scenario participants need complete a two step process:</li> </ul> <p><b>Step 1: list the relevant information (Small group activity)</b></p> <ul style="list-style-type: none"> <li>List relevant information contained in the scenario</li> <li>List relevant child protection reforms from the CSPM, <i>Child Protection Act 1999</i> and ICMS to address the issues identified in the scenario</li> <li>Answer specific questions to identify the practice procedures that they will apply to be inline with the child protection reforms.</li> </ul> <p>Ensure all the relevant information is covered from the first step of the process before moving on to the linking discussion (step 2). All of the relevant information is listed in the facilitator notes.</p> <p><b>Step 2: analyse the lists to identify the links between the knowledge of the reforms and the enhanced practice processes. (Large group activity)</b></p> <ul style="list-style-type: none"> <li>It is important to make the links between the knowledge of the CP reforms. Participants are to answer the following questions: <ul style="list-style-type: none"> <li>What are the positive outcomes for practice?</li> <li>When will I use this practice?</li> <li>How will these outcomes be achieved?</li> </ul> </li> </ul>

This step is to encourage participants to expand their thinking beyond knowledge and comprehension towards application and analysis.

Being able to apply and analyse the knowledge of the CP reforms and the new practice procedures participants will develop a greater understanding of the importance of the reforms and how they will achieve better outcomes for their clients.

**NOTE: Allowing for introductions (15 min) and final debriefing (15 min) this allows 37 minutes per part of the scenario.**

- The 4 parts of the scenario will be completed in mixed team groups to allow each participant to consider the impact for their specific role and functions. This will afford team leaders and other senior officers an opportunity to work with staff through the debrief process.
- The Court Coordinator and Senior Practitioner will support the CMLU facilitator throughout the Ongoing Intervention module. The Court Coordinators and Senior Practitioner have been provided with specific information related to the court process that they will be able to contribute to the discussions.
- Child Safety Service staff are currently visited and supported by learning consultants from the Client Management Learning Unit, Learning Operations. In ongoing visits, the learning consultants can review the ongoing use of the reflective practice tool with the team leader. Continued use of this tool will assist learners to embed the legislative changes into their practice.

<p><b>Purpose</b></p>	<p>The purpose of the Child Protection Reform Stage 2 training is to offer a deeper level of learning focused on specific roles. Activity based learning will be used to support the implementation of the child protection reform agenda in various roles along the child protection continuum.</p>
<p><b>Learning outcomes</b></p>	<p>At the end of the sessions participants will be able to:</p> <ul style="list-style-type: none"> <li>• Assess and formulate rationale for level of intervention including the type of order, if applicable.</li> <li>• Differentiate when engagement is required with the LTG as a parent.</li> </ul>
<p><b>Additional comments</b></p>	<p><b>Participant to bring to the session</b></p> <ul style="list-style-type: none"> <li>▪ Information session resources handout</li> <li>▪ <i>Child Protection Act 1999</i> – with amendments</li> </ul> <p><b>Facilitator to bring to the session</b></p> <ul style="list-style-type: none"> <li>▪ CSPM – version with changes highlighted. Hardcopy is preferred, or on laptop for participants to refer to.</li> <li>▪ Clear message about the use of TCO</li> <li>▪ Lollies for prizes</li> </ul> <p>The purpose of the training is to engage in professional discussion and debate. The participants will be able to take notes as they require for themselves in relation to the changes to the CSMP and Child Protection Act 1999</p> <p>Participants will be provided with one take home resources for the ICMS changes related to this module.</p> <p><b>Support in the Service Centres</b></p> <p>The delivery of the Stage 2 CP Reform training will be supported by Senior Practitioners and Court Coordinators. These people will act as subject matter experts of the Child Protection Reforms in the Child Safety Services Centres post training.</p> <p>LSU and Child Safety Practice Improvement facilitated workshops for Court Coordinators (19 September 2011) and Senior Practitioners (10 October 2011) to provide information about the</p>

reflective practice tool and the training session.

**Reflective Practice Tool**

The Child Protection Reform Stage 2 training will use a reflective practice tool to debriefing the learning activities. The reflective practice tool is the 'meta narrative' that sits behind the design of the session. The following information about the reflective practice tool is for CMLU facilitator's knowledge and does not need to be presented at the CP reform stage 2 training sessions.

**Overview – development of the tool**

The tool was originally developed in collaboration with staff from Griffith University for use as an assessment tool for the CSSO / CSO pilot evaluation. The tool has been adapted for suitability as a reflective practice tool for stage two of the Child Reforms learning intervention.

The tool has been developed using two educational frameworks:

- Blooms taxonomy
- SOLO taxonomy
- Dreyfus & Dreyfus

For further information about the educational frameworks used to develop the reflective practice tool contact Learning Solutions Unit.

Materials	Learning Guide
	<p><b>1. Welcome &amp; Introductions</b></p> <p>Welcome the participants and introduce the presentation topic – Child Protection Reform Stage 2 training Ongoing Intervention Module</p> <p>Outline housekeeping issues:</p> <ul style="list-style-type: none"> <li>• WH&amp;S including emergency exit plan</li> <li>• Bathrooms</li> <li>• Mobile phones to silent/vibrate</li> </ul>
	<p><b>2. Explanation of child protection reform stage 2</b></p> <p>Facilitator to explain the purpose of the stage 2 training - to encourage a deeper level of learning which focuses on specific</p>

	<p>staff in designated roles. Stage 2 consists of three separate modules :</p> <ul style="list-style-type: none"><li>• Harm (I&amp;A and Cumulative)</li><li>• Ongoing Intervention – this module</li><li>• Permanency planning and timely decision making</li></ul> <p>All staff will <b>not</b> be required to attend all of the module trainings.</p> <p>This module <b>will not cover all the changes of the CP reforms</b> only those specific to the learning outcomes for this module.</p> <p>The learning outcomes are to:</p> <ul style="list-style-type: none"><li>• Assess and formulate rationale for level of intervention including the type of order, if applicable.</li><li>• Differentiate when engagement is required with the LTG as a parent.</li></ul>
	<p><b>3. Explain the format of the training</b></p> <p>Participants will explore a 4 part child protection scenario. The CP reforms cut across the whole of the CP continuum, to encourage professional discussion and debate the larger group will be divided into smaller groups that contain members of different CSSC teams.</p> <p>Participants should have with them the Information Session Resource given at the Information Presentation that they attended earlier. This will contain most of the information needed to complete the learning activities.</p> <p>If they did not bring their copy they may want buddy up with someone who has brought their copy to refer to.</p> <p>It will be helpful for them to continue to add to their own comments, so if they are not familiar with the changes to the sections of the CP Act, CSPM or ICMS this can be recorded for</p>

them to look up when they return to their work.

Participants will be given 4 handouts:

- Handout 1 – Model and instructions
- Handout 2 – 4 part scenario
- Handout 3 – Final debrief
- Handout 4 - ICMS Key Changes and Messages relating to Phase 2 Child Protection Reforms

They will write notes on the handouts for the discussions.

Through group discussions participants will identify issues in the scenarios that relate to the child protection reforms and identify the relevant changes to the *Child Protection Act 1999*, CSPM and ICMS. Participants will then apply this knowledge to the scenario and discuss how the knowledge of the CP reforms will impact on their practice in this specific situation.

If general practice issues are raised, get the participant to write the question down for further discussion within the CSSC.

#### **4. Experience in the room**

Participants will have previously attended an Information session in July / August 2011 and should have had discussions in Service Centres about the reforms prior to the 'Go Live' date of 29 August 2011. Have a discussion with the group around how the child protection reforms have impacted on their practice since 'Go Live'.

#### **Discussion questions:**

***How have the reforms impacted on your practice since 'Go Live'?***

***How often have you been required to use the new sections of the CP Act, new procedures in the CSPM or completed the new forms / questions in ICMS?***

This discussion will provide the facilitator with the level of knowledge and experience in the group. People with significant



**Facilitator answers for scenarios (p.1)**

**Note:** For the purpose of this activity participants do not need to identify specific sections of the *Child Protection Act 1999* and CSPM. It is sufficient that they are able to identify the general nature of the CP reforms. They should be able to identify the specific ICMS changes.

However if participants are able to identify the specific sections of the CSPM or Child Protection Act 199 that have been changes they deserve a prize.

**Note:** do not allow the participants to get bogged down in the content of the scenarios. The main process occurs when participants engage in professional discussion and debate the links between the CP reforms and the enhancements made to practice.

Before moving onto the linking questions make sure that participants have identified all the information required.

If participants were not able to identify all the changes make sure that they write down the knowledge that they did not recall - they will be able to look this up when they return to their desk.

Refer them to the Information Session Resource:

- # 3.P.6 – Temporary Custody Order
- ICMS example 4 P.24 – Temporary Custody Order
- Practice Resource 1 P.25 – Temporary Custody Order

**Facilitator answers for scenarios (p.2)**

**Spend enough time during this process to ensure participants are able to analyse and apply the CP reforms.**

### **7. Scenario part 1 – step 2 linking of the knowledge**

In the large group the CMLU facilitator will debrief the process by asking the participants to build the links between the new practices to the CP reforms.

There is no need to re-convene in the larger groups, just get participants to participate from the small group positions.

Get participants to consider the reasons why the CP reforms are

	<p>changing practice.</p> <p><b>What are the positive outcomes for practice?</b>  <b>How will these outcomes be achieved?</b></p> <p>This discussion can occur in the larger group.  <b>Ask the group to consider if there will be any particular local challenges that they will have to overcome to implement the reforms.</b></p>
	<p><b>8. Complete steps 1 &amp; 2 for the remaining 3 parts of the scenario.</b></p> <p><b>CP reforms information for scenario part 2 are identified in the Information Session resource</b></p> <ul style="list-style-type: none"> <li>• # 3 P.6 – Temporary Custody Order</li> <li>• # 8 P.11 – Child Protection Orders</li> <li>• ICMS example 4 P.24 – Temporary Custody Order</li> <li>• Practice Resource 1 P.25 – Temporary Custody Order</li> </ul> <p><b>CP reforms information for scenario part 3 are identified in the Information Session resource</b></p> <ul style="list-style-type: none"> <li>• # 4 P.7 – Transition Orders</li> <li>• P.33 - ICMS Example 7 – Transition Plan</li> </ul> <p><b>CP reforms information for scenario part 4 are identified in the Information Session resource</b></p> <ul style="list-style-type: none"> <li>• # 2 P.4 – Parents / Long Term guardian/s</li> <li>• P.22 – 23 - ICMS Example 2 – Long Term Guardian/s</li> </ul>
<p><b>Handout 3: Aims of the CP Reforms</b></p>	<p><b>9. Module 1 debrief</b>  <b>CMLU facilitator to provide participants with handout 3</b></p> <p>Complete the session by getting the participants to reflect back over the 4 scenarios covered and identify which of the overarching aims of the CP reforms they relate to.          Note: this module does not cover all of the overarching aims. Over the course of the three modules all of the aims will be covered.</p>

	<p>Participants are also to explain how the CP reforms address the overarching aims.</p>
<p><b>Handout 4: ICMS Key Changes and Messages relating to Phase 2 Child Protection Reforms</b></p>	<p><b>10. Provide participants with handout 4.</b></p> <p>As the final resource / reinforcer of the changes provide participants with handout 4 ICMS Key Changes and Messages relating to Phase 2 Child Protection Reforms.</p> <p>Reinforce that there will not be any specific ICMS training for this round of reforms.</p>
	<p><b>11. Final questions</b></p> <p>Stay tuned for the next exciting sessions which will begin</p>

Scenario Part 1- Facilitator Notes – Step 1 Listing of Information

Scenario information		
CP Reform Knowledge		
CSPM	CP ACT	ICMS
<ul style="list-style-type: none"> <li>Aboriginal unborn child – mother refuses to give consent for R.E. involvement.</li> <li>CPN: father's DV and alcohol – substantiated child in need of protection.</li> <li>History of separating and getting back together.</li> <li>Mo plans to permanently separate to keep the baby but can not identify where she will live.</li> <li>Limited support network.</li> <li>Refuses support service help.</li> </ul>	<ul style="list-style-type: none"> <li>TCO - section 51AA – 51AM</li> <li>Unborn children - section 21A</li> <li>Provisions about Aboriginal and Torres Strait Islander children and Recognised Entity - section 6</li> </ul>	<ul style="list-style-type: none"> <li>New TCO event               <ul style="list-style-type: none"> <li>used to create applications for the new Temporary custody orders and record the outcome of applications.</li> <li>This event has been developed based on the TAO event and all functionality will mirror the TAO event.</li> </ul> </li> <li>New forms               <ul style="list-style-type: none"> <li>Form 39 Application for a TCO</li> <li>Form 41 Application to extend/vary a TCO</li> <li>Form 39 – TCOF and Form 41 – TCOF new court outcome forms. These forms will be used to develop applications to be filed with the court and to record the magistrate's decision about an application.</li> </ul> </li> <li>Period of time               <ul style="list-style-type: none"> <li>The period for TCO's is calculated in business days and users will need to calculate the expiry date of orders and record these in ICMS as there is no 'live' calendar in ICMS (ICMS cannot sufficiently account for public holidays).</li> </ul> </li> </ul>
<p><b>Chapter 2</b></p> <p>2. What if a parent will not consent to actions required – use of TAO</p> <p>7. What if the investigation and assessment is for an unborn child</p> <p>10. What if a child needs to be placed under an assessment care agreement?</p> <p><b>Chapter 3</b></p> <p>9. What if immediate custody is required for a child in need of protection – use of TCO.</p> <p><b>Chapter 10</b></p> <p>1 Decision making about Aboriginal and Torres Strait Islander children</p> <p><b>Practice Resource</b> – Temporary Custody Order</p> <p><b>Practice Resource</b> – Working with the Recognised Entity</p> <p><b>Unborn child checklist</b></p>		

### Practice Implications

**Question: What options are available to secure custody of the child after the baby is born?**

**Answer:**

- **s18 of the CPA99** - if the child is at immediate risk of harm, the department can take the child into the CEs custody under s. 18 and must then apply for a TCO. The use of this section would depend on whether an immediate risk was posed to the child, for example, the mother and child could be discharged and the child removed from the safety of the hospital, that would mean immediate action is required.
- **Child Protection Care Agreement** – if it is assessed that it would be in the best interest of the child to be temporarily placed in the care of someone other than the child's parents and it is not likely that if the parents end the agreement, the child will be at immediate risk of harm (refer to s51ZE of the Act).
- **Temporary Custody Order (TCO)** where time is required for the department to determine the appropriate action to meet the child's ongoing protection and care needs whilst ensuring the child's immediate safety. **Should clarify here that at this time, a TCO must not be applied for until further amendments to the CPA99 are made.**
- **Child Protection Order (CPO)** – where there is no immediate risk of harm and the level of protection required is best met by way of a CPO under s61 of the Act.

The following are not options in this scenario:

- Assessment Care Agreement because it only applies during the assessment phase and a decision has already been made that the child is in need of protection.
- A Temporary Assessment Order (TAO) (for the same reason as above). A TAO would only be applicable if you moved back into the assessment phase, for example - a new notification needed to be recorded after birth because an up-to-date risk assessment was required because new child protection concerns are received or it has been a considerable time since the unborn notification was investigated and the level of risk may have changed

**Follow-up Question: Of the previously identified options which would be the most appropriate under the CP reforms?**

**Answer**

**Temporary Custody Order (s51AA-AM)**

**Rationale**

The assessment has already been made that the child is in need of protection. A decision now needs to be made about what type of ongoing intervention is best suited to the situation – from IPA to different types of CPOs. The TCO period will be used to discuss options with parents, an ongoing risk assessment to determine whether custody of the baby is required, including whether the supported accommodation option will be taken up and, to further explore what role the extended family may play in supporting the family.

**Follow-up Question: Provide a rationale as to why the other options are not appropriate?**

- Section 18 would not be appropriate as the child is safe in hospital and they could hold the child until the TCO was applied for.
- Child Protection Care Agreement would not be appropriate based on indication that parents would not consent and would not follow case plan.
- CPO would not be appropriate as other options, to secure the child's safety, had not yet been explored.

**Question: In what other situations would you apply for a TCO?**

**Answer:**

**Temporary Custody Order (s51AA-AM)** is applied for as the assessment has already been made that the child is in need of protection. A decision now needs to be made about what type of ongoing intervention is best suited to the situation – from IPA to different types of CPOs. The TCO period will be used to discuss options with parents to meet the identified needs of the child. During the TCO an ongoing risk assessment to determine whether longer-term custody of the baby is required will be made, including whether the supported accommodation option will be taken up and further exploration of what role the extended family may play in supporting the family. This baby was already assessed as a child in need of protection during the unborn notification, however the period of the TCO (which was granted due to the seriousness of the immediate risks to the infant) enables further assessment of the current risks and the mother's willingness and ability to work with Child Safety to meet the needs of the child.

Note here the difference between a TAO and a TCO referring to examples of circumstances when each order would be appropriate – that is, above and beyond an example such as an unborn child or where a child is subject to a PSO and a more intrusive order is required.

**OF INTEREST:** although a TCO is not captured under s85/s86 in terms of the CEs obligation to advise parents of placing a child in care, departmental practice should reflect that this occurs in accordance with the same principles of s85 (noting that this decision is not a reviewable one).

**Multiple choice Question: At what point should the RE have been / be contacted?**

- A) At intake to decide on the decision about whether a notification would be recorded?
- B) During the I&A planning so a joint investigation with the RE could be organised?
- C) Once the I&A was substantiated?
- D) After the baby is born?

**Answer:**

- D) Once the baby is born, s6 of the CPA99 applies and the CSO will need to contact the RE for participation in decision-making.
- NB: Section 21A** - contact with the RE regarding an unborn child will only occur with the pregnant woman's consent.

Scenario Part 1- Facilitator notes – Step 2 Linking of knowledge and practice

<b>What are the positive outcomes of the reforms?</b>	<b>How will these outcomes be achieved?</b>
<ul style="list-style-type: none"> <li>• <b>TCO</b> The TCO is a less intrusive intervention, than a CPO, that can be used while determining the most appropriate ongoing intervention to use.</li> </ul> <p>Improved early intervention options.                      Movement towards a public health model – referral pathway for families.</p>	<p>Allows the CSO 3 days to engage with the family to determine the most appropriate ongoing intervention, while ensuring the safety of the child.</p>
<ul style="list-style-type: none"> <li>• <b>Unborn Babies / Consent of pregnant woman to inform the Recognised Entity</b> Giving the mother the opportunity to consent before informing the RE of the unborn baby alert empowerment of Aboriginal and Torres Strait Islander people as an appropriate Indigenous response.</li> </ul>	<p>Improved early intervention strategies and options available for families including Helping out Families (HOF) and Aboriginal and Torres Strait Islander family support services.</p>

Scenario Part 2 - Facilitator Notes – Step 1 Listing of Information

Scenario information		
<p><b>Scenario Information</b></p> <p><b>2.1 (period of time for a TCO)</b></p> <ul style="list-style-type: none"> <li>• TCO granted for 3 days.</li> </ul> <p><b>2.2 (applying for a CPO)</b></p> <ul style="list-style-type: none"> <li>• Mother not considering separating from father.</li> <li>• Father presents at hospital intoxicated / aggressive towards staff and mother.</li> <li>• CPO for 1 year granted.</li> <li>• Parents do separate.</li> <li>• Order nearing expiry and decision to apply for extension of CPO.</li> </ul> <p><b>2.3 (Extension of a CPO for maximum period of time of the order)</b></p> <ul style="list-style-type: none"> <li>• Application to extend CPO for 1 year.</li> <li>• Separate Rep.</li> <li>• Grandmother made submission as a non party and seeking copy of affidavit.</li> </ul>		
CP Reform Knowledge		
CSPM	CP ACT	ICMS
<p><b>Chapter 2</b></p> <ul style="list-style-type: none"> <li>• 2. What if a parent will not consent to actions required – use of TAO</li> </ul> <p><b>Chapter 3</b></p> <ul style="list-style-type: none"> <li>• 2.8 Apply to extend, vary, revoke or revoke and make a new child protection order</li> <li>• 9. What if immediate custody is required for a child in need of protection – use of TCO.</li> </ul>	<p><b>2.1 (period of time for a TCO)</b></p> <ul style="list-style-type: none"> <li>• TAO duration to 3 business days – s29</li> <li>• TCO - s51AA – 51AM</li> </ul> <p><b>2.2 (applying for a CPO)</b></p> <ul style="list-style-type: none"> <li>• Extending or granting a further CPO – s59</li> <li>• Custody during adjournment – s67 and s99</li> <li>• Types of CPOs – s61</li> </ul> <p><b>2.3 (Extension of a CPO for maximum period of time of the order)</b></p>	<ul style="list-style-type: none"> <li>• CPO applications and COF's will now include rules in regards to the length of time that CPO's can be extended for. The rules comply with the order periods set out in the CPA 1999 (Link this in with the discussion about this topic in the scenario).</li> <li>• CPO applications and COF's will now include rules in regards to varying CPO's. The rules comply with the advice provided by Crown Law (Link this in with the discussion about this topic in the scenario).</li> <li>• Information about Separate Representatives and</li> </ul>

	<ul style="list-style-type: none"> <li>• Role of separate representative – s110</li> <li>• Non-party access to court material – s113</li> </ul>	<p>their views in regards to an application can now be recorded in all ICMS COF's.</p>
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**Practice Implications**

**Scenario - Part 2.1 (period of time for a TCO)**

**Question: If the TCO is made on Thursday (21 April) and the following Monday is a public holiday – what day and date will the TCO expire?**

**Answer:**

- Wednesday 27 April – calculation of time commences from the day after the order is made and does not include weekends or public holidays – 'business days'.

**Rationale**

- Leg changes re: TAO duration also to 3 business days (s29(2)).

**Scenario - Part 2.2 (applying for a CPO)**

**Question: What is the minimum and maximum length of time the CSO can apply for an extension to the order?**

**Answer:**

The maximum length of time an extension can be sought for is 1 year – in accordance with s62(2)(b) – taking the total time to 2 years from the date the original order was made.

It is noted however, that the time taken for the matter to be determined must be taken into account when calculating this time, for example, if the proceedings take 3 months to determine before an order is made, the order can only be extended for a further period of 9 months taking it to 1 year in total for the extension and 2 years in total for the maximum duration provided for in the Act.

**Indicative answers:** (to include the following content)

**Extensions**

Crown Law advice is that a CPO cannot be extended beyond its maximum duration as set out in s62(2) of the Act.

For example, a CPO granting custody to the CE for a period of 12 months can be subject to an application to extend for a further period of 12 months taking it up to its maximum duration as set out in s62(2) of 2 years.

If the maximum duration for a CPO has already been ordered by the Court and a further order of the same nature is required to resolve the child's protective and care needs, a fresh application is required to be filed rather than an extension.

An application to extend can only be sought where the maximum duration for a CPO has not already been granted.

The period of time the Childrens Court takes to decide the application must also be taken into account to ensure that the total time does not exceed the maximum duration.

For example, if an application to extend a CPO (1 year custody to the CE) for a further period of 1 year takes 6 months for the Childrens Court to determine, the order can only be extended for a further period of 6 months bringing the total period up to 2 years from the day the original order was made.

Vary vs. Revoke & Make Another:

A CPO can only be varied to modify the type of CPO within each stated category. For example, if you are seeking to change from a CPO LTG to CE to a CPO LTG to 3rd party, an application to vary can be filed. However, if you are seeking to change from CPO STG to CE to CPO LTG to CE, an application to revoke and make another must be filed.

CPO's which can be varied are:

- supervision orders
- directive orders
- custodial orders
- long-term guardianship orders.

An application to vary cannot be made in order to change the type of CPO (in this instance apply to revoke and make another); increase the duration of a CPO (in this instance apply to extend); or reduce the duration of a CPO (in this instance apply to revoke).

**Scenario – Part 2.3 (Extension of a CPO for maximum period of time of the order)**

**Question: What information is the maternal grandmother able to access and how does this occur?**

**Answer:**

- Material that has been submitted by the court.
- The Magistrate determines what information will be given to non-parties after hearing submissions from all parties.
- The Magistrate must be satisfied that the information/document the non-party wants, is relevant to a submission the non-party may make.
- The Magistrate must also be satisfied that the person to whom the document/information relates has been informed that it may be viewed by a non-

party and the person has been given reasonable opportunity to make submissions to the court about the non-party being allowed to view the document/information.

**Key messages:**

- s110(4) - a Separate Representative for a child is not a party to a proceeding on an application however, must do anything required to be done by a party and may do anything permitted to be done by a party.
- s113 - non parties can make submissions on an application to the Court and may be granted access to 'view' documents on the Court file. This can only be sought where the document is relevant to the non-parties submission/s, it is in the child's best interest and each party to whom the document relates has been given notice and the opportunity to object. It should be noted that at this time, the word 'view' is open to interpretation – that is, are non-parties simply able to view a document at the Court or are they provided with a copy, etc? Submissions may need to be made as to the literal meaning of the word when orders of this nature are made.
- s99 – the order granting custody or guardianship of the child continues until the application is decided unless the Childrens Court orders an earlier end to the order. Prior to 29 August 2011, s99 could be relied on to ensure that the custody or guardianship of the child continued, but it was not defined as an order (refer to Schedule 3). Previous departmental practice on an adjournment of an application has been to rely on s67, unless the department considered it necessary to retain guardianship of a child. Current departmental practice post 29 August 2011 is that s99 should be relied on for an adjournment of an application as this allows the court an opportunity to make a Transition Order, if the criteria for s65A are met (see part 3 of the scenario). NOTE - Transition Orders can only be sought in situations where there is a CPO granted under s61(d), s61(e) or s61(f). As such, transition orders cannot be sought when the department is seeking a new order or, an application has been made to extend/vary/revoke & vary and the child is subject to interim orders under s67 (rather than s99).  
Therefore: Note - in practice, when moving from a TAO / CAG / TCO to a CPO, at the first mention of the CPO, interim custody should be sought pursuant to s67 and an earlier end to s99 should be sought. This is because if s99 remains in place, the TAO / CAO / TCO from which custody continued will remain in place.  
However, when moving from a CPO to a CPO, interim custody should be sought under s99. This is to allow for a Transition Order to be sought if and where appropriate.
- Orders can be made under s99 and s67 to run along side each other – that is concurrently.

**Scenario Part 2 - Facilitator Notes – Step 2 Linking of Knowledge and Practice**

<b>What are the positive outcomes of the reforms?</b>	<b>How will these outcomes be achieved?</b>
<p><b>Scenario – Part 2.1</b> (period of time for a TCO)</p> <p>Sufficient time to engage with child / young person and family – Time able to dedicate to involve the child / young person and engage with the family to be involved in the decision making process not disadvantaged by weekends and public holidays</p>	<p><b>Scenario – Part 2.1</b> (period of time for a TCO)</p> <p>Not rushed decisions regarding the type of intervention required to secure the safety of the child.</p> <p>Capacity to ensure the participation of the child / young person in the decision making process.</p> <p>Better capacity to engage the family to determine the type of intervention required to secure the safety of the child.</p>
<p><b>Scenario – Part 2.2</b> (applying for a CPO)</p>	<p><b>Scenario – Part 2.2</b> (applying for a CPO)</p> <p><b>Extending CPOs</b></p> <p>Stopping the drift of children in care by limiting the period of time a CPO can go for.</p> <p>Timely permanency planning decisions for children in care.</p> <p>Once maximum period reached CSO must apply for a new short term CPO</p>
<p><b>Scenario – Part 2.3</b> (Extension of a CPO for maximum period of time of the order)</p> <ul style="list-style-type: none"> <li>• Better engagement with families to be involved in the decision making process to secure the safety of the child.</li> <li>• Better outcomes for children through the involvement of Sep reps ensuring that the views and wishes of children are heard.</li> <li>• Better timely permanency planning decisions for children under short term custody orders.</li> </ul>	<p><b>Scenario – Part 2.3</b> (Extension of a CPO for maximum period of time of the order)</p> <p><b>Vary, revoke &amp; make another</b></p>

Scenario Part 3- Facilitator notes – Step 1 listing of information

Scenario information	
<ul style="list-style-type: none"> <li>• Extension to the CPO not granted.</li> <li>• Must return from foster carer to mother.</li> <li>• Not been in mother's care for 18 months.</li> <li>• Mother does not have resources to care for toddler Harry.</li> <li>• Harry is very attached to the carer.</li> </ul>	
CP Reform Knowledge	
CSPM	ICMS
<ul style="list-style-type: none"> <li>• <b>Chapter 3</b>, 2.9 Apply for a transition order</li> <li>• <b>Chapter 10</b>, 1 Decision making about Aboriginal and Torres Strait Islander children</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Transition Order – s65A-D</b></li> <li>• <b>Provisions about Aboriginal and Torres Strait Islander children and Recognised Entity – section 6</b></li> </ul>
<ul style="list-style-type: none"> <li>• Form 10, 11 and 12 final order COF's have been <b>amended</b> to include information about Transition Orders. In situations where an order is not made, the user will be asked to record if an application for a TO was made, and if so, the outcome of this application.</li> <li>• A <b>new form</b> has also been created – the Form 44 Adjournment of TO. This form will be created automatically in the CPO Event, if it is recorded in the final order COF that the TO application was adjourned</li> <li>• Information about the adjournment or granting of a TO will populate into the orders tab, in line with current functionality for existing orders.</li> <li>• A <b>new form</b> has been created in the OI event for the Transition Plan. This form should be used to record a Transition Plan once a TO is being considered or has been granted by the court. It should not be used in other situations (for example, as a reunification plan).</li> </ul>	

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### Practice Implications

**Question: What can you do to try and ensure the smoothest transition for Harry from carer to parent?**

**Answer:**

- An application for a transition order can be made when the court refuses to extend or make a further order before the order ends, revokes the order or decides an appeal against the making of the order in favour of a person other than the chief executive.
- A transition order continues the child protection order for up to 28 days after the transition order is granted. A transition order cannot be extended.
- The purpose of the transition order is to enable the gradual transition of a child from out-of-home care to their parents' care.
- In making the order, the court must be satisfied that the order is necessary to enable the gradual transition of the child to the parents' care in a way that supports the child, reduces their disruption or distress or is otherwise in their best interest, and considers the parents' readiness to care for the child.
- After a transition order is made, a **transition plan** must be developed that outlines how Child Safety will support and gradually transition the child into the parents' care, so as to minimise distress and disruption to the child.
- When an application for a child protection order is not granted by the Childrens Court, consider other types of ongoing intervention to ensure the protection and care needs of the child during the period of the transition order.
- **Note:** the transition plan, to be developed following the making of a transition order is **not** to be confused with the 'transition from care plan' which is recorded in the case plan, for a young person who is 15 years or over and subject to an order granting custody or guardianship to the CE.
- Departmental policy states that these orders should only be applied for upon a **final hearing/determination of a substantive CPO application (where the required criteria has been met – that is, an order under s61(d), s61(e) or s61(f) is in place). A TO should not be sought on an interim basis.**
- TO applications can be made verbally or in writing – it is envisaged that applications will more often than not be verbal given the urgent nature of such an application.
- It is important to note that in practice, the CC / TL / CSO ( / applicant) should discuss the possibility of the need for a TO prior to the Court appearance so that the CC can prepare submissions accordingly if required – that is, why such an order is required, the proposed plan, etc.

Scenario Part 3 - Facilitator Notes – Step 2 Linking of Knowledge and Practice

<i>What are the positive outcomes of the reforms?</i>	<i>How will these outcomes be achieved?</i>
<p><b>Better outcomes for children:</b></p> <ul style="list-style-type: none"> <li>○ recognising the importance of attachment to carers;</li> <li>○ the importance of providing support for families when a child returns to their care.</li> </ul> <p>Preventing children from returning into the child protection system by providing support for families social and practical.</p>	<ul style="list-style-type: none"> <li>○ Planning required around the transition from carer to parent for up to 28 days.</li> <li>○ Opportunity to work with families to ensure they have the resources / referrals required to provide appropriate care for the child when they return home.</li> </ul>

**Scenario Part 4 - Facilitator Notes – Step 1 Listing of Information**

Scenario information						
<p><b>4.1 (LTG to CE – LTG Other)</b></p> <ul style="list-style-type: none"> <li>• Harry now placed with Aunt &amp; Uncle – LTG to CE.</li> <li>• Parents contest the order.</li> </ul> <p><b>4.2 (Notification for LTG Other – contact with parent &amp; LTG Other)</b></p> <ul style="list-style-type: none"> <li>• Aunt and Uncle now kinship carers.</li> <li>• Younger sister subject to a 2 year short term custody order to the CE.</li> <li>• Concerns about Aunt and Uncle talking derogatory / degrading and threatening way.</li> <li>• Notification made against Harry and MOC against sister.</li> <li>• Children interviewed at school.</li> <li>• Outcome unsubstantiated.</li> </ul>	<p style="text-align: center;"><b>CP Reform Knowledge</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="background-color: #cccccc;">CP ACT</th> <th style="background-color: #cccccc;">ICMS</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;"> <p><b>4.1 (LTG to CE – LTG Other)</b></p> <ul style="list-style-type: none"> <li>• <b>Chapter 3</b> <ul style="list-style-type: none"> <li>○ 1. What if a suitable person has long-term guardianship?</li> </ul> </li> <li>• <b>Chapter 4</b> <ul style="list-style-type: none"> <li>○ 5.10 Long-term guardianship to a suitable person – case plan review</li> </ul> </li> <li>• <b>Letter advising parents of long-term guardianship order</b></li> <li>• <b>Letter advising suitable persons of long-term guardianship order</b></li> </ul> </td> <td style="vertical-align: top;"> <ul style="list-style-type: none"> <li>• Case plan where child has a long-term guardian – s51VA, 51X</li> <li>• Obligations of suitable person – s79, 80, 80A</li> <li>• Meaning of parent – s23, 37, 51AA, 51F, 52, 67, 117, 205</li> <li>• Compliance with provisions about explaining and giving documents – s 195</li> </ul> </td> </tr> </tbody> </table>	CP ACT	ICMS	<p><b>4.1 (LTG to CE – LTG Other)</b></p> <ul style="list-style-type: none"> <li>• <b>Chapter 3</b> <ul style="list-style-type: none"> <li>○ 1. What if a suitable person has long-term guardianship?</li> </ul> </li> <li>• <b>Chapter 4</b> <ul style="list-style-type: none"> <li>○ 5.10 Long-term guardianship to a suitable person – case plan review</li> </ul> </li> <li>• <b>Letter advising parents of long-term guardianship order</b></li> <li>• <b>Letter advising suitable persons of long-term guardianship order</b></li> </ul>	<ul style="list-style-type: none"> <li>• Case plan where child has a long-term guardian – s51VA, 51X</li> <li>• Obligations of suitable person – s79, 80, 80A</li> <li>• Meaning of parent – s23, 37, 51AA, 51F, 52, 67, 117, 205</li> <li>• Compliance with provisions about explaining and giving documents – s 195</li> </ul>	<ul style="list-style-type: none"> <li>• A new event participant has been added to ICMS – Long-term guardian. The LTG option will appear in the event participant list when you are adding a person to an event. <u>There must be a LTG added as an event participant in the OI event to have access to the LTG case plan and review report, as well as in other events to have additional LTG information display in forms.</u></li> <li>• Two new case planning forms have been created in ICMS, specifically for children subject to LTG – other orders. They are called, <b>LTG to a suitable person – Case Plan</b> and LTG to a suitable person – Contact and review report.</li> <li>• The same closure process for review reports will</li> </ul>
CP ACT	ICMS					
<p><b>4.1 (LTG to CE – LTG Other)</b></p> <ul style="list-style-type: none"> <li>• <b>Chapter 3</b> <ul style="list-style-type: none"> <li>○ 1. What if a suitable person has long-term guardianship?</li> </ul> </li> <li>• <b>Chapter 4</b> <ul style="list-style-type: none"> <li>○ 5.10 Long-term guardianship to a suitable person – case plan review</li> </ul> </li> <li>• <b>Letter advising parents of long-term guardianship order</b></li> <li>• <b>Letter advising suitable persons of long-term guardianship order</b></li> </ul>	<ul style="list-style-type: none"> <li>• Case plan where child has a long-term guardian – s51VA, 51X</li> <li>• Obligations of suitable person – s79, 80, 80A</li> <li>• Meaning of parent – s23, 37, 51AA, 51F, 52, 67, 117, 205</li> <li>• Compliance with provisions about explaining and giving documents – s 195</li> </ul>					

		apply for OI events.
<b>4.2 (Notification for LTG Other – contact with parent &amp; LTG Other)</b>		
<ul style="list-style-type: none"> <li>• <b>Chapter 2</b> – Investigation and assessment</li> <li>• <b>Chapter 3, 9.</b> What if What if immediate custody is required for a child in need of protection – use of TCO.</li> <li>• <b>Chapter 9</b> – Matters of concern</li> <li>• Practice resource – Informing parents about the harm and the outcome – section 15</li> <li>• <b>Practice resource</b> – Planning the investigation and assessment</li> <li>• <b>Practice resource</b> – Recording the investigation and assessment</li> <li>• <b>Practice resource</b> – Use of powers for a child at immediate risk – section 16 and 18</li> </ul>	<ul style="list-style-type: none"> <li>• Telling parents and long-term guardianship about harm and outcome – s15</li> <li>• Contact with a child at school – s17</li> <li>• Child at immediate risk – s18 and s20</li> <li>• Meaning of parent to include long-term guardian (TAO) – s23</li> <li>• Meaning of parent to include long-term guardian (CAO) – s37</li> <li>• Meaning of parent to include long-term guardian (TCO) – s51AA</li> <li>• Appropriate parental consent – s27</li> </ul>	

### Practice Implications

**Question: What actions are you, Harry's CSO, going to take following the making of the CPO granting long-term guardianship to a suitable person (LTG other)?**

#### Answers

- Inform Harry and his guardians of the Court's decision.
- Inform the RE of the Court's decision.
- Explain to Harry and his parents the terms and effects of the order and the timeframe and process for lodging an appeal
- Following the verbal explanation, provide written notice of the terms and effects of the order and the timeframe and process for lodging an appeal (this involves the completion of the 'Letter advising parents of long-term guardianship order' - there is no 'template' for the letter to Harry as this letter is to be developed by Harry's CSO, having regard to Harry's age and ability to read/comprehend written information).
- Ensure the provision of verbal and written information to Harry and his parents includes the name and contact details for the CSO who will have ongoing case responsibility for Harry.
- Give Harry's guardians written information about the order, which includes their ongoing legal obligations to Harry (refer to s80 and s80A), Harry's parents and Child Safety Services and the name and contact details of Harry's CSO (this involves the completion of the 'Letter advising suitable persons of long-term guardianship order').
- Give Harry, his parents and his guardians a certified copy of the CPO
- Give Harry, his parents and his guardians the case plan that was submitted to the Court as part of the evidence for the application for the CPO – LTG.
- Give Harry:
  - a certified copy of his birth certificate (original remains on dept file);
  - his tax file number, if he has one; and
  - a certified copy of his Aboriginality Certificate (original remains on file).
- Ensure Harry and his guardians have his child health passport folder.
- Give Harry and his guardians information about the Commonwealth Government's Transition to Independent Living (TILA) allowance.
- Give the guardians' contact details for and information about the Foster and Kinship Carer Support Line.
- Create the 'Long-term guardianship to a suitable person – Case plan in ICMS
- A "Long-term guardianship - case plan" is created after a child protection order granting long-term guardianship to a suitable person is made.
- The child and long-term guardian can request a review of their case plan at any time. The department decides whether to conduct a case plan review. A range of case-specific factors inform decision-making about whether and in what circumstances to respond to a request for a case plan review.
- A case plan review is required when

- the long-term guardian is not fulfilling their obligations under section 80
- to assess the current care arrangement and appropriateness of the order to ensure it is meeting the child's care and protection needs
- the outcome of an investigation and assessment regarding the long-term guardian's care of the child is 'substantiated - ongoing intervention continues' and the child is at an unacceptable risk of harm
- Child Safety is notified that the child is no longer residing in the direct care of the long-term guardian
- the long-term guardian or the child requires time-limited, intensive case work from Child Safety.
- the long-term guardian makes a request for the high supports needs allowance or the high supports needs allowance has continued beyond 12 months.
- the long-term guardian or child is in receipt of child related costs payments that have been ongoing for more than 12 months. For further information
- There are information provision requirements and review rights associated with a decision not to review a case plan. A letter template has been developed and is a resource in the CSPM. It should be noted here the new reviewable decision about a refusal to review a case plan upon a request for a child/LTG. Specifically the new decision letter template, why such a decision would be made, how to support such a decision – that is rationale, etc. It is notable that this right of review does not extend to children in the care of CE. Furthermore, it would appear inherent in deciding whether or not to review a case plan, you are, in effect, actually reviewing the case plan and that what in essence a carer or child will ultimately be seeking from QCAT is some process of amending the case plan because they are aggrieved by its content, as opposed to 'reviewing' it. At this stage, it is unclear as to the scope to be taken by QCAT under such a review.
- Record carer details in ICMS, to reflect that the Smith's are now Harry's LTGs.
- Undertake ongoing intervention, including 12 monthly contact with Harry.
- If at any stage following the making of the order a notification and investigation and assessment occurs in relation to a child subject to a CPO granting LTG other, and/or if future action (eg. taking a child into custody or court action) is taken in relation to a child subject to a CPO granting LTG other, departmental officers must comply with s195, re explaining and giving documents to the child's long-term guardian (as well as, where applicable, the child, the child's parents and carers)

**Other relevant information:-**

- **Additional reviewable decision – Child Safety Practice Manual chapter 5 1.10 Provide placement information to parents – “For a child protection order where the placement is more than seven days (exceeds six nights), the decision about in whose care to place the child, or to withhold full or partial placement information from parents, is a reviewable decision. This includes when a child will have planned and on-going respite with one carer that is cumulatively more than seven days for the duration of the current case plan review period. When a child will have planned respite with one carer that cumulatively exceeds six nights over the case plan review period, outline the respite plan in the written advice to the parents.” The written notice of the decision would need to be provided as soon as practicable after**

the respite placement decision has been made.

- Care Agreements - s51Z (a) & (b) applies only to a child if the CE reasonably suspects the child is in need of protection or there is no child protection order in force granting custody or guardianship to anyone...neither of these fit for a child who is subject to LTG (i.e. already in need of protection and has a CPO).

**Key messages**

- Relevant information and documentation to be given to a child or young person, parents and long-term guardians, following the making of a CPO - LTG to Other.
- New practice requirement to complete the 'Long-term guardianship to a suitable person – Case plan' in ICMS, as soon as possible after the LTG other order is granted.
- Following the making of the CPO granting long-term guardianship to a suitable person, the guardians meet the definition of parent under certain sections of the Act. This will require the provision of certain information and documents to long-term guardians in specified circumstances.
- Requirement to have 12 monthly contact with a child or young person subject to CPO - LTG to Other. The purpose of this 12 monthly contact is to:
  - Give the child an opportunity to ask questions and make comments about their case plan, as well as request a case plan review
  - Ensure that the long-term guardian is continuing to fulfil their obligations under the *Child Protection Act 1999*, such as providing information to parents, facilitating contact, providing parents with new address if they have moved and reminder to notify Child Safety if the child leaves their care
  - Any change in the child or guardian's circumstances that may require additional support, such as planning for transitioning to independence, continued FCA
- The new requirement to complete the 'Long-term guardianship to a suitable person – Contact and review report' in ICMS.

Scenario Part 4 - Facilitator Notes – Step 2 Linking of Knowledge and Practice

<i>What are the positive outcomes of the reforms?</i>	<i>How will these outcomes be achieved?</i>
<p><b>4.1 (LTG to CE – LTG Other)</b>            Better outcomes for children:            Timely permanency planning decisions by locating suitable kinship carers            Giving LTG to other the rights and responsibilities of parents in the raising of children</p>	<p>Empowering families to be responsible for the raising of their children</p>
<p><b>4.2 (Notification for LTG Other – contact with parent &amp; LTG Other)</b>            Treating LTG to other, similar to parents having the rights to view materials and be a party to proceedings.</p>	

## Child Protection reforms stage 2 – Ongoing Intervention module Instructions and model

### **Instructions:**

You will be provided with 1 scenario which has 4 parts. For each of these parts of the scenario you will:

- Step 1) List the key relevant information contained in the scenario.
- Step 2) List the relevant parts of the child protection reforms (*CSPM, Child Protection Act 1999 and ICMS*) that you would need to know to address the issues you identified in the scenario.
- Step 3) Answer the questions about the new practice procedures you would now use to be inline with the child protection reforms.

These lists will then be discussed to ensure that all aspects have been covered.

- Step 4) List the linkages as to why have these child protection reforms have been developed to enhance current child protection service delivery. To help with this process ask yourself:
  - What are the positive outcomes for practice?
  - When will I use these new practices?
  - How will these outcomes be achieved?

## Scenario Part 1

List the key information identified from the scenario.

### Scenario Information

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- What options are available to secure custody of the child after the baby is born?
- At what point should the RE have been contacted?

### Practice Implications

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List the relevant parts of the child protection reforms (CP Act, CSPM & ICMS).

### CP Reform Knowledge

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What are the positive outcomes for practice?  
How will these outcomes achieved?

### Linking Questions

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### Scenario Part 3

List the key information identified from the scenario.

#### Scenario Information

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List the relevant parts of the child protection reforms (CP Act, CSPM & ICMS).

#### CP Reform Knowledge

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• What can you do to ensure the smoothest transition for Harry from carer to parent?

#### Practice Implications

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What are the positive outcomes for practice?  
How will these outcomes achieved?

#### Linking Questions

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### Scenario Part 4

List the key information identified from the scenario.

#### Scenario Information

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List the relevant parts of the child protection reforms (CP Act, CSPM & ICMS).

#### CP Reform Knowledge

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What are the positive outcomes for practice?  
How will these outcomes achieved?

#### Linking Questions

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- What actions are you going to take following the making of the CPO granting long-term guardianship to a suitable person (LTG other)?
- For both the MOC and the notification, who needs to be advised about:
  - the alleged concerns
  - **contact with the child under s.17**
  - **the outcome of the investigation and assessments?**

#### Practice Implications

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## Scenario Part 1

A notification on an Aboriginal unborn child is investigated prior to the baby's birth. Child protection concerns relate to the father's alcohol use and domestic violence. During the period of the Investigation & Assessment (I&A), the pregnant woman refuses to give consent to the Recognised Entity's (RE) participation. The outcome of the I&A was 'Substantiated – Child in need of protection'.

The pregnant woman has a history of separating from and reuniting with the father. She and the father have told the CSO that she plans to permanently separate from the father once the baby is born if this means she is able to keep the baby with her. She is unable to explain where she would live and has not made any concrete plans/ enquiries as to how she would obtain separate accommodation. She has limited support networks in the town where she is living which consist mainly of the father's family. Her family resides in a nearby town. The parents refused the offer of a support service case prior to the baby's birth. The CSO believes the pregnant woman would have agreed to the support service case however the father was against it.

One month after the I&A is completed a *HRA Form 2 ('HRA Form 2 Unborn Child High Risk Alert - Notification that pregnant woman has presented for delivery')* is received from the hospital. The mother and father are still residing together and he has accompanied the mother to the hospital for the delivery. He smells of alcohol but is not evidently intoxicated. He has asked staff a number of times what is the earliest time the baby and mother can leave hospital after delivery. The CSO is aware that there is supported accommodation available for the mother and baby in the nearby town where the mother's family resides but the CSO is doubtful the mother would accept the position. A decision is made that custody of the child will be necessary after the birth to ensure the child's protection.

## **Scenario Part 2**

### **Scenario 2.1**

The baby is born and it is a boy. The parents call him Harry. A TCO is applied for and granted for 3 business days.

### **Scenario 2.2**

During the TCO period it is clear that the mother is not considering separating from the father. The father presents at the hospital heavily intoxicated on the two (2) days after the child's birth. He is banned from the hospital after he became aggressive towards staff and was seen putting the mother in a headlock when they were outside in the hospital grounds.

A decision is made to apply for a CPO granting custody to the CE for 1 year. The order is granted.

After some time, the parents separate but as the order is nearing expiry, an application for an extension is made as there are still ongoing child protection concerns regarding the mother's care of Harry.

### **Scenario 2.3**

The application for the extension is made and the matter adjourned in order to appoint a separate representative (s110). The maternal grandmother has also made a submission under s.113 as a non-party and has sought to view affidavit material filed to date in order to make submissions. During the adjournment the child remains in the CE's custody, pursuant to s99 of the Act.

### **Scenario Part 3**

At the hearing of the application, the extension is not granted and Harry must return from his foster care placement to the care of his mother. Harry has been out of his mother's care since birth for 18 months. You are aware that the mother does not have a car seat or cot. Harry has been in the one placement since he came into care and is very attached to the carer.

## **Scenario Part 4**

### **Scenario 4.1**

Some years have passed and Harry is now 15 years old. Two years ago Harry became subject to a CPO granting short-term guardianship of him to the CE. Since that time, Harry has been placed with his Uncle and Aunt, Janice and Steve Smith.

Yesterday, the Childrens Court made a CPO granting long-term guardianship of Harry to his Aunt and Uncle. Harry's parents, Katrina and Tom Jones both attended Court and consented to the making of the order.

### **Scenario 4.2**

Harry's guardian's, his aunt and uncle have recently been made approved kinship carers for Harry's younger sister Tania, who is subject to a 2 year short-term custody order to the CE. Concerns have been raised about the aunt and uncle talking to the children in a derogatory and degrading way and making threats towards them. A notification is recorded in relation to Harry and a matter of concern-notification is recorded in relation to Tania. The children are interviewed at school as part of the investigation and assessment.

Both the MOC in relation to Tania and the notification in relation to Harry are unsubstantiated.

ICMS Key Changes and Messages relating to Phase 2 Child Protection Reforms –

Child Protection Legislative Amendments

Module 2 – Ongoing Intervention

The ICMS R5 Child Protection Legislative Amendments release, available from 29 August 2011, will deliver the required functionality to ICMS to support the legislative amendments, as well as additional functionality to support the Helping out Families (HOF) initiative. This document is aimed to support and provide further information about content of the Module 2 training.

Support and resources are available to staff in a variety of ways, as detailed below –

- The ICMS Training Manual is available to staff by following the below link – <http://comintranet/it/ict-training/business-systems-training/training-resources/icms-child-safety/>
- Online help is available in ICMS by clicking on the Help link in the top right-hand corner of the screen. Clicking this link opens online help in a new window and displays instructions for the ICMS screen you are currently viewing.
- Through System Support Officers – located in each region and available by telephone, email or in person for ICMS support and training. Refer to the departmental telephone directory for more information.

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ALL EVENTS

- A new event participant of Long-term guardian (LTG) has been added to all events in ICMS. A LTG must be added as an event participant for users to see specific LTG related information within various forms in the event. This change is a result from the new definition of a parent in the *Child Protection Act 1999*. Long-term guardians should only be added as event participants to events commenced after the court has granted a Long-term guardianship order in their favour.

INVESTIGATION AND ASSESSMENT EVENT

- A new form, the Record of use of powers / interviews will be available to staff in the ICMS Investigation and assessment event. This form is a combination of the previous Record of use of powers and Record of Interviews forms, which have been deleted and will not be available post 29 August 2011. Staff will complete this form as they would have used the previous forms, including recording information provision to LTG's in relation to use of powers.
- The Information provision to parents form has been updated to include an information provision specifically related to LTG's, where applicable, to record compliance with the information provisions directed by the *Child Protection Act 1999*. For this section of the form to conditionally display, there must be a LTG selected as an event participant.

TEMPORARY CUSTODY ORDERS EVENT

- The Temporary Custody Order (TCO) event is a new event in ICMS and will be used to create applications for the new Temporary Custody Order and record the outcome of applications. This event has been developed based on the TAO event and most functionality will mirror the TAO event.
- The event contains new application forms: (Form 39 Application for a TCO and Form 41 Application to extend/vary a TCO) as well as new court outcome forms (Form 39 – TCOF and Form 41 - TCOF). These forms will be used by staff to develop applications to be filed with the court and to record the magistrate's decision about an application.
- The period for a TCO is calculated in business days and users will need to calculate the expiry date of the order and record this in ICMS as there is no 'live' calendar in ICMS (ie. the ICMS calendar does not account for local or national public holidays).

CHILD PROTECTION ORDERS – VARY AND EXTEND

- ICMS CPO applications and COF's will now include rules in regards to the length of time that CPO's can be extended for. Non-custodial orders will only be able to be extended to a maximum of 1 year from the date that the original order was made and Short term custody and guardianship orders will only be able to be extended to a maximum of 2 years from the date that the original order was made. The ICMS

rules are consistent with the order periods set out in the *Child Protection Act 1999* and as detailed in the CSPM.

- ICMS CPO applications and COF's will now allow users to vary different types of CPO's, in line with new departmental practice and policy. Orders will be able to be varied within the same 'type' of order. For example, a directive order directing a parent not to have contact with a child can be varied to a directive order directing a parent not to have contact with the child unless a stated person or a person of a stated category is present. Similarly, an order granting custody of a child to the chief executive can be varied to an order granting custody of a child to a suitable person.
- ICMS COF's have been amended to include information about Separate Representatives and non-parties, in line with the amendments to the *Child Protection Act 1999*. Staff will have the ability to record in ICMS if a Separate Representative contested an application; if a non-party attended and/or participated in a court mention; if the non-party had legal representation; or if the court granted leave for the non-party to view any part of the court file. Staff should ensure that they record relevant information about Separate Representatives and non-parties to ensure accurate recording of court proceedings.

#### **TRANSITION ORDERS**

- Forms 10, 11 and 12 final order COF's have been amended to include information about the new Transition Orders (TO). In situations where the substantive Child Protection Order is not made, the user will be asked to record if an application for a TO was made, and if so, the outcome of this application. This information will be completed in the COF after the application is made. There is no application form for a Transition Order on ICMS, as the application will usually be made verbally, at the time the substantive application is not granted.
- A new form has also been created – the Form 44 Adjournment of Transition Order and will be used to record a further mention of an application for a Transition Order. This form will be created automatically in the CPO Event, if it is recorded in the final order COF that the TO application was made and subsequently was adjourned. This form includes order linking and will link back to the final COF, where the TO application is recorded.
- Information about the adjournment or granting of a TO will populate into the Orders tab, in line with existing functionality for orders made in relation to a child.
- A new form has been created in the OI event for the Transition Plan. This form should be used to record a Transition Plan once a TO is being considered or has been granted by the court. It should not be used in other situations (for example, as a reunification plan or 'transition from care' plan).

#### **ONGOING INTERVENTION EVENT - LONG TERM GUARDIANSHIP TO OTHER (LTG-OTHER)**

- Two new case planning forms have been created in ICMS, specifically for children subject to LTG – other orders. They are called, **LTG to a suitable person – Case Plan** and **LTG to a suitable person – Contact and review report**.
- There must be a LTG added as an event participant in the OI event to have access to the LTG Case plan and Contact and review report.
- The Contact and review report has a dual purpose. It will be used to record contact with a child, and, if applicable, a review of the child's case plan. If a review of the case plan is not conducted, then the user will record the contact with the child and any decisions made in relation to a possible review. Once approved by a Team Leader, the current OI event will remain open and casework will continue. If a review of the case plan is conducted, the user will record this information in the contact and review report form before submitting the form for approval. Once the form is approved, the current OI event will close and a new OI event will be created – as per current functionality with case plan reviews.

#### **MOC and MOC I&A EVENT**

- The Child placement concern report, Assessment plan – CPCR and Information Provision forms have been updated to include questions relating to information provision to LTG's, where applicable. For specific LTG question to display, a LTG must be selected as an event participant.

**Module 1 Ongoing Intervention**

**Learning outcome:** Assess and formulate rationale for level of intervention including the type of order, if applicable. Differentiate when engagement is required with the LTG as a parent.

**Instructions:** Using the table below reflect on the scenarios that were discussed during the session and identify which of the overarching aims of the child protection reforms were addressed by the introduction of new processes and practice. Then provide a brief explanation of how the new processes and practice addresses the aim of the child protection reform.

<b>Overarching aims of the child protection reforms</b>	<b>S1</b>	<b>S2</b>	<b>S3</b>	<b>S4</b>	<b>How is this aim addressed?</b>
<i>Strengthen early intervention and prevention, including Helping Out Families and the implementation of Aboriginal and Torres Strait Islander Family Support Services</i>					
<i>Reduce the overrepresentation of Aboriginal and Torres Strait Islander children</i>					
<i>Recognising the cumulative nature of harm, the need for holistic assessments and collaboration and information sharing across service providers</i>					
<i>Improved outcomes for children and young people in out-of-home care through child health passports, education support plans, cultural support plans and transition from care plans for young people 15 – 17 years; each of these incorporated within the individual child’s comprehensive case plan.</i>					
<i>Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle and recording of participation of Recognised Entities in decision making</i>					
<i>Strengthened focus on engagement and participation of children and their families in decisions impacting on their lives</i>					
<i>Goal directed case plans that support timely permanency decisions for children</i>					

## Version Modification History

### Facilitators Guide:

Version	Release date	Comments	Consultation for learning guide development
V001	26 September 2011	•	•
V Final	6 October 2011	<ul style="list-style-type: none"><li>• Incorporated feedback from Child Safety Practice Improvement and Child Protection Development</li></ul>	<ul style="list-style-type: none"><li>• Child Safety Practice Improvement</li><li>• Child Protection Development</li></ul>

<b>Topic</b>	<b>Child Protection Reform Stage 2 Training</b>
<b>Title</b>	<b>Permanency Planning and Timely Decision-Making Module</b>
<b>Learning guide developed by</b>	Learning Solutions Unit
<b>Date developed</b>	September 2011
<b>Running time</b>	3 hours
<b>Audience</b>	All CSSC staff across the child protection continuum
<b>Content Summary</b>	<p><b>Session Processes</b></p> <p>Throughout the session</p> <ul style="list-style-type: none"> <li>Participants will work through one scenario that has been divided into 3 parts. For each of the 3 parts of the scenario participants need complete a two step process:</li> </ul> <p><b>Step 1: List the relevant information. (Small group activity)</b></p> <ul style="list-style-type: none"> <li>List relevant information contained in the scenario;</li> <li>List relevant child protection reforms from the CSPM, <i>Child Protection Act 1999</i> and ICMS to address the issues identified in the scenario; and</li> <li>Answer specific questions to identify the practice procedures that they will apply to be inline with the child protection reforms.</li> </ul> <p>Ensure all the relevant information is covered from the first step of the process before moving on to the linking discussion (Step 2). All of the relevant information is listed in the Facilitator Notes.</p> <p><b>Step 2: Analyse the lists to identify the links between the knowledge of the reforms and the enhanced practice processes. (Large group activity)</b></p> <ul style="list-style-type: none"> <li>It is important to make the links between the knowledge of the CP reforms. Participants are to answer the following questions: <ul style="list-style-type: none"> <li>What are the positive outcomes for practice?</li> <li>When will I use this practice?</li> <li>How will these outcomes be achieved?</li> </ul> </li> </ul>

	<p>This step is to encourage participants to expand their thinking beyond knowledge and comprehension towards application and analysis.</p> <p>Being able to apply and analyse the knowledge of the CP reforms and the new practice procedures, participants will develop a greater understanding of the importance of the reforms and how they will achieve better outcomes for their clients.</p> <ul style="list-style-type: none"><li>• The 3 parts of the scenario will be completed in mixed team groups to allow each participant to consider the impact for their specific role and functions. This will afford Team Leaders and other senior officers an opportunity to work with staff through the debrief process.</li><li>• The Court Coordinator and Senior Practitioner will support the CMLU facilitator throughout the Ongoing Intervention module. The Court Coordinators and Senior Practitioner have been provided with specific information related to the court process that they will be able to contribute to the discussions.</li><li>• Child Safety Service staff are currently visited and supported by learning consultants from the Client Management Learning Unit, Learning Operations. In ongoing visits, the learning consultants can review the ongoing use of the reflective practice tool with the Team Leader. Continued use of this tool will assist learners to embed the legislative changes into their practice.</li></ul>
<b>Purpose</b>	<p>The purpose of the Child Protection Reform Stage 2 training is to offer a deeper level of learning focused on specific roles. Activity based learning will be used to support the implementation of the child protection reform agenda in various roles along the child protection continuum.</p>

<p><b>Learning outcomes</b></p>	<p>At the end of the sessions participants will be able to:</p> <ul style="list-style-type: none"> <li>• Evaluate the child's need for emotional stability and security as part of any child protection response to deliver effective and timely permanency decisions.</li> </ul>
<p><b>Additional comments</b></p>	<p><b>Participant to bring to the session</b></p> <ul style="list-style-type: none"> <li>▪ Information session resources handout;</li> <li>▪ <i>Child Protection Act 1999</i> Reprint 7A.</li> </ul> <p><b>Facilitator to bring to the session</b></p> <ul style="list-style-type: none"> <li>▪ CSPM – version with changes highlighted. Hardcopy is preferred, or on laptop for participants to refer to.</li> <li>▪ Clear message about (<u>see key messages in the Facilitator Notes</u>):             <ul style="list-style-type: none"> <li>○ Timely permanency decision making;</li> <li>○ OI with a child subject to LTG other;</li> <li>○ Application to vary LTG other order.</li> </ul> </li> <li>▪ Lollies for prizes.</li> </ul> <p>The purpose of the training is to engage in professional discussion and debate. The participants will be able to take notes as they require for themselves in relation to the changes to the CSPM and <i>Child Protection Act 1999</i>.</p> <p><b>Support in the Service Centres</b></p> <p>The delivery of the Stage 2 CP Reform training will be supported by Senior Practitioners and Court Coordinators. These people will act as 'champions' of the Child Protection Reforms in the Child Safety Services Centres post training.</p> <p>LSU and Child Safety Practice Improvement facilitated workshops for Court Coordinators (15 September 2011) and Senior Practitioners (10 October 2011) to provide information about the reflective practice tool and the training session.</p> <p><b>Reflective Practice Tool</b></p> <p>The Stage 2 CP Reform training will use a reflective practice tool to debrief the learning activities. The reflective practice tool is the 'meta narrative' that sits behind the design of the session. The following information about the reflective practice tool is for CMLU</p>

	<p>facilitator's knowledge and does not need to be presented at the Stage 2 CP Reform training sessions.</p> <p><b>Overview – development of the tool</b></p> <p>The tool was originally developed in collaboration with staff from Griffith University for use as an assessment tool for the CSSO/CSO pilot evaluation. The tool has been adapted for suitability as a reflective practice tool for Stage 2 of the CP Reforms learning intervention.</p> <p>The tool has been developed using three educational frameworks:</p> <ul style="list-style-type: none"> <li>• Blooms taxonomy;</li> <li>• SOLO taxonomy;</li> <li>• Dreyfus and Dreyfus.</li> </ul> <p>For further information about the educational frameworks used to develop the reflective practice tool, contact Learning Solutions Unit.</p>
<b>Materials</b>	<b>Learning Guide</b>
	<p><b>1. Welcome &amp; Introductions</b></p> <p>Welcome the participants and introduce the presentation topic – Stage 2 CP Reform training - Permanency Planning and Timely Decision-Making Module.</p> <p>Outline housekeeping issues:</p> <ul style="list-style-type: none"> <li>• WH&amp;S including emergency exit plan;</li> <li>• Bathrooms;</li> <li>• Mobile phones to silent/vibrate.</li> </ul>
	<p><b>2. Explanation of Stage 2 CP Reforms</b></p> <p>Facilitator to explain the purpose of the Stage 2 CP Reform training - to encourage a deeper level of learning which focuses on specific staff in designated roles. Stage 2 consists of three separate modules :</p> <ul style="list-style-type: none"> <li>• Ongoing Intervention;</li> <li>• Harm (I&amp;A and Cumulative);</li> <li>• Permanency planning and decision making - this</li> </ul>

module.

All staff will **not** be required to attend all of the module trainings.

This module **will not cover all the changes of the CP reforms** only those specific to the learning outcomes for this module.

The learning outcome is to:

- Evaluate the child's need for emotional stability and security as part of any child protection response to deliver effective and timely permanency decisions.

### **3. Explain the format of the training**

Participants will explore a 3 part child protection scenario. The CP reforms cut across the whole of the CP continuum, to encourage professional discussion and debate the larger group will be divided into smaller groups that contain members of different CSSC teams.

Participants should have with them the Information Session Resource given at the Information Presentation that they attended earlier in the year. This will contain most of the information needed to complete the learning activities.

If they did not bring their copy they may want buddy up with someone who has brought their copy to refer to.

It will be helpful for them to continue to add to their own comments, so if they are not familiar with the changes to the sections of the CP Act, CSPM or ICMS this can be recorded for them to look up when they return to their work.

Participants will be given 3 handouts:

- Handout 1 – Model and Instructions;

	<ul style="list-style-type: none"> <li>• Handout 2 – 3 Part Scenario; and</li> <li>• Handout 3 – Final Debrief.</li> </ul> <p>They will write notes on the handouts for discussion.</p> <p>Through group discussions participants will identify issues in the scenarios that relate to the child protection reforms and identify the relevant changes to the <i>Child Protection Act 1999</i>, CSPM and ICMS. Participants will then apply this knowledge to the scenario and discuss how the knowledge of the CP reforms will impact on their practice in this specific situation.</p> <p>If general practice issues are raised, get the participant to write the question down for further discussion within the CSSC.</p>
	<p><b>4. Experience in the room</b></p> <p>Participants will have previously attended an Information Session in July / August 2011 and should have had discussions in Service Centres about the reforms prior to the 'Go Live' date of 29 August 2011. Have a discussion with the group around how the child protection reforms have impacted on their practice since 'Go Live'.</p> <p><b>Discussion questions:</b></p> <p><i>How have the reforms impacted on your practice since 'Go Live'?</i></p> <p><i>How often have you been required to use the new sections of the CP Act, new procedures in the CSPM or completed the new forms / questions in ICMS?</i></p> <p>This discussion will provide the facilitator with the level of knowledge and experience in the group. People with significant experience and exposure to the CP reforms are likely to be more vocal in the group activities.</p>
<p><b>Handout 1: Instructions and</b></p>	<p><b>5. Getting started</b></p> <p>Provide participants with <b>handout 1</b> and explain how the process will work.</p>

<p><b>Model</b></p>  <p><b>Handout 2: Participant Scenarios – Scenario Part 1</b></p>          <p><b>Facilitator answers for scenarios (p.1)</b></p>	<p>Participants will complete lists and take notes on handout 1 – Instructions and Model</p> <p>Give participants <b>handout 2</b> and give them time to read the Scenario Part 1</p> <p><b>Quick run through of the process</b></p> <p>In a large group ask them to identify the type of information they would list from the scenario. Get 2 – 3 pieces of information.</p> <p>Then ask them to identify the specific CP reforms that are relevant to the information they have listed. Again get 2 – 3 pieces of information from the <i>Child Protection Act 1999</i>, CSPM &amp; ICMS.</p> <p>Participants will then answer the specific questions listed in the relevant bubble. These questions will get the participants to identify some of the practice procedures that have resulted from the CP reforms.</p>
	<p><b>6. Scenario Part 1 – Step 1 Listing Knowledge</b></p> <p>Once you have taken the participants through this process get them to work in mixed role groups to complete the lists.</p> <ul style="list-style-type: none"><li>- Identify the scenario information;</li><li>- Identify the CP reform knowledge they would access;</li><li>- Identify the implication the CP reforms would have on practice.</li></ul> <p>The Court Coordinators and Senior Practitioner can support the groups to develop these lists.</p> <p><b>Note: For the purpose of this activity participants do not need to identify specific sections of the <i>Child Protection Act 1999</i> and CSPM. It is sufficient that they are able to identify the general nature of the CP reforms. They should be able to identify the specific ICMS changes.</b></p>

<p><b>Facilitator Notes</b></p>	<p><b>However if participants are able to identify the specific sections of the CSPM or <i>Child Protection Act 1999</i> that have been changed they deserve a prize.</b></p> <p><b>Note:</b> <i>Do not allow the participants to get bogged down in the content of the scenarios. The main process occurs when participants engage in professional discussion and debate around the links between the CP reforms and the enhancements made to practice.</i></p> <p>Before moving onto the linking questions make sure that participants have identified all the information required.</p> <p>If participants were not able to identify all the changes make sure that they write down the knowledge that they did not recall - they will be able to look this up when they return to their desk.</p>
<p><b>Facilitator Notes</b></p> <p><b>Spend enough time during this process to ensure participants are able to analyse and apply the CP reforms.</b></p>	<p><b>7. Scenario Part 1 – Step 2 Linking of the Knowledge</b></p> <p>In the large group the CMLU facilitator will debrief the process by asking the participants to build the links between the new practices and the CP reforms.</p> <p>There is no need to re-convene in the larger groups, just get participants to participate from the small group positions.</p> <p>Get participants to consider the reasons why the CP reforms are changing practice.</p> <p><b><i>What are the positive outcomes for practice?</i></b> <b><i>How will these outcomes be achieved?</i></b></p> <p>This discussion can occur in the larger group.</p> <p><b><i>Ask the group to consider if there will be any particular local challenges that they will have to overcome to implement the reforms.</i></b></p>
	<p><b>8. Complete Steps 1 &amp; 2 for the remaining 2 parts of the</b></p>

	<p><b>scenario.</b></p> <p><b>CP reforms information for Scenario Part 3 are identified in the Information Session resource</b></p> <ul style="list-style-type: none"> <li>• <b>#8 Child Protection Orders</b></li> </ul>
<p><b>Handout 3: Aims of the CP Reforms</b></p>	<p><b>9. Module 1 Debrief</b></p> <p><b>CMLU facilitator to provide participants with handout 3.</b></p> <p>Complete the session by getting the participants to reflect back over the 3 scenarios covered and identify which of the overarching aims of the CP reforms they relate to.</p> <p>Note: this module does not cover all of the overarching aims. Over the course of the three modules all of the aims will be covered.</p> <p>Participants are also to explain how the CP reforms address the overarching aims.</p>
	<p><b>10. Final questions</b></p>

## Scenario Part 1 - Facilitator Notes – Step 1 Listing of Information

Scenario information		
CSPM	CP Reform Knowledge	ICMS
<p>Mo 19 (Aboriginal) – Hannah 2 y.o. Hannah placed in out-of-home care at 3mths old – significant neglect – Mo alcohol abuse. Initial 2year STC order – placed with Jim &amp; Jayne Roberts – kin carers. Mo missed most of the organised contact visits. 5mths prior to end of STC order Mo contacts Dept to work towards Hannah returning to her care. Mo has started alcohol counselling. Starts weekly contact visits but engages mostly with supervising officer. Mo assessed to have limited parenting knowledge and skills to care for Hannah. Mo begins parenting class. Mo continues with parenting classes and demonstrates ability to engage &amp; is more affectionate and responding to Hannah's physical and emotional needs.</p>	<p><b>CP Reform Knowledge</b></p> <p><b>CP ACT</b></p> <ul style="list-style-type: none"> <li>• Paramount principle - Section 5A</li> <li>• Other general principles – Section 5B(g)(i)(k)(n)</li> <li>• Additional principles for Aboriginal or Torres Strait Islander children - Section 5C</li> <li>• Obtaining child's views - Section 5E</li> <li>• Meaning of parent in Part 4 (Child protection orders) - Section 52</li> <li>• Making of child protection order -</li> </ul>	<p>No new ICMS forms.</p>
<p>Chapter 4 Case planning</p> <ul style="list-style-type: none"> <li>• 5.3 Assess whether reunification can occur</li> <li>• 5.4 Undertake permanency planning</li> <li>• 5.5 Refer the case to a permanency panel</li> <li>• Listening, hearing and acting: Approaches to the participation of children and young people in decision-making – a review of the literature</li> <li>• Practice paper, Permanency planning</li> <li>• Practice resource, Participation of children</li> </ul>		

Child Protection Reform Stage 2 – Module 3: Permanency Planning and Timely Decision-Making  
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<ul style="list-style-type: none"> <li>• and young people in decision-making</li> <li>• Family reunification assessment</li> <li>• Fact sheet: 10.1 Attachment</li> <li>• Fact sheet: 10.2 Infant and Toddler Mental Health Emotional Risk</li> </ul>	<p>Section 59</p>	
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	Practice Implications
	<p><b>Key messages permanent planning and timely decision making</b></p> <ul style="list-style-type: none"> <li>• it is critical that permanency decision making for a child in out-of-home care takes into account the research and evidence underpinning permanency planning, and the potential long-term outcomes for the child (having regard to their age, developmental needs, the nature and quality of relationships and the length of time in out-of-home care)</li> <li>• in order to make good permanency decisions with children and families in a timely manner, and to enhance the nature and quality of evidence to be considered by Children's Courts, the following practices are a priority for service delivery staff:             <ul style="list-style-type: none"> <li>• thorough, comprehensive assessments, to inform quality case planning and review</li> <li>• the need to match interventions, support and service delivery to client needs (also ensure that children and families are collaboratively involved in discussions about goals and the identification of what strategies work best for them)</li> <li>• the need to use language about permanency planning that is clear and unambiguous (from the initial family group meeting, and for the duration of CI)</li> <li>• the need to actively seek children's and families' views and work in a collaborative and participatory manner</li> </ul> </li> <li>• the decision to use a discretionary order to change the final permanency plan recommendation (refer Family Reunification Assessment) for the child should only occur in exceptional circumstances, after careful consideration of the potential risk and benefits (short and long-term) for the child</li> <li>• a child should have stable living arrangements, including arrangements that provide for (Child Protection Act 1999, 56(k))             <ul style="list-style-type: none"> <li>• a stable connection with the child's family and community, to the extent that is in the child's best interests; and</li> <li>• the child's developmental, educational, emotional, health, intellectual and physical needs to be met</li> </ul> </li> <li>• a delay in making a decision in relation to a child should be avoided, unless appropriate for the child (Child Protection Act 1999, 56(m))</li> <li>• before departmental officers apply for a further short-term child protection order granting custody or guardianship, give careful consideration to whether that is in the best interest of the child, having regard to the research underpinning permanency planning, ICPS applications and COF's ICMS form rules, and how consistent with the order periods set out in the Child Protection Act 1999 and as detailed in the CSPIA. Short term custody and guardianship orders will only be able to be extended to a maximum of 2 years from the date that the original order was made.</li> </ul>

**Question: Scenario - part 1:**

**When deciding whether to continue working towards reunification or, to stop working towards reunification and pursue alternative long-term stable living arrangements, what factors will you take into account?**

**Answer:**

- Hannah's age
- Hannah's developmental needs
- the nature and quality of relationships between Hannah and her mother, and Hannah and her kinship carers
- the length of time Hannah has been in out-of-home care
- the importance of achieving timely permanency outcomes for children in out-of-home care, having regard to the above factors
- Hannah's need for emotional security and stability

***attachment theory:***

- which holds that early childhood relationship experiences with significant caregivers can have positive or negative psychosocial outcomes
- children who receive consistent, loving responsible and nurturing caregiving are more likely to develop secure attachment and therefore more likely to develop into socially competent adults and experience a range of positive life outcomes (eg. good interpersonal relationships, scholastic achievement, pro-social behaviour)
- children who experience caregiving characterised as inconsistent, insensitive, unresponsive and erratic can develop insecure attachment
- the implications of insecure attachment on an individual include relationship difficulties, interpersonal problems, challenging behaviour, emotional and mental health problems, poor educational and scholastic achievement, all of which adversely effect life outcomes
- early attachment with a primary caregiver is extremely important to the overall emotional health and well-being of children, and to healthy adolescence and adulthood
- secure attachment is particularly important for children up to four years of age, after which time they start to develop as separate and independent people

- children in care are at very high risk of attachment insecurity and of attachment disturbances
- children who have experienced abuse and neglect often develop poor or insecure attachment
- attachment difficulties are exacerbated when children are placed in out-of-home care and then subjected to constant change in their living arrangements and relationships
- if children are unable to develop positive and secure attachments with birth parents, opportunities to develop positive relationships with others is crucial – responsive and sensitive caregiving can assist in repairing attachment difficulties with time and due care

***research on brain development:***

- the impacts of abuse and neglect can have neurobiological impacts on a child's brain functioning with lifelong consequences for learning capacity, mental health and well-being
- the first 3 years of a child's life are particularly critical to brain development and functioning
- children who experience trauma are likely to be stressed
- highly stressed children may have unusual cortisol levels (stress hormones) compared to non-stressed children which can impact on brain functioning
- if stress is prolonged, it may have significant impact on the brain's architecture and regulation mechanisms
- stress effects can be buffered by positive relationships with parents or significant others

***the importance of stability and continuity:***

- children need stability in order to thrive
- family stability is recognised as an important factor in enhancing the developmental outcomes of children in health, academic, scholastic achievement and interpersonal skills
- children who experience instability or constant change can have compromised well-being, attachment, self esteem identify and access to education and health care
- children also need to experience continuity in the activities and systems they are involved with
- eg. it can be beneficial for children in out-of-home care to enjoy continued attendance at the same school and sporting club and have opportunity for contact with significant others such as aunts, grandparents, friends and pets
- maintenance of existing positive connections and activities can assist children manage transitions.

**identity formation**

- a child's sense of self is intimately connected to the nature of the interactions with significant others
- positive interactional messages can lead to a positive sense of self and identity
- whether all reasonable attempts have been made to actively work with Hannah's mother to pursue reunification
- the views of all relevant parties (in this case, Hannah's mother, the kinship carers, the recognised entity – Hannah is too young for her views to be obtained)
- the outcome of the Family Reunification Assessment
- the Permanency panel discussion, recommendation and rationale
- factors to be considered by the Childrens Court, prior to the making of a child protection order.

**Question: Scenario - part 1:**

Before making a child protection order granting long-term guardianship of a child, the court must be satisfied (*Child Protection Act 1999, s59(6)*):

- there is no parent able and willing to protect the child within the foreseeable future; *or*
- the child's need for emotional security will be best met in the long-term by making the order.

In addition, before the court extends or makes a further child protection order granting custody or short-term guardianship of the child, the court must have regard to the child's need for emotional security and stability (s59(8)).

**What factors, to be documented in your affidavit, will inform the court about these areas of consideration?**

**Answer:**

- the length of time Hannah has been in her current placement , given her age
- the total number of orders Hannah has previously been subject to (this would include TCO, TAO, CAO, interim orders if applicable)
- the mother's progress towards achieving the case plan goals at each case plan review, to demonstrate her lack of engagement and the information

provided to her regarding the alternative permanency plan if reunification is not achieved in a timely manner based on Hannah's age and developmental needs

- Hannah's demonstrated relationship with, and attachment to, her mother
- information about the nature of contact between Hannah and her mother
- Hannah's demonstrated relationship with, and attachment to, her kinship carers
- the recommended permanency plan (reunify, continue reunification services or cease working towards reunification and pursue alternative long-term stable living arrangements) and the rationale for this recommendation – other information, as outlined above, should also support the recommended decision and rationale
- the outcome of the permanency panel discussion, including the recommendation and the rationale
- the views of the recognised entity regarding the recommended permanency plan
- Evidence underpinning the importance of timely permanency outcomes, particularly for children up to 3 years of age
- if intending to apply for LTG to Hannah's kinship carers:
  - information about the outcome of the assessment of the kinship carers as proposed guardians
  - the case plan incorporating key items specific to the proposed guardianship to suitable persons arrangement.

Note: the child's views would usually be ascertained and documented in the affidavit, if the child is old enough and developmentally able to express their views.

**Scenario – Part 1- Facilitator Notes – Step 2 Linking of Knowledge and Practice**

<b><i>What are the positive outcomes of the reforms?</i></b>	<b><i>How will these outcomes be achieved?</i></b>
<ul style="list-style-type: none"> <li>• <b>Consideration for a child’s need for emotional security and stability (permanency planning)</b>            Ensuring that before an officer applies for a further short-term order, careful consideration to be given to whether this is in the child’s best interest based on research regarding permanency planning and need to provide child with emotional security and stability,</li> </ul>	<p>Allows departmental officers to ensure in their assessments regarding future applications for children subject to short-term orders research and evidence underpinning permanency planning and the potential long-term outcomes for the child.</p>
<ul style="list-style-type: none"> <li>• <b>Principles of the Act</b>            Highlighting that if there is no parent willing and able in the foreseeable future, a child should have long-term alternative care; a child should have stable living arrangements; a delay in making a decision in relation to a child should be avoided; where possible, a child should be provided with an opportunity to express their views.</li> </ul>	<p>Improved strategies for children to ensure stability and permanency and improve long-term outcomes.</p>

## Scenario Part 2- Facilitator Notes – Step 1 Listing of Information

Scenario information	
<p><b>Scenario 2.1</b></p> <ul style="list-style-type: none"> <li>Hannah now 14 y.o. LTG to Other (Jim and Jayne Roberts).</li> <li>Since LTG to Other Suitable Person CSO has been having 12 monthly contact with Hannah and carer. 12 months since last visit.</li> <li>Hannah and Jayne (carer) do not request review of the case plan.</li> </ul> <p><b>Scenario 2.2</b></p> <ul style="list-style-type: none"> <li>3 months following the contact visit Hannah contacts and wants to review her case plan. Requesting to learn more about her Aboriginal heritage.</li> </ul>	
CP Reform Knowledge	
CSPM	ICMS
<p><b>Scenario 2.1</b> Chapter 3</p> <ul style="list-style-type: none"> <li>1. What if a suitable person has long-term guardianship?</li> <li>2.4 Apply for a short-term custody order</li> <li>2.6 Apply for a long-term guardianship order</li> </ul> <p>Chapter 4</p> <ul style="list-style-type: none"> <li>5.10 Long-term guardianship to a</li> </ul>	<p><b>Scenario 2.1</b></p> <ul style="list-style-type: none"> <li>Meaning of parent in Part 3A Case planning – Section 51F</li> <li>Case plan and contact where child has a long-term guardian – Section 51VA, 51X</li> <li>Obligations of suitable person – Section 80, 80A</li> <li>Payments for care and maintenance – Section 159</li> </ul> <p>Policies and procedures – Child Safety Services Infonet</p>
<p>Two new case planning forms have been created in ICMS, specifically for children subject to LTG-Suitable Person Orders.</p> <ul style="list-style-type: none"> <li>LTG to a suitable person – Case Plan, and</li> <li>LTG to a suitable person – Contact and review report.</li> </ul> <p>There must be a LTG-SP added as an Event Participant to access these forms.</p> <p>NB, Case Plans pre 'go live' will need to be reviewed through a Review Plan (as part of the commitment made at the time of that Case Plan). Following this, a LTG-SP Case Plan should be completed and then a LTG-SP Contact and review report on review of that new LTG-SP</p>	

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<p>suitable person – case plan review</p> <p>Chapter 5</p> <ul style="list-style-type: none"> <li>2.9 Plan and support the young person's transition from care to adulthood</li> <li>Practice Resource – Responsibilities – long-term guardians</li> <li>Practice Resource – Program of supports – long-term guardians</li> </ul>	<ul style="list-style-type: none"> <li>Policy No. 365: Expenses - Fortnightly Caring Allowance and inter-state foster payments</li> <li>Policy No. 608: Child Related Costs – Long-term guardian support, Procedure No. 608: Child Related Costs – Long-term guardian support</li> <li>Policy No. 296: High Support Needs Allowance</li> </ul>	<p>Case Plan.</p> <p>The LTG-SP Contact and review report has a dual purpose, it will be used to record contact with a child and, if applicable, a review of the child's case plan. If a review of the case plan is not conducted, then the user will record the contact with the child and any decisions made in relation to a possible review. Once approved by a Team Leader, the current OI event will remain open and casework will continue. If a review of the case plan is conducted, the user will record this information in the contact and review report form before submitting the form for approval. Once the form is approved, the current OI event will close and a new OI event will be created – as per current functionality with case plan reviews.</p>
<p><b>Scenario 2.2</b></p> <p>Chapter 3</p> <ul style="list-style-type: none"> <li>1. What if a suitable person has long-term guardianship?</li> </ul> <p>Chapter 4</p> <ul style="list-style-type: none"> <li>5.10 Long-term guardianship to a suitable person – case plan review</li> </ul> <p>Chapter 5</p> <ul style="list-style-type: none"> <li>2.9 Plan and support the young person's transition from care to adulthood</li> </ul> <p>Letter re: Decision not to review the case plan</p>	<p><b>Scenario 2.2</b></p> <ul style="list-style-type: none"> <li>Case plan and contact where child has a long-term guardian – Section 51VA, s51X</li> <li>Obligations of suitable person – Section 80, 80A</li> <li>Provisions about Aboriginal and Torres Strait Islander children and Recognised Entity - Section 6</li> </ul>	<p>As above.</p>

**Key messages ongoing intervention with a child subject to LTG OTHER for scenario 2.1**

- Key issues identified by children and young people subject to LTG other orders include the extent to which, following the making of the order, their guardians:
  - continue to facilitate and support family contact
  - keep parents informed about where the child is living and the child's progress, well-being, achievements etc.
  - continue to identify and respond to the child's cultural and identity needs, where applicable
  - proactively support and assist children and young people to prepare for life as an independent adult
- Approved foster carers and approved kinship carers who are subsequently granted the long-term guardianship of a child continue to receive the Fortnightly Care Allowance (€158) and may apply for the High Support Needs Allowance and Child Related Costs (where eligibility criteria are met) at any time following the making of the LTG order. The new requirement to complete the Long-term Guardianship to a suitable person – Contact and review report in ICMS, following the 12 monthly contact with the child or young person
- A new event participant has been added to ICMS – Long-term guardian. The LTG option will appear in the event participant list when you are adding a person to an event. There must be a LTG added as an event participant in the CE event to have access to the LTG case plan and review report, as well as in other events to have additional LTG information display in forms.
- Two new case planning forms have been created in ICMS, specifically for children subject to LTG – other orders. They are called, LTG to a suitable person – Case Plan and LTG to a suitable person – Contact and review report.
- The LTG to a suitable person – Case Plan is only completed once, following the making of the LTG other order for the child.
- The Long-term guardianship to a suitable person – Contact and review report will be completed multiple times, either following a twelve monthly visit with the child or young person and/or following a case plan review.
- The same closure process for review reports will apply for CE events.

**Key message ongoing intervention with a child subject to LTG OTHER scenario 2.1**

- A range of case-specific factors inform decision-making about whether and in what circumstances to respond to a request for a case plan review.
- The case plan incorporating key items specific to the proposed guardianship to suitable persons arrangement, submitted to the Children's Court prior to the making of a LTG other order, is an enduring case plan and is only likely to require review where there are significant changes in the child or guardians' circumstances that are likely to significantly alter the current case plan.

- In this circumstance the recognised entity is not required to be consulted, or to be provided with an opportunity to participate in decision-making about the child as there is no significant change in the child's current case plan – the dept. is simply providing referral information, and the guardians continue to have full responsibility for implementing actions relating to Hannah re this referral.
- Information provision requirements and review rights associated with a decision not to review a case plan (s.51VA(4)(5)(6)&(7)).
- A new event participant has been added to ICMS – Long-term guardian. The LTG option will appear in the event participant list when you are adding a person to an event. There must be a LTG added as an event participant in the OI event to have access to the LTG case plan and review report, as well as in other events to have additional LTG information display in forms.
- Two new case planning forms have been created in ICMS, specifically for children subject to LTG – other orders. They are called, LTG to a suitable person – Case Plan and **LTG to a suitable person – Contact and review report.**
- Users will only have access to the full case plan review document if a review is conducted, alternatively, if a review of the case plan is not conducted, the form will record the contact with the child and the OI event will continue. If a review is conducted, the approval of the review document will close the existing OI event and create a new event – as per current functionality with case plan reviews.

**Question: Scenario – part 2.1:**  
**What other issues will you discuss with Hannah and her guardian during the visit and why?**

**Answer:**  
***Matters discussed with Hannah:***

- Hannah's current circumstances eg. at home, at school, health, relationship with guardians etc, and whether there is anything in particular she would like to talk about.
- Any changes in Hannah's circumstances or needs that might require additional supports for Hannah or her guardian.
- How her guardians have been helping her to have her cultural and identity needs met.
- Hannah's plans for when she finishes school and whether her guardians are talking to her, and supporting her to make decisions, about whether she wants to obtain a job, continue to study or do something else.
- Whether Hannah has given any thought to where she will live once she turns 18 years of age and whether she has discussed this with her guardians.
- Hannah's potential eligibility for the Commonwealth Government's Transition to Independence Allowance (TILA) and whether she is ready to apply for this, or whether she will wait until a later date.
- Does Hannah know how to cook, clean, use public transport, locate services that might help her to respond to a need and whether her guardians help

her to learn or do all of these things?

- What contact Hannah has been having with her mother, family members, and other people who are important to her and whether this contact has been positive?
- Other connections Hannah has, with whom and the nature of these connections (eg. friends, community).

**Matters discussed with Hannah's guardians:**

- Any changing needs or circumstances that may require additional support to Hannah or her guardians and if applicable, in what circumstances the guardians may be able to request child related costs.
- Whether and how the guardians have been giving Hannah's parents information about Hannah's care and examples of what information the guardians have been providing to Hannah's mother.
- Whether and how the guardians have been facilitating contact between Hannah and her mother, family members, and other people of importance to her and how these contacts have been progressing.
- If Hannah and her guardians have moved homes recently, whether the guardians have told Hannah's parents where Hannah is now living.
- Whether and how the guardians are assisting and preparing Hannah for her life as an independent adult (provide guardians with information about relevant services that might be able to assist).
- Advise the guardians of the availability of TILA, should Hannah wish to apply.
- Whether and how the guardians have been assisting Hannah to maintain her cultural connection.
- The ongoing provision of the FCA, and any other financial supports, if applicable or requested by the guardians.
- A reminder of the guardians' legal responsibility to notify Child Safety Services in writing, should Hannah leave their direct care at any stage in the future.

**Question: Scenario - part 2.1:**  
**Why it is important to discuss these issues with Hannah and her guardians?**

**Answer:**

- So the guardians continue to understand and fulfil the full range of legal and other responsibilities (towards Hannah, her mother and Child Safety

Services) they have accepted as Hannah's guardians.

- So Hannah fully understands what her guardians are responsible for, and where she can seek assistance if her guardians are not fulfilling any of their ongoing responsibilities and obligations.
- To help Hannah and her guardians to identify whether they have any new support needs which require a response.
- To continue to support the long-term guardianship arrangement, to maintain Hannah's stability and emotional security.

**Question: Scenario – part 2.1:  
When you return to the CSSC what information will you record in ICMS and how?**

**Answer:**

- The CSO will complete the 'Long-term guardianship to a suitable person – Contact and review report' in ICMS and:
  - complete the 'Contact with child' section;
  - indicate that a review was not requested or approved by Child Safety Services – the review report will not be generated; and
  - submit the report to the team leader for approval.
- Note: the 'Contact with child' section will reflect specific matters discussed with, and information obtained from, Hannah and her guardian; particularly in relation to how the guardians are fulfilling all of the responsibilities under the order; if issues or concerns are identified, include actions taken or to be taken by the CSO; include details of requests for support or referrals and the action taken or to be taken by the CSO; etc)

**Question: Scenario - part 2.2:  
Will you complete a case plan review as requested by Hannah? Explain your decision. How will you inform Hannah and her guardian of your decision and what other action will you take in response to her request?**

**Answer:**

- It is not necessary to complete a case plan review, as:
- the current case plan for Hannah already incorporates strategies to be implemented by the guardians, for responding to Hannah's cultural needs

- and the provision of referral information, to Hannah and her guardian, is consistent with (rather than a significant change to) the existing case plan
- Hannah's guardians are kin who identify as Aboriginal, and have consistently responded to Hannah's cultural needs in accordance with the current case plan
  - the CSO is able to locate an appropriate service, and provide Hannah and her guardian with the service's contact details.

The decision, the reason for the decision and the process for applying to have the decision reviewed, will be verbally communicated to Hannah and her guardians. Ensure that Hannah clearly understands her review rights and how to apply to have the decision reviewed.

In addition, written information about the decision not to review the case plan, the reason for the decision, and how to apply to have the decision reviewed, will be provided to Hannah and her guardian as follows:

- CSO completes the 'Letter re: Decision not to review the case plan' and provides her to the guardian.
- CSO writes a letter to Hannah, on a case-by-case basis (having regard to Hannah's age and ability to understand) outlining the necessary information.

The Team Leader or CSSC Manager is responsible for ensuring that the legislative requirement to provide written notice of the decision is complied with.

The CSO attaches a copy of each written notice to the relevant event in ICMS.

The CSO will locate an appropriate service and either make a referral, or provide the service's contact details to, Hannah and her guardian. The CSO will record in ICMS that these actions have been completed (case note).

Scenario Part 2- Facilitator Notes – Step 2 Linking of Knowledge and Practice

<i>What are the positive outcomes of the reforms?</i>	<i>How will these outcomes be achieved?</i>
<ul style="list-style-type: none"> <li><b>Requirement for 12 monthly contact with child on LTG to other.</b> Ensure that the department sees and speaks with the child and guardian to ensure that obligations are being met and to allow for assistance/support to be provided where required.</li> </ul>	<p>Obligation on departmental officers to meet with child and guardian once every 12 months to continue to support the long-term guardianship arrangement and maintain the child's stability and emotional security.</p>
<ul style="list-style-type: none"> <li><b>Foster Caring Allowance.</b> Approved foster carers and kin carers who are subsequently granted the long-term guardianship of a child continue to receive the fortnightly caring allowance.</li> </ul>	<p>Ensures that foster carers/kin carers maintain financial support from the department when taking on the role of long-term guardians.</p>
<ul style="list-style-type: none"> <li><b>Reviewable decision regarding case plans for LTG to other.</b> Provides for a child or guardian to seek review of the child's case plan when an LTG to other order is in place.</li> </ul>	<p>Whilst a LTG case plan is enduring, a range of factors inform decision-making about whether and in what circumstances a case plan should be reviewed. This allows for a child or guardian to request such a review dependent on case-specific circumstances and ensures that the department must give a considered response to such a request.</p>

**Scenario Part 3- Facilitator Notes – Step 1 Listing of Information**

Scenario information	
<p>Hannah nearly 15 y.o. Jayne contacts you to inform that she has been diagnosed with terminal illness</p> <ul style="list-style-type: none"> <li>• Jayne expected to live for a few months and will require full time care.</li> <li>• Positive relationships with adult children and their family.</li> <li>• Jim will continue to work full time and does not believe that he is able to care for Hannah full time.</li> <li>• Hannah has a positive relationship with her maternal grandmother (sleep over / visit once per month)</li> <li>• Hannah has limited contact with her mother. Mother remains highly mobile</li> <li>• The Roberts' adult son and wife have indicated that they would be willing to care for Hannah.</li> </ul>	
CP Reform Knowledge	
CSPM	ICMS
<p>Chapter 3 Ongoing intervention</p> <ul style="list-style-type: none"> <li>• 1. What if a suitable person has long-term guardianship</li> <li>• 2.8 Apply to extend, vary, revoke or revoke and make a new child protection order</li> </ul> <p>Chapter 4 Case planning</p> <ul style="list-style-type: none"> <li>• 5. Review and revise the case plan</li> </ul> <p>Policies</p> <ul style="list-style-type: none"> <li>• Fortnightly Caring Allowance and inter-</li> </ul>	<p>CP ACT</p> <ul style="list-style-type: none"> <li>• Meaning of parent in Part 4 Child protection orders – s52</li> <li>• Notice of application – section 56</li> <li>• Respondents to hearing – section 57</li> <li>• Variation and revocation of child protection orders – section 65</li> <li>• Custody or guardianship of child continues pending decision on application for order – section 99</li> <li>• Separate legal representation of child</li> </ul> <p>The Long Term Guardian role will have the same functionality as the Parent role. There will be changes to all forms regarding this. Some forms relevant to long term guardians are only available if a long term guardian is an event participant. Eg. LTG-SP Case Plan and LTG-SP Contact and Review report.                      ICMS records application to vary CPO's – directive orders, protective supervision orders, custody orders and LTG, as a new Court Event.</p>

Child Protection Reform Stage 2 – Module 3: Permanency Planning and Timely Decision-Making  
 Facilitator Notes Table

<p>state foster payments</p> <ul style="list-style-type: none"> <li>• Child Related Costs – Long-term guardian support</li> </ul>	<ul style="list-style-type: none"> <li>• – section 110</li> <li>• Compliance with provisions about explaining and giving documents – section 195</li> <li>• Payments for care and maintenance – section 159</li> </ul>	
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**Practice Implications**

**Key message APPLICATION TO VARY LTG OTHER ORDER**

- Following the variation of the order to vary LTG is granted to the CEI continue ongoing intervention with Hannah, David and Emma (eg. case work, mtg & month care plan reviews, ESI, CIP, cultural support plan etc. support the kinship placement, monitor the ongoing quality of care provided)
- An application cannot be made to vary the order granting LTG to Jayne and Jim, to an order granting LTG to David and Emma. Because Hannah is in the guardianship of Jayne and Jim, she is no longer in an out-of-home care placement under the Child Protection Act 1989, section 82 and does not therefore require an out-of-home care placement. Under the existing LTG other order, Jayne and Jim cannot give guardianship of Hannah to David and Emma, and Child Safety Services cannot place Hannah in out-of-home care on a full time basis, unless the CEI has custody of Hannah to grant guardianship of Hannah. The CEI therefore needs to be granted LTG of Hannah, so it can then invite David and Emma to apply to become approved kinship carers for Hannah. Further, if David and Emma require the fortnightly Caring Allowance for Hannah, they will need to be assessed and approved as kinship carers for Hannah (or be granted provisional approval).
- A decision by the CEI to apply to vary an order granting LTG either to seek an order granting LTG to CEI is a significant decision – in that the child will again become a child requiring an out-of-home care placement under the Child Protection Act 1989, section 82. The CEI must therefore be provided with an opportunity to participate in this decision-making process.
- A child protection order can only be varied within type to modify the type of order. Orders which can be varied include protective supervision, custody and LTG.
- ICMS CPO applications and COF's will now allow users to vary different types of CPO's, in line with new departmental practice and policy.
- ICMS COF's have been amended to include information about Separate Representatives and non-parties, in line with the amendments to the Child Protection Act 1989. Staff will have the ability to record in ICMS if a Separate Representative contested an application, if a non-party attended and/or participated in a court mention, if the non-party had legal representation, or if the court granted leave for the non-party to view any part of the court file. Staff should ensure that they record relevant information about Separate Representatives and non-parties to ensure accurate recording of court proceedings.

**Question: Scenario – part 3**  
 Can the Roberts give guardianship to David and Emma? What is the rationale for this decision?

**Answer:**

No – legal guardianship is afforded by the Childrens Court to the person/s specifically named on the child protection order granting long-term guardianship (in this case, Jayne and Jim Roberts). If the Roberts were to simply give Hannah to David and Emma:

- David and Emma would have **no legal authority** to have the daily care of Hannah, or to make guardianship decisions/provide guardianship consents in relation to Hannah
- Hannah's mother could remove Hannah from David and Emma's care at any time, potentially placing Hannah at risk of harm
- the department could **not** pay the Fortnightly Caring Allowance (currently being paid to Jayne and Jim Roberts), or child related costs, to David and Emma (only an approved carer, or an approved carer who is subsequently granted the guardianship of the child for whom they were an approved carer, is eligible for financial support from the department)

**Question: Scenario – part 3**

**What actions will you take in response to the Roberts' request?**

**Answer:**

- Review the case plan and explore all of the options available to Hannah
- Options to be explored for Hannah need to consist of strategies which will facilitate ongoing stability and security (for example, possibilities within the guardians extended family, as Hannah already has connections/relationships with these people, or other people within Hannah's existing family or community, such as her grandmother)
- Discuss the circumstances with people who might be able to offer Hannah ongoing stability and security eg. grandmother, David and Emma
- Review the case plan as outlined in Chapter 4. Case planning (with the exception of the family reunification and parental strengths and needs assessment). Complete the child strengths and needs assessment to inform the case plan review.
- Involve Hannah's mother in the case plan review process, if she can be located
- Jayne and Jim may need to be supported in telling Hannah about Jayne's medical condition, and Jim's inability to continue caring for Hannah
- Hannah may require emotional support, independent of Jayne and Jim, to help her cope with grief and loss, and the subsequent change in guardianship arrangements
- If required, provide referrals to counselling services for Hannah and or the Roberts
- Prior to deciding the best way to proceed, obtain and consider Hannah's views (particularly about David and Emma request to take on the role of caring for Hannah on a full time basis, would also discuss grandmother's views with Hannah, esp. if grandmother also offers to care for Hannah)

- Provide the recognised entity with an opportunity to participate in decision-making about the best way to proceed
- If David and Emma appear to be the most appropriate option for meeting Hannah's emotional and physical needs and best interests, apply to vary the order from long-term guardianship to suitable persons, to long-term guardianship to the Chief Executive
- Once Hannah is in the guardianship of the CE, invite David and Emma to apply to become kinship carers for Hannah
- Ensure David and Emma have provisional approval, prior to placing Hannah in their full time care
- Upon placement, commence the Fortnightly Caring Allowance

**Question: Scenario – part 3**

**Upon deciding that an application to vary the order is the best option available, what actions will you take in relation to the court process?**

**Answer:**

- Attempts to locate Hannah's mother, to obtain consent re the application to vary the order
- Obtain consent from Jayne and Jim to vary the order
- Give Hannah's mother and Jayne and Jim Roberts copies of all relevant court documentation, as they will all be respondents in the proceedings.
- Complete the Affidavit for Service re all respondents
- Apply to the Childrens Court, in accordance with the *Child Protection Act 1999*, section 65, to vary the child protection order from long-term guardianship to suitable persons, to long-term guardianship to the chief executive.
- Ensure that the views of the recognised entity, about the application to vary, are made available to the Childrens Court.
- Treat the long-term guardians as parents during court proceedings
- Provide the parents and long-term guardians with written information, following the Childrens Court decision, regarding appeal rights. Also provide written information about appeal rights to Hannah.
- The application to vary the order is based on the premise that Hannah is still a child in need of protection however her long-term guardians are no longer able and willing to be the child's long-term guardians. The affidavit will need to support this.

**Note:** During court proceedings, Jayne and Jim Roberts continue to maintain guardianship rights and responsibilities for Hannah – under the *Child*

*Protection Act 1999*, section 99 the existing LTG other order continues until the application to vary is decided.

**Question: Scenario – part 3**

**What matters would you take into account if Hannah disagreed with the decision to apply to vary the order from LTG other to CE, or if Hannah disagreed with the decision that David and Emma would be the most appropriate future placement option for Hannah?**

**Answer:**

- Ensuring Hannah has access to a separate representative
- Serve court material on the separate rep. and complete an Affidavit of Service
- Determining whether Hannah would like a support person and facilitate this
- Consider the possibility of supported independent living

**Question: Scenario – part 3:**

**Once the application to vary is decided by the Childrens Court, the CE is granted LTG and Hannah is placed with David and Emma, will you apply for another variation? That is, an application to vary LTG to CE, to LTG to David and Emma? If so, how long would you wait before applying? What would be the considerations?**

**Answer:**

- After a period of stability, the department could assess whether it is appropriate to seek LTG to David and Emma – otherwise, Hannah will remain in CE's guardianship until turning 18 years.
- What would constitute a period of stability would depend on the circumstances of the case and how well Hannah settles into her new care arrangements, how the new carers are managing with taking on the responsibilities of caring for Hannah.
- Hannah may also request that this occurs, or David and Emma, or Jim and Jayne may have requested that this occur.
- Child Safety Services would need to consider whether LTG other is in Hannah's best interests and whether David and Emma are willing and able to assume full legal responsibility for Hannah.

- Hannah's age may be a consideration, and her views about how strongly she wishes to have David and Emma as her legal guardians, rather than ongoing guardianship to the CE etc.
- Hannah's support needs would be another significant consideration – how well she adjusts, following Jayne's death and whether any significant emotional or behavioural issues arise.
- The RE would again need to participate in the decision-making process.
- Whether Hannah's need for emotional security will be best met in the long-term by seeking an order granting LTG to David and Emma
- Which option is most likely to ensure Hannah's safety, wellbeing and best interests, in the current circumstances, having regard to all available information (Paramount principle section 5A)

**Scenario – Part 3 - Facilitator Notes – Step 2 Linking of Knowledge and Practice**

<i>What are the positive outcomes of the reforms?</i>	<i>How will these outcomes be achieved?</i>
<ul style="list-style-type: none"> <li><b>Definition of parent</b> The definition of parent for CPO proceedings has been widened to include LTGs.</li> </ul>	<p>Allows for LTGs to be treated as parents in any subsequent Childrens Court proceedings after the LTG order has been made, including, being listed as a respondent and being served with the material.</p>
<ul style="list-style-type: none"> <li><b>Application to vary the CPO</b> The practice decision that a CPO can only be varied within type to modify the type of order, e.g. LTG to other VARY to LTG to CE.</li> </ul>	<p>Allows departmental officers where required to vary a LTG to other CPO to LTG to CE narrowing the scope of evidence required to support the application to why the variation is required and why the CE is now more suitable to hold guardianship of the child.</p>

## Child Protection Reforms Stage 2 – Permanency Planning & Timely Decision-Making Module Instructions and Model

### **Instructions:**

You will be provided with 3 scenarios for each of these scenarios you will:

Step 1) List the key relevant information contained in the scenario.

Step 2) List the relevant parts of the child protection reforms (CSPM, *Child Protection Act 1999* and ICMS) that you would need to know to address the issues you identified in the scenario.

Step 3) Answer the questions about the new practice procedures you would now use to be inline with the child protection reforms.

These lists will then be discussed to ensure that all aspects have been covered.

Step 4) List the linkages as to why these child protection reforms have been developed to enhance current child protection service delivery. To help with this process ask yourself:

- What are the positive outcomes for practice?
- When will I use these new practices?
- How will these outcomes be achieved?

**Scenario Part 1**

List the key information identified from the scenario.

**Scenario Information**

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List the relevant parts of the child protection reforms (CP Act, CSPM & ICMS).

**CP Reform Knowledge**

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What are the positive outcomes for practice?

How will these outcomes achieved?

**Linking Questions**

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When deciding whether to continue working towards reunification or, to stop working towards reunification and pursue alternative long-term stable living arrangements, what factors will you take into account?

Before making a Child Protection Order granting long-term guardianship of a child, the Court must be satisfied (*Child Protection Act 1999, s59(6)*):

- there is no parent able and willing to protect the child within the foreseeable future, or
- the child's need for emotional security will be best met in the long-term by making the order.

In addition, before the Court extends or makes a further Child Protection Order granting custody or short-term guardianship of the child, the court **must have regard to the child's need for emotional security and stability (s59(8))**.

**What factors, to be documented in your affidavit, will inform the court about these areas of consideration?**

**Practice Implications**

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## Scenario Part 2

List the key information identified from the scenario.

### Scenario Information

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List the relevant parts of the child protection reforms (CP Act, CSPM & ICMS).

### CP Reform Knowledge

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What are the positive outcomes for practice?  
How will these outcomes achieved?

### Linking Questions

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What other issues will you discuss with Hannah and her guardian during the visit and why? When you return to the CSSC what information will you record in ICMS and how?

Why is it important to discuss these issues with Hannah and her guardians?

When you return to the CSSC what information will you record in ICMS and how?

Will you complete a case plan review as requested by Hannah? Explain your decision. How will you inform Hannah and her guardian of your decision and what other action will you take in response to her request?

### Practice Implications

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### Scenario Part 3

List the key information identified from the scenario.

#### Scenario Information

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List the relevant parts of the child protection reforms (CP Act, CSPM & ICMS).

#### CP Reform Knowledge

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What are the positive outcomes for practice?  
 How will these outcomes achieved?

#### Linking Questions

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Can the Roberts give guardianship to David and Emma? What is the rationale for this decision?

What actions will you take in response to the Roberts' request?

Upon deciding that an application to vary the order is the best option available, what actions will you take in relation to the Court process?

What matters would you take into account if Hannah disagreed with the decision to apply to vary the order from LTG other to LTG to CE, or if Hannah disagreed with the decision that David and Emma would be the most **appropriate future placement option for Hannah?**

Once the application to vary is decided by the Childrens Court, the CE is granted LTG and Hannah is placed with David and Emma, will you apply for another variation? That is, an application to vary LTG to CE, to LTG to David and Emma? If so, **how long would you wait** before applying? What would be the considerations?

#### Practice Implications

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## Scenario Part 1

Melissa Jones, 19 years of age, is the mother of Hannah Jones, age 2 years. Melissa is Aboriginal. Hannah was placed in out-of-home care at 3 months of age, due to significant neglect associated with her mother's alcohol misuse. Hannah was initially made subject to a child protection order granting short-term custody to the chief executive for a period of two years, and placed in out-of-home care with approved kinship carers, Jim and Jayne Roberts.

Hannah currently remains in placement with the Roberts.

Following the making of the order, Melissa's contact with the department is erratic, and she misses most of her organised contact visits with Hannah.

Five months prior to the end date of the short-term order, Melissa recontacts the department and indicates an interest in working towards Hannah's return to her care. Melissa advises that she commenced alcohol counselling six weeks earlier, which has helped her to understand how her drinking has limited her ability to care for Hannah.

Melissa's counsellor confirms that Melissa has been doing good work during the counselling appointments and has gained significant insights into the addictive process, as well as acquiring skills for relapse prevention.

Melissa commences weekly supervised visits with Hannah however during these visits she mostly interacts with the supervising departmental officer, and rarely engages with Hannah. Upon further discussion following these visits, Melissa indicates that there is not a lot she can do with Hannah anyway because Hannah is only 1 and  $\frac{3}{4}$  years old.

Although Melissa appears to be managing her alcohol addiction, the assessment is that she has limited parenting knowledge and skills specific to Hannah's age and developmental level.

Melissa commences a parenting class and after three weeks, begins to actively engage in discussions. Melissa acknowledges that she doesn't have a good understanding of Hannah's needs but seems open to learning about how to develop a positive relationship with Hannah.

Melissa continues to attend her visits with Hannah and begins to demonstrate an ability to proactively engage in activities with her daughter during these visits. Melissa and Hannah are both observed to be more affectionate with each other, and Melissa responds appropriately to Hannah's physical and emotional needs during the visits.

It is now two months before the short-term child protection order is due to expire.

## **Scenario Part 2**

### **Scenario 2.1**

Hannah is now 14 years of age and subject to a child protection order granting long-term guardianship to her formerly approved kinship carers, Jim and Jayne Roberts. Since the making of the LTG order you (as Hannah's CSO) have been undertaking 12 monthly contact visits with Hannah and her guardians.

It has been 12 months since your last visit with Hannah and you phone Jayne and explain that you would like to organise your 12 monthly visit with Hannah. The visit is scheduled for a time when Hannah and Jayne are both available.

During the visit you ask Hannah whether she would like to comment on or ask questions about her case plan, and whether she would like her case plan to be reviewed. You also inform Jayne that she is able to request a review of Hannah's case plan. Both Hannah and Jayne indicate that they do not wish for the case plan to be reviewed at this time.

### **Scenario 2.2**

Three (3) months following your contact visit, Hannah telephones you and asks for her case plan to be reviewed. Upon further discussion, Hannah tells you that she would like to learn more about her Aboriginal heritage and asks if there is a local service that might be able to assist.

### Scenario Part 3

Just before Hannah's 15<sup>th</sup> birthday, Jayne Roberts contacts the CSO. Jayne is very distressed and informs the CSO that she has been diagnosed with a terminal illness and her prognosis is poor. Following further meetings with the Roberts and their adult children, the following information is available:

- Jayne is only expected to live for a few months
- Hannah has a strong connection to Jim but she also has a close relationship with the Roberts' adult children, each of whom have their own young families
- Hannah regularly spends weekends and school holidays with the Roberts' adult children and their families
- Jayne's health will continue to deteriorate to the point of requiring full time care
- while Jim will immediately take time off work, he will need to return to full time employment eventually (due to financial commitments)
- Jim doesn't believe that he will be able to continue caring for Hannah on a full-time, long-term basis, following Jayne's death
- Hannah has maintained a close relationship with her maternal grandmother while being in the guardianship of the Roberts, and generally has a day visit or a sleep over at least once a month
- Hannah has had limited contact with her mother in recent months, as her mother remains highly mobile and does not always advise the Roberts when she changes address
- the Roberts' adult son and his wife, David and Emma, have indicated a willingness to care for Hannah on a long-term basis
- the Roberts indicate they wish to give guardianship of Hannah to David and Emma.

**Module 3 Permanency Planning and Timely Decision-Making**

**Learning outcome:** Evaluate the child's need for emotional stability and security as part of any child protection response to deliver effective and timely permanency decisions.

**Instructions:** Using the table below reflect on the scenarios that were discussed during the session and identify which of the overarching aims of the child protection reforms were addressed by the introduction of new processes and practice. Then provide a brief explanation of how the new processes and practice addresses the aim of the child protection reform.

Overarching aims of the child protection reforms	S1	S2	S3	How is this aim addressed?
<i>Strengthen early intervention and prevention, including Helping Out Families and the implementation of Aboriginal and Torres Strait Islander Family Support Services.</i>				
<i>Reduce the overrepresentation of Aboriginal and Torres Strait Islander children.</i>				
<i>Recognising the cumulative nature of harm, the need for holistic assessments and collaboration and information sharing across service providers.</i>				
<i>Improved outcomes for children and young people in out-of-home care through child health passports, education support plans, cultural support plans and transition from care plans for young people 15 – 17 years; each of these incorporated within the individual child's comprehensive case plan.</i>				
<i>Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle and recording of participation of Recognised Entities in decision-making.</i>				
<i>Strengthened focus on engagement and participation of children and their families in decisions impacting on their lives.</i>				
<i>Goal directed case plans that support timely permanency decisions for children.</i>				

# Child Protection Legislation Stage 2 information session

Name (Optional): \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Unit/CSSC: \_\_\_\_\_

## What did you think of the information session?

Please indicate how much you agree or disagree to the statements below by selecting a number (1 Strongly Disagree to 10 Strongly Agree).

	Strongly Disagree $\longrightarrow$ Strongly Agree									
The training helped me to reflect on practice decisions using the Child Protection reforms Legislation	1	2	3	4	5	6	7	8	9	10
This information session will be useful in my work	1	2	3	4	5	6	7	8	9	10
The reflective practice tool was useful	1	2	3	4	5	6	7	8	9	10

## How useful was the information session?

Did the training tell you anything that you didn't know? YES / NO

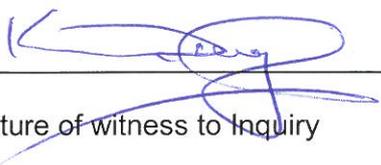
Please indicate how much you learnt as a result of the session.

	None	A little	Not Much	Some	A Lot
I feel able to evaluate the child's need for emotional stability and security as part of any child protection response to deliver effective and timely permanency decisions	1	2	3	4	5
I feel able to assess and formulate a rationale for the level of intervention including the type of order, if applicable	1	2	3	4	5
I feel I can differentiate when engagement is required with the LTG as a parent	1	2	3	4	5

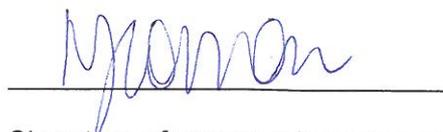
## Any further comments:


### Attachment Marking

The preceding 266 pages is the annexure mentioned and referred to as ATTACHMENT 6  
in the statement of Kenneth Dagley taken on 25/10/2012

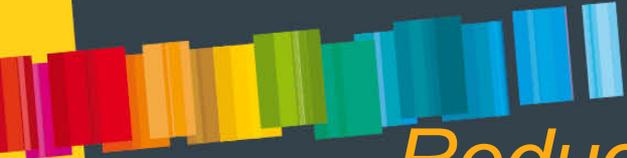
A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

Signature of witness to Inquiry

A handwritten signature in blue ink, appearing to be 'M. Manon', positioned above a solid horizontal line.

Signature of person witnessing statement

# *Sharing Responsibility*



*Reducing the over-representation  
of Aboriginal and Torres Strait  
Islander children in Queensland's  
child protection system*



# Sharing Responsibility Workshop Plan

Introductions

Purpose of Workshop

Background to the Blueprint

Case Study 1

***Morning tea (10:45 - 11.00)***

CCYPCG Audit

Finding Kin

New RE/CPP Form

***Lunch (12.00 – 12.45)***

Consultation

Unborn

Case Study 2

RE Participation in Court

***Afternoon Tea (3.15-3.30)***

A positive yarn – We can do it !

Discussion and planning – what now?

***Close 4:30***

## Workshop Purpose

To provide the opportunity for all stakeholders to come together to yarn, build and strengthen relationships.

To discuss the ways all stakeholders share responsibility.

To share responsibility by:

- building a base of shared knowledge and interpretation of current legislative, policy and practice requirements
- reviewing & clarifying roles and responsibilities of each stakeholder
- identifying & exploring barriers to best practice
- creating & planning the implementation of local shared solutions to improve culturally sensitive practice
- identifying and planning ways to review local practice regularly.

## Stolen Generation Impacts

Government acknowledges the contribution of past policies and practices to the current level of overrepresentation. The government is committed to leading processes to identify, implement and support new and current strategies to reduce the number of Aboriginal and Torres Strait Islanders children and families in the child protection system.

The government cannot achieve this without partnerships with all facets of the local communities and the community sector.

The impacts of the Stolen Generation continue and all stakeholders are mindful of the sensitivities involved in building and maintaining relationships.

Healing will continue as listening, respect and collaborative action occurs.



# Background to the Blueprint

- Establishment of a Taskforce in October 2009 to provide advice on the over-representation of Aboriginal and Torres Strait Islander children in care.
- On 25 August 2010 the *Together keeping our children safe and well*: Our comprehensive plan was submitted for the Department's consideration.



# Blueprint for Implementation Strategy

- Government response to the Comprehensive Plan was the *Blueprint for Implementation Strategy*.
- Developed in collaboration as a 12 month strategy designed to meet the intent of the Comprehensive Plan.



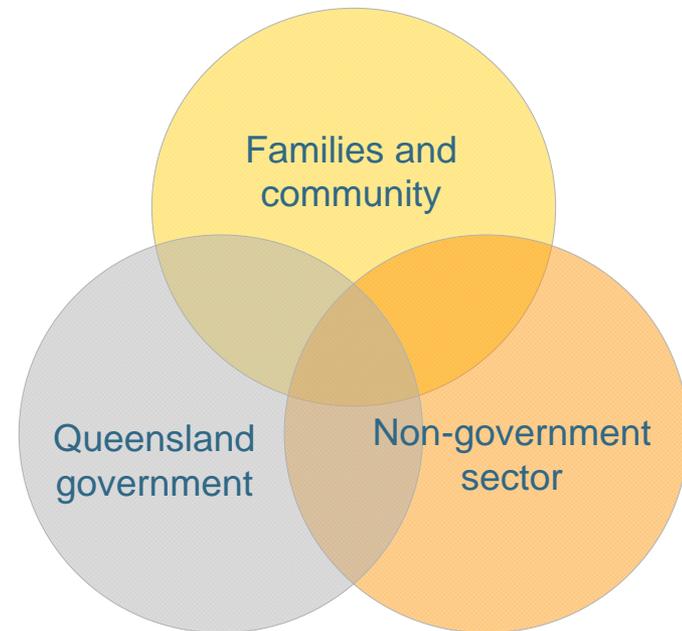
# Blueprint for Implementation Strategy

- Identifies how government, community and Aboriginal and Torres Strait Islanders can work together to support vulnerable (all) Indigenous families earlier to create healthy and sustainable communities and thereby reduce their over-representation in Queensland's child protection system.
- Themes:
  - *engage with Aboriginal and Torres Strait Islander communities,*
  - *support families earlier*
  - *build localised capacity, knowledge and participation to create change in social norms at a community level.*



# Shared responsibility

- The key theme emerging from the *Blueprint for Implementation Strategy* was that the care, safety and wellbeing of children is our shared responsibility.
- Simply “fixing” the existing child protection system will not address the risks and disadvantage Aboriginal and Torres Strait Islander children and families face on a daily basis.



# Key Priorities for the implementation of the strategies

1. Sharing a common vision and commitment
2. Providing the right service at the right time
3. Ensuring the existence and application of sound legislation, policy, practice and procedures
4. Building a robust system and network of Aboriginal and Torres Strait Islanders service providers

# Case Study 1

- Questions
- Issues



# Indigenous Child Placement Principle Audit Report 2010/11

*The Audit Report 2010/11 represents the second audit conducted by the Commission in fulfilling its legislative responsibility to monitor the Department of Communities' compliance with section 83 of the Child Protection Act 1999.*



- **Section 83** is founded on the principle that it is in the best interests of Aboriginal and Torres Strait Islander children and young people to be raised within, or in connection with, their own family, community and culture where they are no longer able to remain safely in the care of their parents.
- Compliance with section 83 is therefore important to ensure that Aboriginal and Torres Strait Islander children and young people are placed in the most culturally appropriate placements related to their specific needs and family structure, and experience maintained connection to their family, community and culture.

## Profile of Aboriginal and Torres Strait Islander children in out of home care.

- As at June 2009, the proportion of Aboriginal and Torres Strait Islander children in Qld was 6.5%, while the proportion in out of home care was 35% (an increase from 26% in 2006)
- audit based on a random sample of 388 placement decisions
- 14% of carer families Indigenous – 570 carer families (41% foster carers, 41% kinship carers, 18% provisionally approved)
- majority of children (87%) in family based care
- proportion of Aboriginal and Torres Strait Islander children in out of home care placed with a kinship or Indigenous carer was 58.2% (decrease from 64.1% in 2006)

# Practice Information

- Practice compliance with individual steps in S83 positive
- compliance with every step **increased** to 15% (as opposed to 0% in 2008)
- Need to improve overall compliance – likely to be enhanced upon the implementation of the expanded RE/ICPP form
- Need for strengthened training in practice compliance – sharing audit outcomes should assist staff to understand the importance of S83 compliance
- 58% of all placement decisions demonstrated consideration of RE views – RE/ICPP completed for 48% of placement decisions

# Outcomes achieved

- Overall children reported positive outcomes in relation to contact with family and community and participation in cultural activities, ( 89% reported some level of family contact, identified as weekly for 41%)
- More positive outcomes reported for children with an Indigenous carer

# Finding Kin

- What role do you play in identifying and engaging kin?
- At what point in the child protection process does the identification of kin start?
- What challenges are there in finding kin or approving kin as carers?
- What might you do differently in the future

# New ICMS Reporting re ICPP

- Go Live 26 March
- Placement Event Complete form
- Prompts to consult Recognised Entity
- AHCSSC and PSU input information
- CSO responsible for completion
- Prompts regarding the hierarchy of placement
- Provides a record of potential kin carers

# Consultation

- At what points in the child protection continuum does consultation with the RE occur ?
- What do you understand by cultural advice ?

# Unborns

## **CP Act 1999 section 21(A)(3)(4)**

- The purpose of an investigation and assessment prior to the birth of a child is to assess the likelihood that an unborn child will need protection after birth and determine what help and support can be offered to the pregnant woman, and where relevant, her partner or the father of the unborn child.
- Any intervention by Child Safety must occur with the consent of the pregnant woman and must not interfere with her rights and liberties. When the investigation and assessment is in relation to an Aboriginal or Torres Strait Islander unborn child, the consent of the pregnant woman must be obtained prior to contacting the recognised entity. This cannot occur until the investigation and assessment has commenced and the pregnant woman has been interviewed

## Case Study 2

- What are the practice issues identified in this case study ?



# Recognised Entity Cultural Advice in Children's Court

In July 2003, the Crime and Misconduct Commission commenced an inquiry into the abuse of children in foster care. The report of the Inquiry, *Protecting Children: An Inquiry into Abuse of Children in Foster Care*, found that the child protection system in Queensland had failed many children.

The legislative reforms recommended by the Crime and Misconduct Commission were aimed at ensuring a more child focussed approach to child protection and strengthening safeguards for children and young people in the child protection system.

The Child Safety Legislation Amendment Bill 2005 represented the third stage of legislative reforms resulting from the Crime and Misconduct Commission's report.

Amongst other things, the amendments sought to strengthen:

- the working relationship between the government and the Indigenous community in relation to Aboriginal and Torres Strait Islander children within the child protection system
- requirements to ensure the unique cultural identity needs of Aboriginal and Torres Strait Islander children are met when they require placement away from their parents and family.

More specifically, amendments to Section 6 of the *Child Protection Act 1999* (CPA) imposed new requirements including:

- Department of Communities (Child Safety) to ensure the recognised Aboriginal and Torres Strait Islander organisation is involved in the process of decision-making about a child, when a decision is likely to have a significant impact on the child's life; and
- the court must have regard to the views of the recognised entity for the child about the child and about the Aboriginal and Island customs relating to the child in exercising a power under the CPA

- This means that in terms of tradition and culture the RE can comment on every aspect of the Child Protection continuum.
- However, this right to participate excludes agreement or otherwise about matters of law, because section 36 of the *Acts Interpretation Act 1954*, outlines the meaning of Aboriginal tradition as follows:

***Aboriginal tradition*** means the body of traditions, generally or of a particular community or group of Aboriginal people, and includes any such traditions, observances, customs and beliefs relating to particular persons, areas, objects or relationships.

***Island custom***, known in the Torres Strait as Ailan Kastom, means the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular community or group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships.



# Participation in court proceedings

- The RE is not a party to proceedings, since no provisions have been made to include the RE as a party in any of the amendments to date. An RE therefore has no legislative entitlement to be served with court documents.
- However, an RE's opportunity to participate in proceedings is implied by section 6(4) and is otherwise provided for by section 20 of the *Childrens Court Act 1992* and section 113 of the *Child Protection Act 1999*. Section 113 of the CPA provides for non-parties to make submissions to the court.

- Whether the RE attends court, or participates in another way, is likely to depend on their capacity given workload and travel commitments.
- If the RE cannot attend court, they may choose to complete a form\* that can be exhibited to the department's affidavit.

- Should a RE representative elect to attend court, they may seek or be invited to make verbal submissions. Alternatively, the RE may prefer to rely on written submissions using the court form and may seek leave to hand up the form in court.
- Irrespective of the RE's attendance or use of a court form, the department will provide information about their consultations with the RE in their affidavit material.

- It will not be possible for the RE to properly consider a child protection matter if the RE is not provided with all the information at hand - this would include all court documents filed by the department.
- It may be useful to speak with REs about how this information is to be provided. It could be that the material is handed to the RE or the RE comes to the service centre to inspect affidavit material.
- The RE is not entitled to notifier information and is obligated to maintain confidentiality as per section 188 of the CPA.

# RE and information

The RE is independent from the Department and must be viewed as any other NGO. This means that the RE can and indeed must form their opinion based on their expertise and their information. The information held by both parties can be different because the RE has a different view point based on expertise.

- This does NOT mean that:
  - The RE should seek to have changes made to the Departmental record, even if the RE does not agree with the opinion formed or the record as it stands.
  - The department should change its records on the basis of RE comment.
  - The RE should rely on the Department to accurately reflect the RE's opinion, especially if the RE does not agree with the Departmental reasoning

- What it does mean is that the Department should create a record of the fact that the RE does not agree and the RE should provide in writing why it is that the RE does not agree with the Departmental reasoning. This is important because each child is entitled to know the reasons and decision making surrounding their involvement with the Department.
- If differing views cannot be reconciled and the matter proceeds to hearing, an RE representative may be required to give evidence in proceedings.

# A Good News Yarn

- Scenario
- Discussion

## WHERE TO FROM HERE

- What concepts or thoughts will you take away with you today to improve your practice?
- What will you do differently in the future
  - As an individual practitioner
  - As an agency

# Farewell



### Attachment Marking

The preceding 19 pages is the annexure mentioned and referred to as ATTACHMENT 7  
in the statement of Kenneth Dagley taken on 25/10/2012



Signature of witness to Inquiry



Signature of person witnessing statement

# Begin With Kin Workshop



## Agenda

- Introduction & Welcome
- What's happening now across our region
- Background & Overview
- Current Literature
- Kinship Policy Development
- Café style groups
  - Group 1: Identification, Engagement & Recruitment of Kinship Carers
  - Group 2: Assessment & Approval of Kinship Carers
  - Group 3: Supporting & Retaining Kinship Carers
- Group feedback - determine 3 – 5 priorities . Group Discussion
- Draft Action Plan with local focus
- Finalise draft for consideration by SALT for approval
- Where to from here
- Close



# Vision

To embed  
**‘Beginning with Kin’**  
as a practice priority in the  
**Region**

# Current Local Kin Care Initiatives



# Kinship care

Kinship care refers to the placement of children with relatives (kin), persons without a blood relation, but who have a relationship with the child or family, or persons from the child/family's community.

# Enshrined in Legislation

## Child Protection Act 1999

- 5B(h) if a child is removed from family, consideration should be given to placing the child, as a first option, in the care of kin.
- 83 (1) –(7) Child Placement Principle

# Kinship Care

- Growing number of children in care
- Insufficient foster care placements to meet need
- Indigenous children over-represented in care:
  - 23% Australian out-of-home care population
  - 4.5% of Australian children
- Internationally, kinship care increasingly used as option for out-of-home care placements (e.g. AUS, US, UK)
- Kinship care potentially more beneficial for child

# Potential benefits of kinship care

- Maintain family, community and cultural ties
- Likely to have increased contact with parents, siblings, and friends
- Family has investment in wellbeing of child
- Child more likely to feel secure, loved and have a sense of belonging
- Trauma associated with removal lessened
- Shared care is a traditional parenting practice in some cultural groups, kinship care normative in these cultures

# Disadvantages of kinship care

- Pre-existing relationships with carer is not that of parent and child, must adjust to new roles
- Adoption distorts biological relationships
- Inter-generational transmission of abuse
- Lack of enforcement of mandated supervised contact, carer may have disbelief of the severity of abuse
- Pre-existing or newly arising conflict between carer and parent
- Did not self nominate to become a carer



# Kinship Reconnect Project 2008

## Key Findings

Useful project framework for:

- reviewing the circumstances of individual Aboriginal and Torres Strait Islander children placed in non-Indigenous placements and making recommendations for improving connections with family, community and culture
- supporting Child Safety Service Centre practice and promoting cultural awareness and capability
- developing linkages and relationships with key stakeholders
- identifying systemic issues impacting on practice



# RECOMMENDATIONS

**Recommendation 3:** That the **process and basis for identifying the cultural background** of children be clarified including:

- procedures and practice guidance
- involvement of Recognised Entities
- management of disputes

**Recommendation 4:** That guidelines and support for **identifying and recording family and cultural information** be developed

**Recommendation 15:** That the **purpose of the interim placements** with non-indigenous carers or other non-indigenous placements is made **explicit** in the Placement Agreement and **clearly communicated to all stakeholders**

**Recommendation 26:** That an Aboriginal and Torres Strait Islander Kinship Care program be developed with reference to:

- Finding kin
- Assessing and approving kin (including the use of provisional approval and obtaining the required “suitability clearances”)
- Planning placements with kin including resource requirements
- Supporting and training kin in relation to the demands and requirements of their role
- Providing casework support to children placed with kin
- Linking placement planning with case planning and the allocation of resources required to support culturally appropriate care and achieving the desired outcomes identified for the child and their family.



## Project: Kinship Care Program Development

- Undertaken by Quality Care Team, Child Protection Development
- The department recognises there are significant differences between kinship and foster care. For example, identification/recruitment, assessment processes, supports required.
- Historically department hasn't distinguished kin care from foster care placements through any specific, documented program specifications unique to kinship care.

## Kinship Care Program Development (cont.)

The project will have two phases

First phase will include:

- Kinship care literature review – to inform development of program description – Access on Infonet
- A scan of existing kinship care initiatives across the child protection sector in Qld and other jurisdictions
- Development of a kinship care policy
- Development of a kinship care program description – Drafted, consultation is occurring
- Identification of strategies across the government and community sectors to increase the use of kinship care and to support kinship carers and placement stability

The second phase will focus on future implementation of the strategies identified in the first phase.

# Kinship Care Literature Review

## Key Messages:

- Kinship care can afford numerous benefits to children including lessening disruption, continuity, sense of belonging, identity formation, cultural and family preservation and stability.
- Kinship care does have a number of risks which may necessitate monitoring and service support/provision.
- Outcomes on kinship care are inconclusive. Positive outcomes provisionally reported are: placement stability, continuity of relationships and behavioural development.
- Assessment is vital in kinship care. A different approach to assessment is suggested but effectiveness is yet to be empirically established.

## Kinship Care Literature Review (cont.)

- The process of kinship assessment could be more collaborative, supportive and partnership based. Safety and thoroughness are still essential.
- A number of kinship care specific content areas as distinct to foster care assessment have been recommended.
- There is substantial justification for developing quality support provision for kinship carers. Not all kin carers will have the same support requirements or the desire to receive support.
- Kinship care placements can be increased by implementing more proactive measures for identifying kin. However, kinship care is not suitable for all children. Not all kin have the capacity and ability to offer care.

## Kinship Care Literature Review (cont.)

- Kinship care does require professional staff that are well trained, skilled and aware of the particularities of kinship care. Specialised training may be required.
- Kinship care is different to foster care. Policy, programming and practice need to be tailored to the unique benefits, risks and requirements.

# Kinship care program description

The Kinship care program description will:

- o support the department's focus on improving outcomes for children and their families through the provision of quality care
- o articulate the uniqueness and importance of kinship care as one placement type within the range of out-of-home care options
- o support the department's commitment and legislative requirement to preserving children's family connections and promoting their wellbeing by identifying a suitable kinship carer for the child, as a first option, when out-of-home care is required
- o articulate the distinct types of support required by kinship carers, to improve the stability of kinship care placements
- o assist staff in understanding the importance of kinship care in promoting positive outcomes for children by articulating the benefits that kinship care may provide children who require out-of-home care
- o inform departmental staff and other child protection stakeholders about the challenges and key considerations in identifying, assessing and supporting kinship carers and the children in their care.

# Region Stats

<b>CSSC</b>	<b>General Foster Care</b>	<b>Specialist Foster Care</b>	<b>Kinship Care</b>	<b>Provisional Approval</b>

CSSC	General Foster Care	Specialist Foster Care	Kinship Care	Provisional Approval



Type of Foster Care	Number of placements	Percentage
General Foster Care		
Specialist Foster Care		
Kinship Care		
Provisional Care		
<b>Regional Total</b>		

# Café Style Planning

- Group 1: Identification, Engagement & Recruitment of Kinship Carers
- Group 2: Assessment & approval of Kinship Carers
- Group 3: Supporting & Retaining Kinship Carers

## Where to From Here

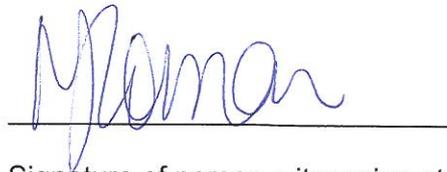
- Draft Action Plan for SALT approval
- Updates from CSPI re current state wide practices
- Sharing local practice learning
- Review Action Plan in six months and report back to SALT

### Attachment Marking

The preceding 12 pages is the annexure mentioned and referred to as ATTACHMENT 8  
in the statement of Kenneth Dagley taken on 25/10/2012



Signature of witness to Inquiry



Signature of person witnessing statement



# RSDO Learning Stakeholder Engagement Project Brief

**December - 2011**

**Version No. 1.0**

<b>Document Owner:</b>	Fay Towner, A/Director RSDO Learning Debbie Jensen, Director Service Delivery Project Office
<b>Program Name:</b>	Service Delivery Improvement and Support
<b>Workgroup:</b>	RSDO Learning
<b>Document Status:</b>	Final

## Approval

Approval of this Lite Project Brief by the Project Executive/Sponsor confirms the following:

- The project scope is accurate given the information at hand,
- The project is justified and viable to achieve the identified business value and benefits;
- There is confidence the project is achievable;
- The risks are identified, understood and accepted;
- Appropriate and adequate consultation has been undertaken with key stakeholders;
- All documents supplied to the Project Executive/Sponsor has undergone a rigorous due diligence process, thus confirming that the information provided in this document is correct and sufficient to inform the decision to proceed; and.
- Approval has been granted for the Project Manager/Team to proceed with detailed project planning (completion of Lite Project Initiation Document PJL-T-09)

<b>Executive Sponsor Approved By</b>	<b>Signature</b>	<input type="checkbox"/> Endorsed <input type="checkbox"/> Rejected <input type="checkbox"/> Change required	
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	<b>Comments</b>		
<b>Business Change Manager Approved By</b>	<b>Signature</b>	<input type="checkbox"/> Endorsed <input type="checkbox"/> Rejected <input type="checkbox"/> Change required	
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	<b>Comments</b>		

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## 1 Background

The Learning and Organisational Development Framework 2010-2015 was endorsed by the Board of Directors on 15 June 2010. The Framework outlined at a high level how organisation arrangements for learning units should be developed and the services these units should deliver to the department. The largest of these units was RSDO Learning.

The establishment in March 2011 of RSDO Learning within Statewide Services brought together five previously separate training units under the one organisational unit — Central Training Unit, Youth Detention Training Unit, Youth Justice Training Unit, Child Safety Services Training and Specialist Support Unit and Housing and Homelessness Training Unit. The training units formed three work units under RSDO Learning — Client Management Learning Unit (CMLU), Residential Services Learning Unit (RSLU) and the Learning Solutions Unit (LSU). See Appendix One for further details of the organisational unit at that time.

The role of RSDO Learning is to improve client service delivery, improve staff attraction and retention and improve business practice. This has largely taken the shape of providing accredited and non accredited priority training for operational / frontline staff including Child Safety Officers (CSOs), Residential Care Officers (RCOs), Team Leaders, Service Managers, Youth Detention Workers, Youth Justice Conferencing and Housing and Homelessness staff.

LSU as a discreet learning unit had strategic oversight providing learning consultancy, intake functions for learning and development for the whole of the department, program reviews and pedagogical advice on training to assist broader organisational priorities. Additionally, in 2011, regions commenced the introduction of Regional Learning Networks (RLNs) to support the identification of regional learning and development priorities as part of the RSDO Learning approach.

RSDO Learning transitioned to Service Delivery Improvement and Support (SDIS) on 1 December 2011. The driver behind the realignment was to strengthen the ongoing links between Learning and Organisational Development and Practice Improvement. This change provides an opportunity to further streamline and improve the connections and opportunities that present between formal training and development programs, and the implementation of practice improvement strategies. See Appendix Two for details of the current organisational unit.

### 1.1 Outline Business Case

The stakeholder engagement activities will follow an action learning and research approach. Communication and engagement will be practiced through all phases.

This project has been designed as a phased approach, as follows:

#### Phase 1: Engagement and consultation with key stakeholders

- achieve a clear understanding of the department's Learning and Organisational Development (L&OD) landscape
- understand the role of RSDO Learning in the department's L&OD landscape
- confirm RSDO L&OD business requirements and existing gaps
- agree the immediate, medium and long term RSDO L&OD needs

#### Phase 2: Implementation planning

- immediate, medium to long term
- confirm ongoing reporting arrangements and governance

## Phase 3: Implementation and transition to business as usual

- deliver agreed priorities
- operate under new RSDO Learning governance
- regular engagement with key stakeholders
- implement workforce plan
- implement changes to practice and procedures

## 1.2 Alignment to the Departmental Strategic Plan

The engagement of stakeholders in establishing future direction for RSDO Learning will ensure:

- Effective management of our key business processes through enhanced workforce capability and workforce quality aligned to current and future business needs.
- Workforce capabilities will deliver consistent and trusted information to drive and support improved client and customer outcomes across all channels.
- Flexibility and skill are built into the department's workforce to support the achievement of service outcomes that meet clients' needs.
- Capability development is provided to meet the immediate and future needs of staff to participate and respond to National Reforms.
- Staff are supported to work in a purchaser/provider environment.
- Capability is developed to partner with the broader Human Services sector to respond to National Plans and frameworks.

## 1.3 Project Benefits and Outcomes

The table below outlines the expected outcomes and forecast benefits/disadvantages of the project, as well as the respective performance measures, benefit realisation timeframes and ownership.

Expected New or Changed Outcome/s	Forecast benefit/s or disadvantage/s	Performance Measures/Target Improvements	Indicative Timeline	Owner
Transition and cohesion of RSDO Learning	Collaboration and synergies developed between learning units and practice improvement units Leadership management established	Efficiencies of collaborating and sharing of training resources & materials	Phase 1 25/01 – 28/02/2012	Director, RSDO Learning
Enhanced engagement with regional stakeholders	Regular engagement with regional stakeholders Development strategies are aligned to business needs	Increased engagement with stakeholders.	Phase 1 25/01 – 28/02/2012	Director, RSDO Learning
Increased understanding of learning and development needs	Development activities are planned and forecasted with an understanding of regional needs	Targeted training and development. RLNs established in all regions	Phase 1 25/01 – 28/02/2012	Director, RSDO Learning

# RSDO Learning Stakeholder Engagement

Expected New or Changed Outcome/s	Forecast benefit/s or disadvantage/s	Performance Measures/Target Improvements	Indicative Timeline	Owner
Training and development activities align to business requirements	Improved staff development across a broader range of need	Strategies are endorsed and developed.	March to 31/05/2012	Director, RSDO Learning
Increased awareness amongst stakeholders of the role of RSDO Learning	Stakeholder awareness of the role of RSDO Learning in supporting service areas and in the broader L&OD landscape. Improved collaborative approaches to support immediate and future development needs	Departmental staff understand the role and value of RSDO learning.	Phase 1 25/01 – 28/02/2012  Phase 2 Ongoing	Director, RSDO Learning

## 2 Project Definition

### 2.1 Objectives

- Collective agreement on the purpose and priorities of RSDO Learning
- Establish a collaborative and systemic engagement process with stakeholders
- Develop a clear understanding of stakeholder learning and development requirements and expectations
- Increase stakeholder awareness and understanding of the role of RSDO Learning in the broader L&OD strategy

### 2.2 Scope (Inclusions)

The following items are included in the scope of the project:

- Current activities of RSDO Learning
- The role of the LSU, CMLU and RSLU in RSDO Learning
- Ongoing engagement activities with stakeholders
- Future direction of RSDO Learning activities
- Review of current governance arrangements

## 2.3 Products

For further detail on dependencies and associated activities see Attachment Two — Schedule.

PBS No.	Products	Start Date	End Date
<b>Phase 1: Engagement and consultation with key stakeholders</b>			
PBS-01	RSDO Learning Stakeholder Engagement Brief	14/12/2011	13/01/2011
PBS-02	Confirm current role, responsibilities and purpose of RSDO Learning in departmental landscape. <ul style="list-style-type: none"> <li>Confirm activities delivered to date</li> </ul>	16/01/2012	31/01/2012
PBS-03	Engagement Model developed and implemented <ul style="list-style-type: none"> <li>Identify external and internal and stakeholders for focus groups</li> <li>Identify ongoing stakeholder engagement activities</li> </ul>	16/01/2012	31/01/2012
PBS-04	Deliver focus groups	Feb 2012	Feb 2012
PBS-05	Gap analysis <ul style="list-style-type: none"> <li>Analysis of focus group findings to inform ongoing role and priorities</li> <li>Assess existing RSDO Learning activities against priorities</li> <li>Use of action learning methodology to map and scope Phase 2 implementation</li> </ul>	Feb 2012	April 2012
<b>Phase 2: Implementation planning</b>			
PBS-06	Implementation Plan	April 2012	May 2012
PBS-07	Workforce Plan	May 2012	May 2012
PBS-08	Practice and Procedure Review	May 2012	May 2012
PBS-09	Confirm ongoing reporting arrangements and governance	May 2012	May 2012
PBS No.	Products	Start Date	End Date
<b>Phase 3: Implementation and transition to business as usual</b>			
PBS-10	Commence End Project Report <ul style="list-style-type: none"> <li>Document follow-on actions and lessons learned.</li> </ul>	Nov 2012	Dec 2012

## 2.4 Exclusions

The following are outside the scope of the project:

- Designing or developing curriculum or content of programs.

## 2.5 Related Projects/Programs/Initiatives

The projects, programs and other initiatives shown below have a relationship or dependency on this project:

Related Projects/Programs/Initiatives	Nature of the Relationship
<p>Learning &amp; Organisational Development Framework 2010 – 2015</p> <ul style="list-style-type: none"> <li>Department of Communities 2010-15 Learning and Organisational Development Strategic Plan</li> </ul>	<p>The Learning &amp; Organisational Development Framework will build the capability of Department of Communities' staff to deliver integrated services and meet strategic service needs.</p> <p>The framework included the creation of three learning units and one curriculum development as part of RSDO Learning.</p>
Existing and upcoming reform agendas and frameworks which impact on service delivery	Work units within RSDO Learning may be required to develop and/or deliver training/development.
Mandatory training requirements for frontline staff	There are a number of roles requiring accredited qualifications to be achieved in accordance with role profile or EB agreements; these need to proceed regardless of outcome of Stakeholder Engagement strategy.
Community Services Skilling Plan	Developed between the department and the Registered Training Organisation for provision of supporting the sector and separate initiatives for internal staff to achieve qualifications

## 2.6 Assumptions

The following assumptions have been made on which this project has been based at this point in time:

- Stakeholders have endorsed the engagement process and will provide appropriate representation in consultation activities.
- The Department of Communities 2010-15 Learning and Organisational Development Strategic Plan remains the endorsed strategic direction for the department.
- Service Delivery Project Office (SDPO) will provide ongoing project support.
- RSDO Learning has transitioned into SDIS

## 2.7 Constraints

The following project constraints have been identified for this project:

- Capacity of stakeholders to be across the broader departmental L&OD landscape.
- The ability and capacity of stakeholders to assess future L&OD requirements.
- Capacity of stakeholders to participate

## 3 Project Management Team Structure

### 3.1 Project Roles and Responsibilities

Role	Responsibilities
<b>Executive Sponsor</b> Deidre Mulkerin ADG SDIS	The Executive Sponsor has ultimate responsibility for the project.
<b>Project Director</b> Debbie Jensen Director, SDPO	The Project Director will manage the project on behalf of the RSDO EMC and report to the RSDO EMC on progress, key risks and issues. SDPO will also provide project management assurance and support.
<b>Business Change Manager</b> Fay Towner A/Director RSDO Learning	The BCM will manage and undertake key activities associated with benefits and change management, communication and embedding of new capabilities.
<b>Project Manager</b> Erin Flynn A/Project Manager SDPO	The Project Manager will coordinate all aspects of project implementation on a day-to-day basis including design and monitoring of project schedules; identify risks and issues; project reporting and monitoring.

### 3.2 Reporting Structure

The following diagram depicts the RSDO Learning Stakeholder Engagement reporting structure:

**RSDO Learning Stakeholder Engagement Governance**  
 V0.1 – 21 December 2011



## 4 Project Approach

The approach to be deployed on the RSDO Learning Stakeholder Engagement Strategy is as follows:

### 4.1 Coordination

- Develop consultation strategy and schedule
- Coordinate reporting and review mechanisms
- Develop Engagement Model and key messages for stakeholders
- Engage with stakeholders throughout the project stages
- Determine links with programs, projects and initiatives and develop communication protocols as required
- Confirm resources and functions to respond to outcomes of consultations

### 4.2 Change Management

The change management strategy for this project is related to strategies within RSDO Learning as well as wider departmental implications. These include:

- Utilising team meeting processes, achievement planning processes, individual time and other team processes to ensure all team members are engaged and contributing to the change process to establish a future direction for RSDO Learning.
- Utilising an action learning methodology to create a positive team environment to review, evaluate and make recommendations for the continued development of RSDO Learning
- Developing clear consistent process and messages to communicate the goals and objectives of the Project with RSDO Learning stakeholders.
- Establishing engagement mechanisms with RSDO Learning stakeholders, particularly in the regional context to ensure strategic partnership continue to optimise service delivery outcomes.
- Undertaking a combined team planning meeting to review existing business / work plans and develop a combined response strategy
- Actively identify opportunities to promote and celebrate successes and milestones achieved by the realignment of RSDO Learning to organisational requirements.

## 5 Risks

Risk No	Risk Description	Risk Cause	Risk Level	Risk Treatment	Project Risk Owner
1	Outcomes of consultation do not align with L&OD Strategy.	Stakeholder awareness and agreement with detail of L&OD strategy.	<b>Major</b>	Development and Implementation of a Communication strategy with stakeholders to advise of relevance of needs to endorsed strategy.	ADG SDIS Director, RSDO Learning

# RSDO Learning Stakeholder Engagement

Risk No	Risk Description	Risk Cause	Risk Level	Risk Treatment	Project Risk Owner
2	Possible disruption to project due election and subsequent actions.	Uncertainty of organisational structure and reporting.	Major	Communication strategy to acknowledge possibility but to highlight the ongoing need for aligned training strategy regardless of organisational structure.	ADG SDIS
3	Inability to respond to stakeholder needs.	Lack of available resources and funding to meet "mandatory" training as well as respond to additional needs.	Major	Ongoing engagement strategy to inform stakeholders of progress and ability to respond to needs.  Develop partnerships with regions/training units to develop responses	ADG SDIS Director, RSDO Learning
4	Securing the right representation at the focus groups.	Stakeholders not being available or nominating the incorrect representation.	Moderate	Being explicit in the purpose of the focus groups and being clear around the criteria to ensure the right representation.	ADG SDIS
5	Lack of engagement by RSDO staff.	Scepticism regarding outcomes.	Minor	Engagement Model and ongoing engagement activities with stakeholders.	Director, RSDO Learning

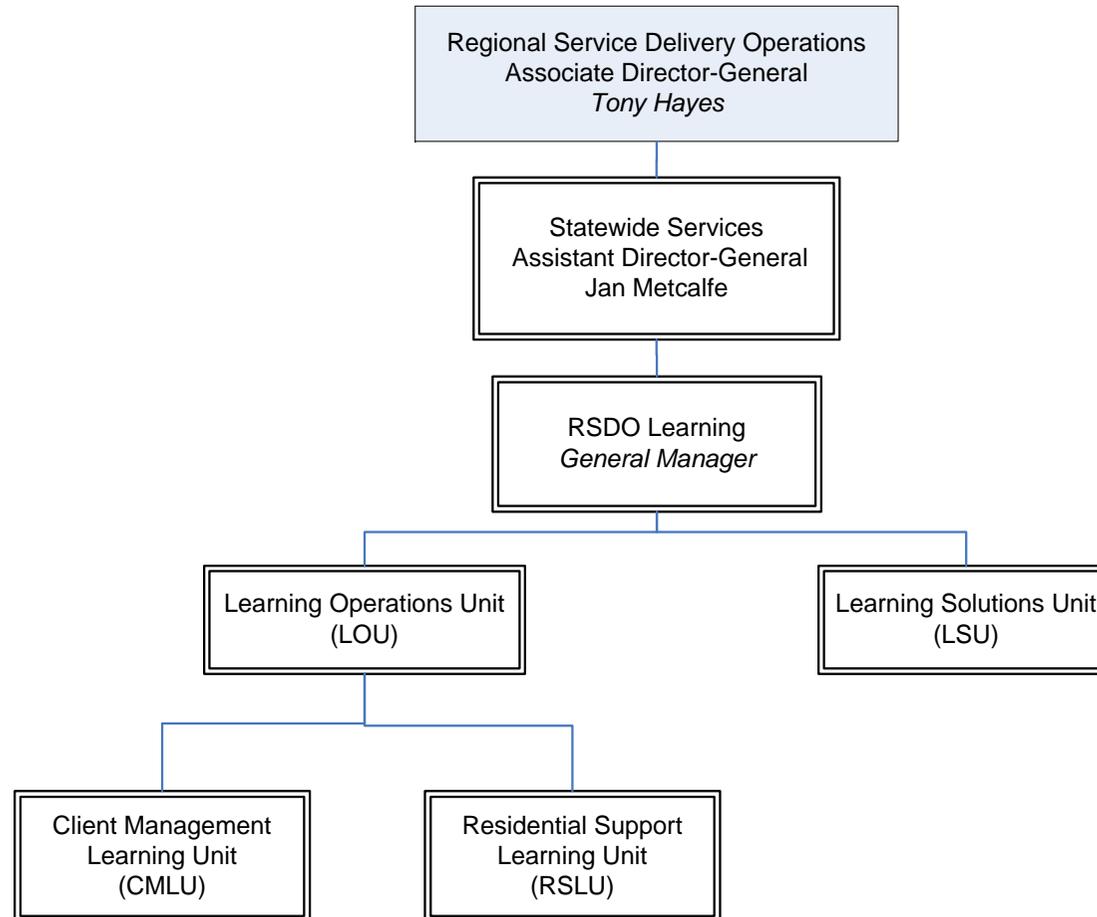
## 6 Project Implementation and Ongoing Costs

### 6.1 Project Costs

The costs associated with this project are expected to be covered within existing resources and does not require any further funding or budget expenditure.

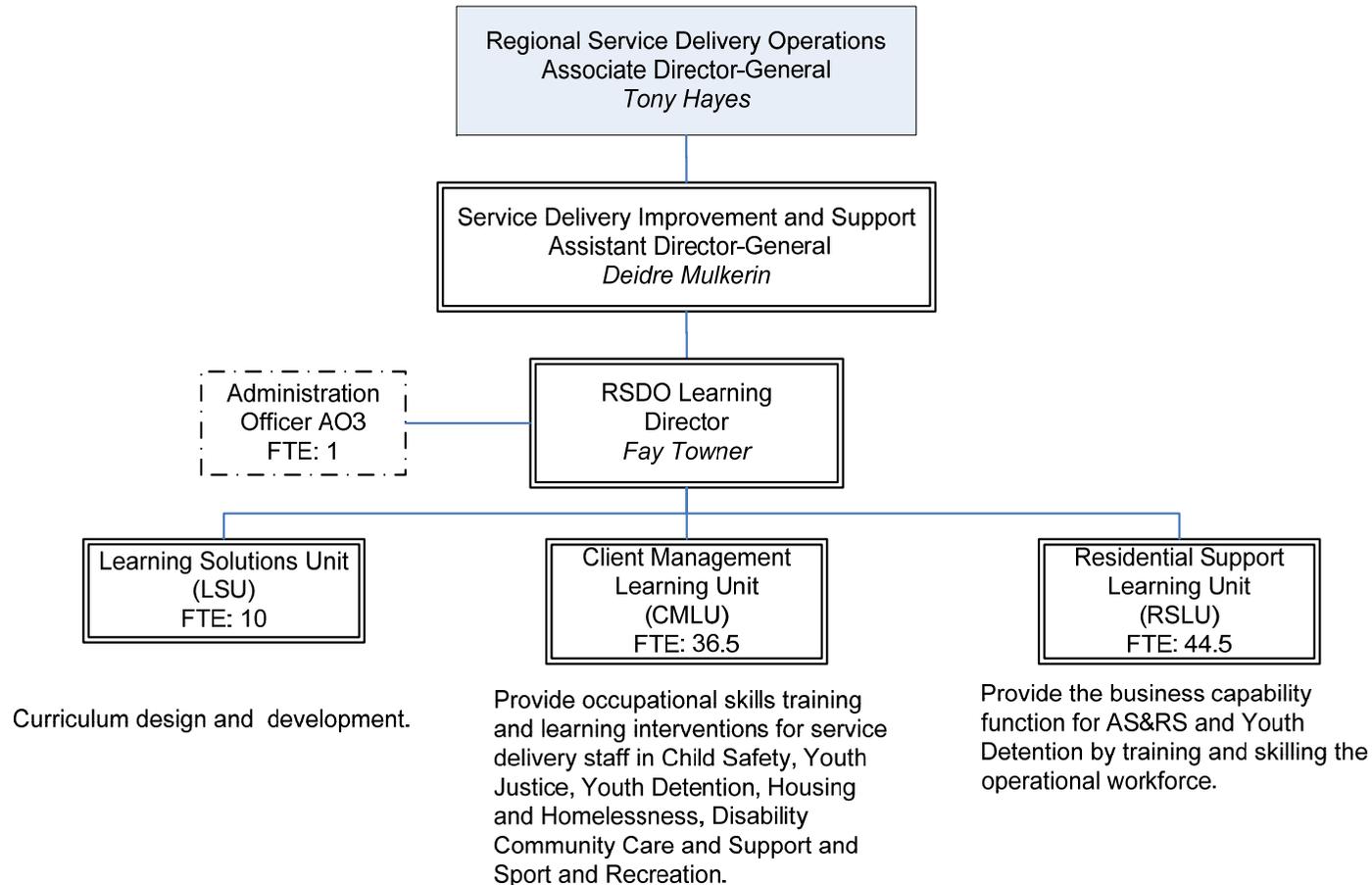
# RSDO Learning Stakeholder Engagement

## Appendix one – Previous Workforce Structure (period 06/06/2011 to 30/01/2011)



# RSDO Learning Stakeholder Engagement

## Appendix Two – Workforce Structure as at 01/12/2011



## Appendix Two – Schedule

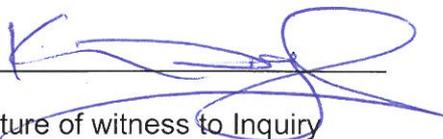
PBS No	Product Name	Associated Activities and/or Tasks	Dependency	Responsible Officer	Planned	
					Start Date	End Date
PBS-01	RSDO Learning Stakeholder Engagement Brief	<ul style="list-style-type: none"> <li>Develop RSDO Learning Stakeholder Engagement Brief</li> </ul>	<ul style="list-style-type: none"> <li>RSDO EMC approval</li> </ul>	Director, RSDO Learning ADG, SDIS	14/12/2011	13/01/2011
PBS-02	Confirm current role, responsibilities and purpose of RSDO Learning in departmental landscape.	<ul style="list-style-type: none"> <li>Develop RSDO L&amp;OD Landscape/picture</li> <li>Include activities to date</li> </ul>	<ul style="list-style-type: none"> <li>Accurate records on activities delivered to date</li> <li>RSDO EMC approval</li> </ul>	Director, RSDO Learning ADG, SDIS	16/01/2012	31/01/2012
PBS-03	Engagement Model developed and implemented <ul style="list-style-type: none"> <li>Identify external and internal stakeholders</li> <li>Identify ongoing stakeholder engagement activities</li> </ul>	<ul style="list-style-type: none"> <li>Confirm key stakeholders with ADG SDIS for focus groups</li> <li>Identify communication and engagement activities</li> </ul>	<ul style="list-style-type: none"> <li>RSDO EMC approval</li> </ul>	Director, RSDO Learning ADG, SDIS	16/01/2012	31/01/2012
PBS-04	Deliver focus groups	<ul style="list-style-type: none"> <li>Design focus group sessions</li> <li>Invite and confirm focus group members</li> </ul>	<ul style="list-style-type: none"> <li>Availability of key stakeholders</li> <li>Availability of resources e.g. venue</li> </ul>	Director, RSDO Learning ADG, SDIS ED, PPR	Feb 2012	Feb 2012
PBS-05	Gap Analysis	<ul style="list-style-type: none"> <li>Analysis of focus group findings to inform ongoing role and priorities</li> <li>Assess existing RSDO Learning activities against priorities</li> </ul>	<ul style="list-style-type: none"> <li>Comprehensive findings from focus groups</li> </ul>	Director, RSDO Learning ADG, SDIS	Feb 2012	April 2012

## RSDO Learning Stakeholder Engagement

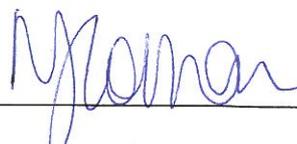
PBS No	Product Name	Associated Activities and/or Tasks	Dependency	Responsible Officer	Planned	
					Start Date	End Date
PBS-06	Implementation Plan	<ul style="list-style-type: none"> <li>Schedule and plan</li> </ul>	<ul style="list-style-type: none"> <li>RSDO EMC approval</li> </ul>	Director, RSDO Learning	Feb 2012	April 2012
PBS-07	Workforce Plan	<ul style="list-style-type: none"> <li>Identify current workforce arrangements</li> </ul>	<ul style="list-style-type: none"> <li>Availability of Planning Performance &amp; Review (PPR)</li> <li>RSDO EMC approval</li> </ul>	Director, RSDO Learning ADG, SDIS	May 2012	May 2012
PBS-08	Practice and Procedure Review	<ul style="list-style-type: none"> <li>Review existing practice and procedures</li> <li>Confirm against priorities</li> </ul>	<ul style="list-style-type: none"> <li>RSDO EMC approval</li> </ul>	ADG, SDIS	May 2012	May 2012
PBS-09	Confirm ongoing reporting arrangements and governance	<ul style="list-style-type: none"> <li>Confirm requirements of RSDO Learning governance</li> </ul>	<ul style="list-style-type: none"> <li>RSDO EMC approval</li> </ul>	Director, RSDO Learning Service Delivery Project Office	Nov 2012	Dec 2012
PBS-10	Commence End Project Report	<ul style="list-style-type: none"> <li>Conduct lessons learned</li> <li>Confirm follow on actions and responsibilities</li> <li>Ensure consultation with responsible work units</li> </ul>	<ul style="list-style-type: none"> <li>Successful implementation</li> <li>RSDO EMC approval</li> </ul>	Director, RSDO Learning Service Delivery Project Office	Nov 2012	Dec 2012

### Attachment Marking

The preceding 15 pages is the annexure mentioned and referred to as ATTACHMENT 9a  
in the statement of Kenneth Dagley taken on 25/10/2012

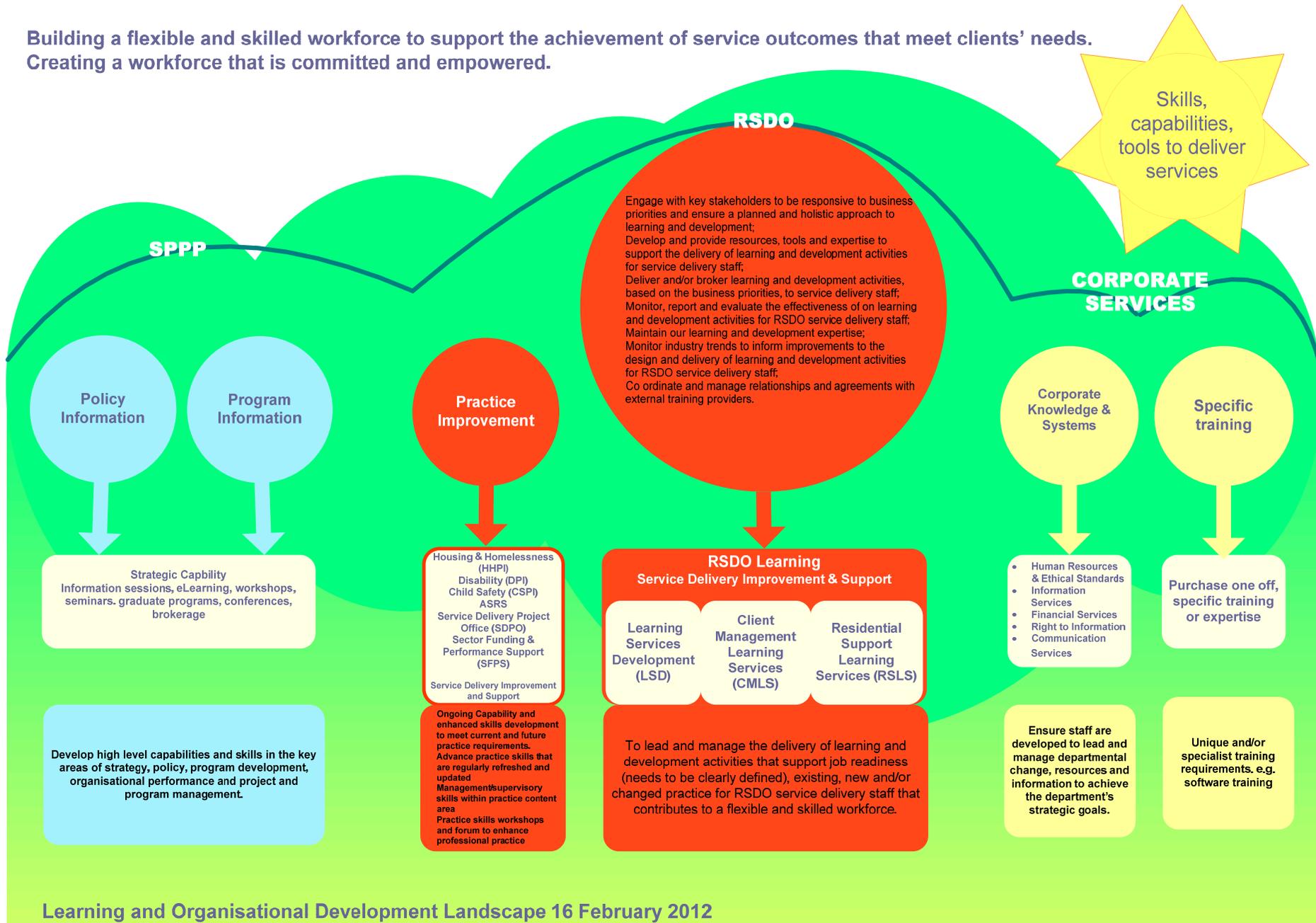


Signature of witness to Inquiry



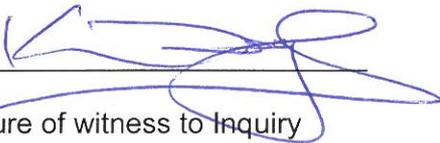
Signature of person witnessing statement

Building a flexible and skilled workforce to support the achievement of service outcomes that meet clients' needs.  
 Creating a workforce that is committed and empowered.



### Attachment Marking

The preceding 1 page is the annexure mentioned and referred to as ATTACHMENT 9b  
in the statement of Kenneth Dagley taken on 25/10/2012



Signature of witness to Inquiry

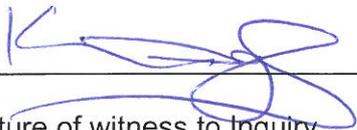


Signature of person witnessing statement

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### Attachment Marking

The preceding CD is the annexure mentioned and referred to as ATTACHMENT 10  
in the statement of Kenneth Dagley taken on 25/10/2012

A handwritten signature in blue ink, appearing to be 'K. Dagley', written over a horizontal line.

Signature of witness to Inquiry

A handwritten signature in blue ink, appearing to be 'M. Manan', written over a horizontal line.

Signature of person witnessing statement

## Training materials prepared by OC&T for ICMS training of Child Safety staff

As per the CPCOI summons, all materials prepared by OC&T for training of Child Safety staff on the Integrated Client Management System (ICMS) for the years 2009/2010, 2010/2011, 2011/2012 and 2012/2013 have been provided. These materials represent ongoing training ('Business As Usual') as well as materials prepared for the following releases:

- ICMS CP – Placement Management Enhancements (PME) – August 2009
- IJIS EMMA release – October 2009
- IJIS ECR (Electronic Court Results) report – March 2010
- ICMS CP – Regulation of Care (ROC) – November 2010
- ICMS CP – CP Legislation – August 2011
- ICMS Child Protection Enhancements 3 and Regulation of Care 2 (CPE3 and ROC2) – June 2012

The following materials have been produced:

Index	Date	Release / reason for change	Courses / materials
01	July 2009	<i>Business As Usual</i> materials at start of financial year representing start of requested period	Business As Usual courses: <ul style="list-style-type: none"> <li>• Court processes</li> <li>• I&amp;A</li> <li>• Intake</li> <li>• Manager, Team Leader, Senior Prac</li> <li>• New Staff</li> <li>• OI</li> <li>• Read only</li> </ul> Course outlines, PPTs, session plans, activities etc

Index	Date	Release / reason for change	Courses / materials
02	August 2009	Placement management enhancements (PME) release	PME courses: <ul style="list-style-type: none"> <li>• PSU</li> <li>• CSSC</li> <li>• QAB</li> <li>• Manage care service</li> <li>• Service desk</li> <li>• CSAHSC</li> <li>• SSO</li> </ul> Course outlines, PPTs, session plans, activities etc Training for Data Management Services staff only – course materials provided.
03	Sept – Oct 2009	IJIS EMMA release	
04	Oct – Nov 2009	After PME release in August, courses were updated: <ul style="list-style-type: none"> <li>• Business As Usual courses updated to contain PME functionality</li> <li>• New Business As Usual courses created from PME release training</li> </ul>	Business As Usual courses now: <ul style="list-style-type: none"> <li>• Court processes</li> <li>• I&amp;A</li> <li>• Intake</li> <li>• Manager, Team Leader, Senior Prac</li> <li>• Manage Care Service</li> <li>• New Staff</li> <li>• OI</li> <li>• Placements and MOC</li> <li>• PSU</li> <li>• Read only</li> </ul> Course outlines, PPTs, session plans, activities etc No hands on training – handout provided.
05	8 March 2010	IJIS ECR (electronic court results) report release	

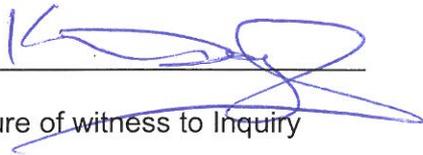
Index	Date	Release / reason for change	Courses / materials
06	26 November 2010	Regulation of Care release	<p>ROC courses:</p> <ul style="list-style-type: none"> <li>• CSU</li> <li>• Data quality (role)</li> <li>• Information session</li> <li>• One day course</li> <li>• Operational reports course</li> <li>• Service desk</li> </ul> <p>Course outlines, PPTs, session plan, activities etc  Note – only the session plan for the one day course is provided – all other courses would have been based on this one).</p>
07	April – June 2011 (*delays in approvals and updates due to changes in priorities after floods)	<p>After ROC release in November, courses were updated:</p> <ul style="list-style-type: none"> <li>• Business As Usual courses updated to contain ROC functionality</li> <li>• New Business As Usual courses created from ROC release training</li> </ul>	<p>Business As Usual courses now:</p> <ul style="list-style-type: none"> <li>• Court processes</li> <li>• I&amp;A</li> <li>• IFPAT</li> <li>• Intake</li> <li>• Manager, Team Leader, Senior Prac</li> <li>• Manage Care Service</li> <li>• New Staff</li> <li>• OI</li> <li>• Placements and MOC</li> <li>• PSU</li> <li>• Read only</li> <li>• ROC</li> </ul> <p>Course outlines, PPTs, session plans, activities etc</p>
08	August 2011	CP Legislation release.	<p>No hands on training – handout and updated manual (with TCO event) supplied.</p>
09	June 2012	Child Protection Enhancements 3 and Regulation of Care 2 (CPE3 and ROC2) release.	<p>Courses:</p> <ul style="list-style-type: none"> <li>• CPE3 and ROC2 half day course</li> </ul> <p>Course outlines, PPTs, session plans, activities etc</p>

Index	Date	Release / reason for change	Courses / materials
10	July 2012 – Current	<p>After CPE3 and ROC2 release in June courses were updated:</p> <ul style="list-style-type: none"> <li>• Business As Usual courses updated to contain ROC2 materials.</li> </ul>	<p>Business As Usual courses:</p> <ul style="list-style-type: none"> <li>• Court processes</li> <li>• I&amp;A</li> <li>• IFPAT</li> <li>• Intake</li> <li>• Manager, Team Leader, Senior Prac</li> <li>• Manage Care Service</li> <li>• New Staff</li> <li>• OI</li> <li>• Placements and MOC</li> <li>• PSU</li> <li>• Read only</li> <li>• ROC</li> </ul> <p>Course outlines, PPTs, session plans, activities etc</p>

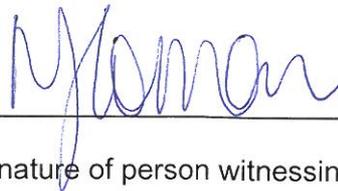
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### Attachment Marking

The preceding 4 pages and CD is the annexure mentioned and referred to as ATTACHMENT 11 in the statement of Kenneth Dagley taken on 25/10/2012



Signature of witness to Inquiry



Signature of person witnessing statement