

# Childrens Court - Child Protection Reforms

## Director of Child Protection Litigation

### Who is the Director?

The *Director of Child Protection Litigation Act 2016* (the Act) establishes a new statutory officer, the **Director of Child Protection Litigation** (DCPL) and the office of the DCPL, who will commence operations **on 1 July 2016**. Mr Nigel Miller has been appointed as the Director of Child Protection Litigation. The Act may be accessed at:

<https://www.legislation.qld.gov.au/LEGISLTN/ACTS/2016/16AC023.pdf>

### What is the Role of the DCPL?

The DCPL is responsible for deciding whether an application for a child protection order should be made, the type of order to be applied for and to litigate the application.

From 1 July 2016, the DCPL will be deemed the applicant for all pending child protection order applications and will be the applicant for all child protection order applications filed from that date.

The DCPL will also be the applicant in other related child protection order matters including the transfer of child protection orders and proceedings to participating states and appeals from decisions about child protection orders.

The Director may also provide advice to, or appear for the Department of Communities, Child Safety and Disability Services (DCCSDS) on its instructions for the following matters: adoption; family law; QCAT reviews; Hague Child Abduction Convention or other matters relating to the safety, wellbeing or protection of a child.

### Where will the Director and staff be located?

The office is located in Brisbane but there are two lawyers located in Cairns and Atherton. The Office of the Director comprises 29 lawyers (including the Director) - who have been appointed from Crown Law, DCCSDS (former court coordinators) and externally; and who have demonstrated experience in child protection or litigation.

## Office of the Child and Family Official Solicitor (OCFOS)

### Who is the OCFOS?

The Office of the Child and Family Official Solicitor (OCFOS) is an in-house legal unit within DCCSDS. Key responsibilities of the OCFOS include:

- providing high quality legal advice and support services to child safety service centres (CSSC) about the chief executive's statutory functions relating to the protection of children;
- applying for temporary assessment orders, court assessment orders and temporary custody orders (emergency orders);
- working with CSSCs to prepare briefs of evidence for child protection matters that are being referred to the DCPL;
- working in partnership with the DCPL to prepare matters for filing in the Childrens Court and in the ongoing review and management of those matters.



## What is the Role of the OCFOS?

The OCFOS is the principal DCCSDS point of contact for the DCPL. The OCFOS is responsible for preparing referrals of child protection matters to the DCPL and for ongoing consultation with the DCPL about that matter. The OCFOS also liaises with CSSCs and the DCPL as necessary to progress child protection matters in a timely manner and in a manner consistent with the best interests of the child

## Where will the OCFOS staff be located?

The OCFOS comprises legal officers and senior advisors in each CSSC, with the majority appointed from the exiting court coordinators. Four senior legal officers are also located across the State who will supervise the legal officers in each CSSC. The Official Solicitor and a small management team is located in Brisbane with the majority of OCFOS officers located across the State in CSSCs.

## What are the main changes?

### Court Appearances

DCPL officers will now appear in all court matters as the applicant in child protection order applications.

As the DCPL is based in Brisbane, lawyers will travel across Queensland to attend mentions, court ordered conferences (COCs) and hearings, when required.

However, DCPL lawyers will use telephone or video link up to attend court mentions where appropriate and with leave of the court, for example when the mention involves a procedural or uncontroversial matter for determination.

DCCSDS officers will appear for emergency orders (court assessment orders, temporary assessment orders and temporary custody orders).

CSSC staff will continue to attend court in situations where they normally would, as requested by the DCPL.

If a staff member from the CSSC does not attend court they will be available by telephone to give information to the DCPL.

### Court Ordered Conferences (COCs)

The DCPL will attend the COC with the CSSC staff who usually attend – that is the child safety officer and team leader.

OCFOS can attend if it is negotiated with the DCPL and the Child Protection Conferencing Unit at the Dispute Resolution Branch.

### Childrens Court Rules 2016

The Department of Justice and Attorney-General has revised the rules of the Childrens Court, which will commence on 1 July 2016.



The Rules provide for a **court case management framework** (Part 7 of the Rules) that will allow the court to actively manage proceedings, minimise delay, clarify issues and evidence and determine who should be a party or participate in the proceeding. A copy of the Rules is available for download at the OQPC website at <https://www.legislation.qld.gov.au/LEGISLTN/SLS/2016/16SL092.pdf>.

### **DCPL - Duty of Disclosure**

From 1 July 2016, the DCPL is subject to a new duty of disclosure. The *Child Protection Reform Amendment Act 2016* inserts new sections 189C to 189E into the *Child Protection Act 1999* (CP Act) to provide that the DCPL has a duty to disclose to parties in the proceeding all documents relevant to the proceeding; and this duty continues until the matter is finalised.

The duty of disclosure applies to all child protection order applications that are on foot on 1 July 2016 and all applications filed after that date.

The duty of disclosure is subject to section 191 of the CP Act that allows the DCPL to refuse to disclose particular documents on certain grounds; where such refusal may be subject to an application to the court by a party who disagrees with the decision of the DCPL.

Part 6 of the new Rules (rules 50 to 61) provide the procedures for how the DCPL will comply with the duty of disclosure, including the provision of a disclosure form that may list documents or classes of documents that are in the possession and control of the DCCSDS and relevant to the proceeding. The list may include documents or classes of documents the DCPL refuses to disclose on the grounds set out in section 191 of the CP Act.

Disclosure will occur between the DCPL and parties to a proceeding and will not involve the court, apart from its consideration of applications made under section 191 of the CP Act regarding a refusal to disclose a document.

### **Participants**

From 1 July 2016, the court has expanded authority under section 113 of the CP Act to make an order or give a direction to allow a significant person in a child's life to take part in the proceeding. Upon an application by a person, the court has discretion to allow a person to do all or some of the things a party to a proceeding can normally do.

Section 113 of the CP Act was amended by the *Child Protection Reform Amendment Act 2016*. Part 5 of the new Rules (rules 35 to 49) provide guidance about who can be a participant and how the person may participate.

### **Transitional arrangements in place up to 30 June 2016**

To become ready for the commencement of the new arrangements, work is currently being undertaken by DCCSDS and DJAG together with Crown Law to ensure that all child protection order files are transferred to the DCPL transition team prior to 1 July 2016.

What this means is that a lawyer from Crown Law may appear at court mentions in a child protection order proceeding with DCCSDS staff prior to 1 July 2016.

## **Contact Details for the DCPL**

### **Director of Child Protection Litigation**

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