Child Protection

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Introduction

Children, people under 18 years of age, have a right to be protected from harm, with families recognised as having the primary responsibility for their upbringing, protection and development. If a child does not have a parent who is able and willing to protect them, the state is responsible for their protection to the extent that families cannot, will not, or do not fulfil their primary responsibility. Child protection is public law.

The Department of Communities, Child Safety and Disability Services (Child Safety) is the lead state government agency responsible for protecting Queensland's children and young people who have been harmed or are at risk of being harmed from abuse and neglect.

Child Safety also works in partnership with other Queensland Government departments, police, non-government organisations and the broader community to deliver child protection services.

Child Protection Legislation Concepts and Principles

The *Child Protection Act 1999* (Qld) (Child Protection Act) attempts to reflect international declarations and conventions along with national and international child protection practice directions and standards in providing for the protection of children.

The Child Protection Act establishes the following child protection system:

- reporting of suspected child abuse or neglect—anyone can contact Child Safety and report concerns about a child who has been, is being or is at risk of being harmed
- investigations and assessments of reported child abuse or neglect—Child Safety must investigate and assess the reported concerns if there is a reasonable suspicion that the child is in need of protection
- ongoing intervention—Child Safety will provide ongoing help under the Child Protection Act once it has been assessed that a child is in need of protection.

Harm to a child can be described as any detrimental effect of a significant nature on their physical, psychological or emotional wellbeing, 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 (s 9 Child Protection Act).

The central concept of the Child Protection Act is whether a child is in need of protection (s 10). This is established when a child:

- has suffered significant harm, is suffering significant harm or is at an unacceptable risk of suffering significant harm in the future
- does not have a parent able and willing to protect them from harm.

The guiding principle for administering the Child Protection Act is that the safety, wellbeing and best interests of a child are paramount (s 5A). In practice, this means that where Child Safety is making a

decision about a child, the most important consideration is what is best for the child, not what is best for the parents or other people in the child's life.

This guiding principle is supported by a series of 14 general principles (s 5B Child Protection Act), which include:

- a child has the right to be protected from harm or risk of harm (s 5B(a))
- a child's family has the primary responsibility for the child's upbringing, protection and development (s 5B(b))
- supporting the child's family is the preferred way of ensuring a child's safety and wellbeing (s 5B(c))
- if a child does not have a parent who is able and willing to protect them, the state is responsible (s 5B(d))
- in protecting a child, the state should only take action that is warranted in the circumstances (s 5B(e))
- if a child is removed from their family, support should be given to the child and their family to allow the child to return if it is in the child's best interests (s 5B(f))
- if a child cannot be returned to their family in the foreseeable future, the child should have long-term alternative care (s 5B(g))
- if a child is removed from their family, as a first option, consideration should be given to placing them with kin (s 5B(h))
- if a child is removed from their family, to the extent that it is possible, the child should be placed with their siblings (s 5B(i))
- a child should only be placed in the care of a parent or other person who has the capacity (including with assistance or support) and is willing to care for them (s 5B(j))
- a child should have stable living arrangements that provide a connection with their family and community to the extent that is in the child's best interests, and provide for their developmental, educational, emotional, health, intellectual and physical needs to be met (s 5B(k))
- a child should be able to maintain relationships with their parents and kin if appropriate (s 5B(l))
- a child should be able to know, explore and maintain their identity and values, including their cultural, ethnic and religious identity and values (s 5B(m))
- a delay in making a decision in relation to a child should be avoided, unless appropriate for the child (s 5B(n)).

The Child Protection Act also includes additional principles for Aboriginal or Torres Strait Islander children:

- the child should be allowed to develop and maintain a connection with their family, culture, traditions, language and community (s 5C(a) Child Protection Act)

- the long-term effect of a decision on their identity and connection with their family and community should be taken into account (s 5C(b)).

Decision-making Powers Regarding Child Protection

The Child Protection Act provides when exercising a power, it should be done in a way that is open, fair and respectful of the rights of each person affected by the exercise of the power (s 5D(1)(a) Child Protection Act).

When making a decision under the Child Protection Act:

- to the extent that it is appropriate, the views of the persons involved, including the child, should be sought and taken into account before the decision is made (s 5D(1)(b))
- if required, help should be given to persons to participate in or understand the decision-making process or to understand a statutory right relevant to the decision, and are able to obtain legal advice or be represented by a lawyer or supported by another person (s 5D(1)(c), 5D(1)(d))
- information about a child affected by a decision should only be shared to the extent that it is necessary and in a way that protects the child's privacy (s 5D(1)(e)).

Obtaining a child's views

When giving a child an opportunity to express their views, language appropriate to the age, maturity and capacity of the child should be used. If required, the child should be given any help, including an appropriate explanation of the decision affecting them, in order to respond to the decision. However, a child is not required to express a view (s 5E Child Protection Act).

Protection Decisions about Aboriginal and Torres Strait Islander Children

When Child Safety is making significant decisions about Aboriginal and Torres Strait Islander children, it must give an opportunity to a recognised entity for the child to participate in the decision-making process (s 6(1) Child Protection Act). A recognised entity can be either an individual or a group of people who are of Aboriginal or Torres Strait Islander descent and have appropriate knowledge of, or expertise in, child protection (s 246I Child Protection Act). When making other decisions, Child Safety must consult with a recognised entity for the child (s 6(2) Child Protection Act).

The Childrens Court

If the Childrens Court exercises power under the Child Protection Act, it must have regard to:

- the views about the child and about Aboriginal tradition and Island custom relating to the child from a recognised entity, or if not practicable, members of the community to whom the child belongs
- the general principle that an Aboriginal or Torres Strait Islander child should be cared for within an Aboriginal or Torres Strait Islander community (s 6(4)(b) Child Protection Act).

As far as is reasonably practicable, Child Safety must try to conduct all consultations, negotiations, meetings and proceedings involving Aboriginal and Torres Strait Islander people in a way and in a place that is appropriate to Aboriginal tradition or Island custom (s 6(5) Child Protection Act).

Indigenous child placement principle

If an Aboriginal or a Torres Strait Islander child is removed from their family, the Indigenous child placement principle (s 83 Child Protection Act) requires Child Safety to place the child, in order of priority, with:

- a member of the child's family
- a member of the child's community or language group
- another Aboriginal person or Torres Strait Islander who is compatible with the child's community or language group
- another Aboriginal person or Torres Strait Islander.

If Child Safety decides there is no appropriate person mentioned above in whose care the child may be placed, then Child Safety must give proper consideration to placing the child, in order of priority, with a person who lives:

- near the child's family
- near the child's community or language group.

If Child Safety places an Aboriginal or Torres Strait Islander child in the care of a family member or other person who is not Aboriginal or Torres Strait Islander, Child Safety must give proper consideration to whether the person is committed to helping the child to:

- maintain contact with their parents and other family members
- maintain contact with their community or language group
- maintain a connection with their culture
- preserve and enhance the child's sense of Aboriginal or Torres Strait Islander identity.

Reporting Concerns about Child Neglect or Abuse

Anyone can contact Child Safety to report concerns about a child (suspected child abuse or neglect), if they reasonably suspect a child may be in need of protection (s 13A Child Protection Act). The Child Protection Act provides that when a person is deciding if they have a reasonable suspicion, they may consider:

- whether there are detrimental effects on the child's body or the child's psychological or emotional state that are evident to the person or they consider are likely to become evident in the future
- the nature and severity of the detrimental effects and the likelihood that they will continue
- the child's age.

When a person is deciding if they have a reasonable suspicion, they may be informed by an observation of the child, other knowledge about the child or any other relevant knowledge, training or experience that the person may have (s 13C Child Protection Act).

Mandatory notifiers

The Child Protection Act also provides if any person (a relevant person), who is a doctor, registered nurse, teacher, police officer or child advocate with the Office of the Public Guardian, forms a reportable suspicion about a child, they must give a written report to Child Safety (ss 13E, 13G). Child Safety employees and employees of licensed care services must also give a written report to Child Safety if they form a reportable suspicion about a child in care (s 13F).

A reportable suspicion about a child is a reasonable suspicion that the child:

- has suffered significant harm, is suffering significant harm or is at an unacceptable risk of suffering significant harm in the future caused by physical or sexual abuse
- may not have a parent able and willing to protect them from the harm (s 13E(2) Child Protection Act).

The written report to Child Safety must include the basis on which the person has formed the reportable suspicion and to the extent of the person's knowledge:

- the child's name, sex, age and details how to contact the child
- details of the harm to which the reportable suspicion relates and the identity of the person suspected of causing the child harm
- details of any other person who may be able to give information about the harm (s 13G Child Protection Act).

A person is not required to give a report, if it might incriminate the person, or they know Child Safety is aware of the matter.

A relevant person is allowed to confer with a colleague that they work with to assist them in forming a reportable suspicion, to give a written report to Child Safety or to take appropriate action to deal with the suspected harm to a child (s 13H Child Protection Act).

Protection from liability for giving information about alleged child harm

The Child Protection Act provides for protection from civil and criminal liability, or under an administrative process, for persons who, acting honestly and reasonably, notify or give information to Child Safety about suspected harm to a child (s 197A Child Protection Act).

The Child Protection Act also provides that merely because a person gives the notification or information, the person cannot be held to have:

- breached any code of professional etiquette or ethics
- departed from accepted standards of professional conduct (s 197A(3)).

If the person would otherwise be required to maintain confidentiality under an Act, oath or rule of law or practice, the person:

- does not contravene the requirement by giving the information
- is not liable to disciplinary action for giving the information (s 197A(4)(b) Child Protection Act).

As a general rule, the Child Protection Act provides for the confidentiality of the identity of a person who notifies or gives information about suspected harm to a child (s 186 Child Protection Act).

Investigation and Assessment of Reported Child Abuse or Neglect

If Child Safety receives information about alleged harm or risk of harm to a child, and reasonably suspects the child is in need of protection, they must investigate. If Child Safety reasonably believes that the alleged harm may include a criminal offence relating to the child, such as sexual abuse, they must inform police regardless of whether or not Child Safety suspects the child is in need of protection (s 14 Child Protection Act).

As part of the investigation, Child Safety will complete a safety assessment to determine whether a child can remain with their family during the investigation. If the safety assessment identifies immediate harm indicators, Child Safety will consider what actions could be taken as part of a safety plan that will keep the child safe with their family.

Informing a child's parents and long-term guardians about allegation of harm and outcome of investigation

If Child Safety decides to investigate an allegation of harm or risk of harm to a child, they must:

- give at least one of the child's parents the details of the allegations of harm
- as soon as practicable, tell them about the outcome of the investigation
- if a child has a long-term guardian, give them the details of the allegations of harm and, as soon as practicable, tell them about the outcome of the investigation, and if satisfied it would be in the child's best interests to do so, must also give at least one of the child's parents the details of the alleged harm and tell them about the outcome of the investigation.

However, if Child Safety reasonably believes telling the parents or long-term guardians may jeopardise the investigation of a criminal offence for the alleged harm or may expose the child to harm, they are only required to advise at least one of the parents or long-term guardians to the extent considered reasonable and appropriate in the circumstances (s 15 Child Protection Act).

Consent of parents regarding investigations and assessments

During an investigation of an allegation of harm to a child, Child Safety must give consideration to obtaining the parents' agreement to any actions necessary as part of the investigation to assess whether the child is a child in need of protection.

Safety plan for the child

Child Safety may make a safety plan, which is a written signed agreement that documents what has been agreed with the family to keep the child safe during the investigation.

The safety plan will include:

- what the parents and other people involved must do to keep the child safe at home
- who will be responsible for any agreed actions
- how the plan will be monitored.

Out-of-home Care for a Child during an Investigation

If Child Safety determines that a child needs to be in out-of-home care during the investigation, Child Safety should consider entering into an assessment care agreement for the child to be placed in out-of-home care.

An assessment care agreement (s 51Z(a) Child Protection Act) is available when:

- Child Safety reasonably suspects the child is a child in need of protection
- an investigation is necessary to assess the child's protection needs
- Child Safety is satisfied that it is necessary for the child to have some protection while the investigation is carried out.

An assessment care agreement is an agreement between the parents and Child Safety for the short-term out-of-home care of the child. Child Safety may enter into an agreement with only one of the child's parents, if it is impractical to obtain the consent of the other parent to the agreement before entering the agreement.

Child Safety may not enter into an agreement with only one of the child's parents if another parent refuses to enter the agreement (s 51ZE Child Protection Act).

Child Safety must obtain and have regard to the child's views before entering into the care agreement, unless the child is unable to form and express views, taking into account the child's age and ability to understand (s 51ZE Child Protection Act).

An assessment care agreement should be in the approved form (in writing) and signed by the parties and must state:

- the name of the carer
- the period of the agreement
- where the child will be living
- contact arrangements between the child and parents while the agreement is in place
- the types of decisions relating to the child for which the parents must be consulted (s 51ZF Child Protection Act).

An assessment care agreement must not be for more than 30 days and cannot be extended (s 51ZH Child Protection Act).

The parents or Child Safety may end an assessment care agreement on at least two days notice (s 51ZI Child Protection Act). If a parent ends the agreement, Child Safety will need to determine:

- if investigation and assessment needs to continue
- if satisfied the child is a child in need of protection and a child protection order is appropriate and desirable for the child's protection, the matter will be referred to the Director of Child Protection Litigation.

The care agreement will end automatically if a child protection order is made granting custody or guardianship of the child to Child Safety or to someone else (s 51ZI Child Protection Act).

Gaining Contact with a Child in Need of Protection

A police officer may use reasonable force to enter and search a place (including land, premises, a vehicle, boat or aircraft) to have contact with the child if:

- they have been denied contact with the child or cannot reasonably gain entry to a place where the officer reasonably believes the child is
- they have a reasonable suspicion that the child may be at risk of immediate harm or is likely to leave or be taken from the place and suffer harm if the officer does not take immediate action.

The officer may remain in the place and have contact with the child for as long as the officer reasonably considers necessary for investigating the allegation (s 16 Child Protection Act).

Contact with a child at a school, kindergarten or day-care centre

During an investigation of an allegation of harm to a child, a Child Safety officer or police officer may have contact with the child at a school, kindergarten, day-care, or at another place where education and care or regulated education and care is provided without the child's parents or long-term guardians being told about it, if they reasonably believe:

- it is in the child's best interest that they have contact with them before the child's parents or long-term guardians are told about the investigation
- the child's parents or long-term guardians knowing in advance about the proposed contact with the child is likely to adversely affect or otherwise prevent the effective conduct of the investigation (s 17 Child Protection Act).

Child Safety custody

A Child Safety officer or police officer can take a child into Child Safety custody for up to eight hours if they reasonably believe:

- the child is at risk of harm
- the child is likely to suffer harm if the officer does not immediately take the child into custody (s 18 Child Protection Act).

The officer must then:

- as soon as possible apply for either a temporary protection order or a temporary custody order
- if reasonable, also arrange for a medical examination or treatment of the child
- as soon as practicable, take reasonable steps to tell at least one of the child's parents or long-term guardians that the child has been taken into custody and the reasons for it (s 20 Child Protection Act).

Moving a child to a safe place

During an investigation of an allegation of harm to a child, if the child is under 12 years of age and a parent or family member cannot be contacted, the child may be moved to a safe place. This is a temporary arrangement for children who do not need to be taken into custody and will only continue until the child's family can resume the care of the child. An example would be where a child has been left at a day-care centre or after-school care facility that is about to close, and no-one has collected the child (s 21 Child Protection Act).

Family Support Services

The Child Protection Act provides that Child Safety also has the responsibility 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 (s 159B(a) Child Protection Act).

Child Safety is responsible for ensuring that ways exist to coordinate the roles and responsibilities of service providers in promoting the protection of children, child protection services and family support services (s 159G(1)(a) Child Protection Act). The intention is to ensure that the agencies and service providers involved with children and families are coordinated and can share information to provide children with the opportunity to remain in a stable, functioning family environment without the need to enter the statutory child protection system before they can receive support. Non-statutory secondary services that can support at-risk families include:

- Family and Child Connect
- intensive family support services
- domestic and family violence support services
- specialist services and supports such as mental health services, drug and alcohol counselling and housing services.

Information exchange

Child Safety is able to request and exchange information with other agencies and service providers about a child's protection or care needs to ensure the safety of the child, and a coordinated and responsive service delivery that meets the needs of the child and their family (ss 159A-H, 159M-R Child Protection Act). This includes the following agencies:

- The Public Guardian

- Corrective Services
- Community Services
- Disability Services
- Education Queensland including all schools
- Housing Services
- Queensland Health
- Queensland Police Service
- other service providers.

Suspected Child Abuse and Neglect Assessment

When required, Child Safety can refer a child's matter to the Suspected Child Abuse and Neglect (SCAN) team, which operates throughout Queensland. Each SCAN team includes representatives who have knowledge and experience in child protection from the following agencies:

- Child Safety
- Police
- Queensland Health
- Department of Education
- a recognised entity when discussing Aboriginal and Torres Strait Islander children
- if needed, other service providers and professionals, for example the child's counsellor.

The purpose of a SCAN team is to ensure that there is:

- timely sharing of information about the child and their family and other involved people between SCAN team members
- planning and coordination of actions to assess and respond to the child's protection needs
- a holistic and culturally responsive assessment of the child's protection needs.

The SCAN team will try to agree on recommendations to give Child Safety about assessing and responding to the protection needs of the child, and each agency involved will take action under the recommendations to ensure there is a coordinated response to the protection needs of the child. However, any continuing needs of the child are the responsibility of Child Safety (ss 159I-L Child Protection Act).

The Protection of Unborn Children

If, before a child is born, Child Safety suspects the child may be in need of protection after birth, they may take action they consider appropriate. This can include investigating the circumstances and assessing whether the child will need protection after they are born.

Child Safety can also offer help and support to the pregnant woman, and if the unborn child is an Aboriginal or Torres Strait Islander child, Child Safety, with the consent of the pregnant woman, will consult with the appropriate recognised entity (s 21A Child Protection Act).

Child Protection Intervention without Parental Agreement

If Child Safety needs to conduct further investigations to determine whether the child is in need of protection, and parental consent to further investigations cannot be obtained, the Child Protection Act enables Child Safety or police to apply for assessment orders.

If a child has been taken into custody during the investigation phase, then Child Safety has eight hours from the time the child is taken into custody to apply for an assessment order in relation to the child (s 18 Child Protection Act); otherwise the child must be returned to the parents.

Assessment orders

There are two different types of assessment orders:

- temporary assessment order (TAO) (ch 2 pt 2 Child Protection Act)
- court assessment order (CAO) (ch 2 pt 3 Child Protection Act).

Temporary assessment order

An application for a TAO is made directly to a magistrate and can be decided without notifying the parents or hearing them on the application (s 26 Child Protection Act).

The application must be sworn and state:

- the grounds upon which it is made
- the nature of the order sought
- the proposed arrangements for the child if they are to be in Child Safety's custody under the TAO (s 25 Child Protection Act).

An application may be made by telephone, facsimile or other means of communication in urgent circumstances (s 30 Child Protection Act). Generally, a TAO will last for a maximum of three business days, but can be extended to the end of the next business day. A TAO cannot be extended more than once (ss 29, 34 Child Protection Act).

A TAO can only be made if the magistrate is satisfied that:

- an investigation is necessary to assess whether the child is in need of protection
- the investigation cannot be properly carried out without the order
- reasonable steps have been taken to obtain the consent of at least one of the parents or long-term guardians, or that it is not practicable to take steps to obtain the consent (s 27 Child Protection Act).

A TAO can provide for any of the following:

- authorise Child Safety or a police officer to have contact with the child
- provide for Child Safety to have temporary custody of the child
- authorise Child Safety or a police officer to enter a place to find the child
- authorise medical examinations or treatment of the child
- direct a parent of the child not to have contact with the child or to only have supervised contact with the child (s 28 Child Protection Act).

Once a TAO is made, Child Safety must:

- give a copy of the order to at least one parent or any long-term guardian
- explain the terms and effect of the order
- tell them about the right of appeal and if they want to appeal, that it should be started immediately because of the duration of the order, and how to appeal
- tell the child about the order (s 32 Child Protection Act).

Court assessment order

An application for a court assessment order (CAO) is made to the Childrens Court in circumstances similar to TAOs, but are available where the investigation cannot be completed within three business days (s 38 Child Protection Act).

The application must be sworn and filed in the court and state:

- the grounds on which it is made
- the nature of the order sought
- comply with the rules of the court (s 39 Child Protection Act).

After the application is filed, a copy must be served on each parent or long-term guardian personally and the child must also be told about the application (s 41 Child Protection Act). The parents are respondents to the application. If personal service is not practicable, the application can be left at or sent by post to the last known residential address.

The application can be heard in the absence of the parents if they have been given reasonable notice of the hearing, or if the court is satisfied it was not practicable to give the parents notice of the hearing (s 43 Child Protection Act).

A CAO can only be made for a period of four weeks, but can be extended for a further four-week period (ss 47, 49 Child Protection Act).

The Childrens Court can make a CAO if satisfied:

- that an investigation is necessary to assess whether the child is in need of protection
- the investigation cannot be properly carried out without the order (s 44 Child Protection Act).

A CAO can provide for any of the following:

- authorise Child Safety or a police officer to have contact with the child
- authorise medical examinations or treatment of the child
- provide for Child Safety to have temporary custody of the child
- authorise Child Safety or a police officer to enter a place to find the child
- make provision about the child's contact with their family during Child Safety's custody of the child
- direct a parent of the child not to have contact with the child or to only have supervised contact with the child (s 45 Child Protection Act).

Once a CAO is made, Child Safety must:

- give the parents, any long-term guardians and the child a copy of the order
- explain the terms and effect of the order
- tell them about the right of appeal and if they want to appeal, that it should be started within 28 days after the order is made
- state how to appeal (s 48 Child Protection Act).

A Child in Need of Protection

If Child Safety at the end of the investigation is satisfied that a child is in need of protection and needs ongoing help under the Child Protection Act, Child Safety is then obligated to intervene through either:

- an agreement with the child's parents or
- if not appropriate in the circumstances, to apply for a temporary custody order to ensure the protection of the child while deciding the most appropriate action to meet the child's ongoing protection and care needs.

Child Safety must also develop a case plan for a child that is in need of protection and needs ongoing help under the Child Protection Act.

Intervention with parental agreement

At the end of an investigation, Child Safety must decide whether the child requires ongoing protection under the Child Protection Act. Any help that Child Safety provides to the family to meet the child's protective needs, including any ongoing help, is called intervention.

If Child Safety decides that some kind of intervention is required, then Child Safety must give consideration to obtaining the parents' agreement to the proposed intervention as a first preference.

If the parents agree to the intervention, then Child Safety must encourage and facilitate the parent and child's participation in decisions about the most appropriate intervention for the child and how the intervention is to be carried out (ss 51ZB, 51ZC Child Protection Act).

An intervention with parental agreement will include Child Safety undertaking work with the family, as well as referring them to appropriate services to address the identified child protection needs in a timely way.

If Child Safety determines that a child needs to be in out-of-home care during the investigation, Child Safety should consider entering into a child protection care agreement for the child to be placed in out of home care.

Child protection care agreement

A child protection care agreement (s 51Z(b) Child Protection Act) is available when Child Safety is satisfied that the child is a child in need of protection and needs ongoing help under the Child Protection Act, and there is no child protection order in force granting custody or guardianship of the child to anyone.

A child protection care agreement is an agreement between the parents and Child Safety for the short-term out-of-home care of the child. Child Safety may enter into an agreement with only one of the child's parents, if it is impractical to obtain the consent of the other parent.

Child Safety may not enter into an agreement with only one of the child's parents if another parent refuses to enter the agreement (s 51ZE Child Protection Act).

Child Safety must obtain and have regard to the child's views before entering into the care agreement, unless the child is unable to form and express views, taking into account the child's age and ability to understand (s 51ZE Child Protection Act).

A care agreement should be in the approved form (in writing) and signed by the parties and must state:

- the name of the carer
- the period of agreement
- where the child will be living
- contact arrangements between the child and parents while the agreement is in place
- the types of decisions relating to the child for which the parents must be consulted (s 51ZF Child Protection Act).

The initial period of operation of the agreement must not be for more than 30 days. However, the agreement can be extended (more than once) with the parents' agreement for further periods. It must not be extended if the total of the periods would be more than six months during any twelve-month period (s 51ZH Child Protection Act).

Child protection care agreements are intended to be short-term arrangements to allow the parents time to address the child protection concerns. The effect of a child protection care agreement is that while the agreement is in force, Child Safety has custody of the child (s 51ZG Child Protection Act). The parents will retain guardianship.

The parents or Child Safety may end a care agreement on at least two days notice (s 51ZI Child Protection Act). If a parent ends the agreement and Child Safety is satisfied the child is a child in need of protection, and a child protection order is appropriate and desirable for the child's protection, the matter will be referred to the Director of Child Protection Litigation.

The care agreement will end automatically if a child protection order is made granting custody or guardianship to Child Safety or to someone else (s 51ZI Child Protection Act).

Temporary custody order

A temporary custody order (TCO) is similar to a TAO. The purpose of a TCO is to authorise the action necessary to ensure the immediate safety of a child while Child Safety decides the most appropriate action to the child's ongoing protection and care needs, which could include applying for a child protection order (s 51AB Child Protection Act).

A TCO application is made directly to a magistrate, and must be sworn and state the following:

- the grounds upon which it is made
- the nature of the order sought
- the proposed arrangements for the child's care (s 51AC Child Protection Act).

A magistrate may decide an application for a TCO without notifying the parents or hearing them on the application (s 51AD Child Protection Act).

The magistrate may make a TCO if satisfied that:

- a child is at an unacceptable risk of suffering harm if the TCO is not made
- within the term of the order, Child Safety will decide and begin taking appropriate action to meet the child's care and protection needs (s 51AE Child Protection Act).

A TCO may last for a maximum of three business days (s 51AG Child Protection Act), but can be extended to the end of the next business day. A TCO cannot be extended more than once (s 51AH Child Protection Act).

A TCO can provide for any of the following:

- authorise Child Safety or a police officer to have contact with the child
- provide for Child Safety to have temporary custody of the child
- authorise Child Safety or a police officer to enter a place to find the child
- authorise medical examinations or treatment of the child
- direct a parent of the child not to have contact with the child or to only have supervised contact with the child (s 51AF Child Protection Act).

Once a TCO is made, Child Safety must:

- give a copy of the order to at least one parent
- explain to the parent the terms and effect of the order

- tell the parent about the right of appeal and if the parent wants to appeal, that it should be started immediately because of the duration of the order, and how to appeal
- tell the child about the order (s 51AK Child Protection Act).

Child Protection Order

If, at the end of the investigation, Child Safety is satisfied that a child is in need of protection and a child protection order is appropriate and desirable for the child's protection, the matter must be referred to the Director of Child Protection Litigation (DCPL) (s 15 *Director of Child Protection Litigation Act 2016* (Qld) (DCPL Act)).

Child Safety must then give the DCPL a brief of evidence about the child that includes:

- the reasons why the child is a child in need of protection
- the reasons why a child protection order is appropriate and desirable for the child's protection
- the type of child protection order Child Safety considers appropriate and desirable for the child's protection (s 16 DCPL Act).

Child Safety will also give all relevant documents and evidence to the DCPL.

The DCPL will then decide to:

- apply for a child protection order for the child or
- refer the matter back to Child Safety (s 17 DCPL Act).

If the DCPL decides to apply to the Childrens Court for a child protection order for a child, the application must state the grounds upon which it is made and the nature of the order sought (s 54 Child Protection Act).

After the application is filed, the DCPL must serve a copy on each parent personally (s 56 Child Protection Act). The parents then become respondents to the application. The child is also a party to the proceedings and so must be told about the application; however, they should only be served with copies of the documents if it is appropriate in the circumstances having regard to the child's age or ability to understand the information (s 195 Child Protection Act).

An application for a child protection order can only be heard in the absence of the child's parents if the parents have been given reasonable notice of the hearing and fail to attend the hearing, or the court is satisfied that it was not practicable to give the parents notice of the hearing (s 58 Child Protection Act).

Types of child protection orders

There are four main types of child protection orders set out in s 61 of the Child Protection Act. The different types of orders are:

- directive orders—these orders involve the child remaining at home and can include a direction to a parent to do or not to do something directly related to the child's protection and/or a direction about the type of contact that the parent can have with the child

- supervision orders—these orders involve the child remaining at home and require Child Safety to supervise the child's protection in relation to specific matters stated in the order
- custody orders—these orders give a suitable person or Child Safety the right to care for the child on a day-to-day basis including the right and responsibility to make decisions about the child's daily care
- guardianship orders—these orders give a suitable person or Child Safety guardianship of the child and also include all the powers, rights and responsibilities in relation to the child that a person with parental responsibility for the child would have (e.g. the right to make long-term decisions about the child's care, welfare and development).

The court may make any combination of orders that it considers appropriate in a particular case.

Length of child protection orders

Every child protection order must state how long the order is to last (s 62 Child Protection Act). There are three main time frames for child protection orders:

- interim orders—these orders are normally made during the course of the proceedings before the Childrens Court. It is a temporary order and will usually only last until the matter is next in court. An interim order can include granting temporary custody of a child to Child Safety or a suitable member of the child's family (s 67 Child Protection Act)
- short-term orders—these orders can last for any period of time up to a maximum of two years. Short-term orders can be directive orders, supervision orders, custody orders or guardianship orders. However, directive and supervision orders can only be made for a maximum of 12 months. Custody of a child on a short-term order can be granted to either a suitable member of the child's family (other than the child's parents) or Child Safety. Guardianship of a child on a short-term order can only be granted to Child Safety
- long-term orders—these orders can only be guardianship orders, and they grant guardianship of the child until the child turns 18 years of age. Long-term guardianship can be granted to a suitable member of the child's family (other than the child's parents), another suitable person who is not part of the child's family (e.g. a foster carer) or to Child Safety.

Making a child protection order

A Childrens Court may make a child protection order if it is satisfied that (s 59 Child Protection Act):

- the child 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 (s 10 Child Protection Act)
- the order is appropriate and desirable
- there is an appropriate case plan in place for the child, and a copy of the case plan has been filed in court. It is not relevant whether or not all persons who participate in the development or revision of the plan agreed with the plan

- if the application is contested, a court-ordered conference has been held to try to settle the matter, or because of exceptional circumstances, it would be inappropriate to require the parties to hold a conference
- the child's wishes or views, if they are able to be ascertained, have been made known to the court
- the child's protection is unlikely to be ensured by a less intrusive order.

Before making a child protection order granting custody or guardianship of a child to a person other than Child Safety, the court must have regard to any report given or recommendation made by Child Safety about the person. These reports may include a report about the person's criminal, domestic violence and traffic histories.

Before extending or making a further short-term child protection order granting either custody to Child Safety or a suitable person, or guardianship to Child Safety, the court is required to take into account how the extension or further order will affect the child's need for emotional security and stability.

In addition, before making a child protection order granting long-term guardianship of a child, the court must also be satisfied that:

- there is no parent who is able and willing to protect the child within the foreseeable future
- the child's need for emotional security will be best met in the long-term by making the order.

The court must not grant long-term guardianship of the child to a person who is not a member of the child's family, unless the child is already in custody or guardianship under a previous child protection order. Also, long-term guardianship cannot be granted to Child Safety if it can properly be granted to another suitable person (s 59 Child Protection Act).

If the DCPL applies for an extension of a short-term child protection order or for a new successive order, and the court declines to make the order, the court on the court's own initiative or on the application made orally or in the approved form of a party to the proceeding, may make a Transition Order (TO). A TO can provide that the child protection order ends on a later day, no more than 28 days after the court's decision to decline to make a substantive child protection order. If a party applies for a TO and the court adjourns the proceeding before deciding the application, the child protection order continues in force, despite the court's decision to refuse to extend the application or grant a further child protection order.

Court Proceedings in Child Protection Matters

The court must have regard to particular principles and state reasons.

The court must decide child protection applications having regard to the principles stated in ss 5A to 5C of the Child Protection Act to the extent the principles are relevant; and when making a decision, the court must state its reasons for the decision (s 104 Child Protection Act).

Rules of evidence

When making a determination about the safety, wellbeing and best interests of the child, the court is not bound by the rules of evidence and may inform itself in any way it thinks appropriate (s 105 Child Protection Act). It may take into consideration social and family assessment reports, medical reports and any affidavit material or information provided by the parties. This allows the admission of hearsay evidence or the relaxation of other rules of evidence at the court's discretion. Of course, there may still be some argument as to the weight to be given to such evidence. The court needs to only satisfy itself of a matter on the balance of probabilities. The inquisitorial nature of the court's role in child protection matters was considered in the Supreme Court case of *Dale v Scott; Ex Parte Dale* [1985] 1 Qd R 406, which followed an earlier case *Re T (an infant)* [1982] Qd. R 475, that where a court is primarily concerned with the welfare of a child, it should be able to inform itself of the facts which are relevant to the matter.

Evidence given by a child

A child can only be called to give evidence with the leave (permission) of the court. Leave will only be granted if the child is at least 12 years of age, is represented by a lawyer and agrees to give evidence. If a child gives evidence, cross-examination will be allowed only with the further leave of the court (s 112 Child Protection Act).

Legal representation

The child has the right to appear in person or be legally represented by either or both a direct representative and a separate representative. The child's parents and other parties may also appear in person or be represented by a lawyer (s 108 Child Protection Act). If a parent is not represented, then the court may only proceed if the court is satisfied the parent has had reasonable opportunity to obtain legal representation (s 109 Child Protection Act).

Separate representative of a child

In a child protection proceeding, if the court considers it is necessary in the child's best interests, may order that a child be separately represented by a lawyer (a separate representative). Without limiting when a court may appoint a separate representative, the court must consider it where the child or their parents contest an application for a child protection order (s 110 Child Protection Act). The court can decide to make such an order, or one of the parties can apply for a separate representative to be appointed.

The separate representative must:

- to the extent that is appropriate, taking into account the child's age and ability to understand, meet with the child, explain their role and help the child to take part in the proceeding
- as far as possible, present the child's views and wishes to the court.

The separate representative must act in the child's best interests regardless of instructions from the child. They will act independently in the best interests of the child, but may request information from Child Safety and from the other parties to the proceedings.

They may engage an independent report writer to prepare a social assessment report for the court about the child and their protective needs. In preparing the report, the report writer will usually speak to the child, each of the parties (including Child Safety) and other professionals involved in the child's life (e.g. the child's school or doctor). This report writer may be a social worker, psychologist or psychiatrist, as the separate representative considers appropriate in the circumstances (s 98 Child Protection Act).

The separate representative will take part in family group meetings, conferences and court appearances and may make submissions on which orders and what interventions they consider to be in the child's best interests.

A separate representative, whilst not a party to the proceedings, must do anything required to be done by a party and may do anything permitted to be done by a party. Further, the parties to the proceeding must act in relation to the proceeding as if the separate representative were a party to the proceeding, and the role of a separate representative ends when the application is decided or withdrawn or, if there is an appeal in relation to the application, when the appeal is decided or withdrawn (s 110 Child Protection Act).

Direct legal representation of the child

A direct legal representative is not the same as a separate representative. If the child engages a lawyer to act on their behalf in the proceedings, this lawyer is a direct representative and would act on the child's instructions and is an advocate for the child's views and wishes.

Non-parties to a court proceeding

On an application by a person who is not a party to a proceeding, the court may, by order, allow the person to take part in the proceeding by doing all or some of the things that a party is or may be allowed to do.

Before deciding the application of a non-party to take part in the proceeding, the court must:

- give the other parties a reasonable opportunity to make submissions about the person participation
- consider the extent to which the person may be able to inform the court about a matter relevant to the proceeding, and the person's relationship with the child.

An order allowing a non-party to take part in the proceeding must state:

- how the person may take part
- whether the participation is allowed until the proceeding ends or only for a stated part of the proceeding
- whether the non-party is subject to conditions and may be required to do a thing that a party is or may be required to do
- whether a provision or all provisions of the Child Protection Act apply in relation to the person as if they were a party.

A non-party may be represented by a lawyer (s 113 Child Protection Act).

Hearing of applications together

The court may hear two or more applications for an order together if the court considers it is in the interests of justice to do so. This is even though the parties, or all of the parties to the proceedings are not the same. The court may decide to do this at any time before the applications are decided on its own initiative or on the application of a party to the proceeding.

Adjournments and interim orders

During the course of the proceedings, it may be necessary for the matter to be adjourned. If so, the court may make one or more of the following orders for the period of the adjournment (ss 66–68, 110 Child Protection Act):

- to prepare a written social assessment report about the child and the child's family and file it in court
- to authorise a medical examination or treatment of the child and require a report to be filed in court
- to arrange the child's contact with their family
- to require Child Safety to convene a family group meeting to develop or revise a case plan to be filed in court
- to hold a conference between the parties. The purpose of the conference is to try to identify the issues in dispute and to try to resolve them
- to appoint a separate legal representative for the child
- to allow (where an interim custody order has not been made) an authorised officer or police officer to have contact with the child, to authorise an authorised officer or police officer to find the child by entering and searching any place the officer reasonably believes the child is.

Extension, Variation and Revocation of Child Protection Orders

Before an order ends, the Director of Child Protection Litigation can apply to extend, vary or revoke a child protection order.

A child's parent (including persons who have custody or guardianship of the child) or the child may also apply to vary or revoke the order before it ends. However, if these people are unsuccessful on the first application, they will need the leave of the court to bring a further application to vary or revoke a child protection order (ss 64–65 Child Protection Act).

A child protection order may only be revoked if the court is satisfied that the order is no longer appropriate and desirable for the child's protection. The court may have regard to a contravention of the child protection order or the Child Protection Act and, if the application is to revoke a long-term guardianship order, must have regard to the child's need for emotional security and stability.

Appeals

Appeals about decisions made by the Childrens Court must be made within 28 days of the decision being made (s 118 Child Protection Act). The court hearing the appeal may extend the period for filing the notice of appeal in certain circumstances.

If the original application was heard by a magistrate, appeals are made to a judge of the Childrens Court of Queensland (usually a District Court judge). If the application was heard by a judge of the Childrens Court, appeals are heard by the Court of Appeal of Queensland.

The court hearing the appeal may stay (put on hold) the decision of the lower court on the reasonable conditions the court considers appropriate until the appeal is decided (s 119 Child Protection Act).

An appeal is usually decided on the evidence and proceedings from the lower court, but may also be heard afresh, in whole or part (s 120 Child Protection Act).

Case Plans for Children in Need of Protection

A child who is in need of protection and ongoing help under the Child Protection Act must have a case plan. A case plan is a written document that should provide a clear statement of the goal of Child Safety's ongoing help under the Child Protection Act. It will also identify the child's assessed protection needs along with how and who will be responsible for addressing them. Case plans must also include:

- arrangements about where the child will live
- what services are to be provided to meet the child's protection and care needs and to promote the child's future wellbeing
- provide for the child's contact with their family group or other persons they connected with
- provide for the maintaining of the child's ethnic or cultural identity (s 51B Child Protection Act).

A case plan is normally developed at a special meeting called a 'family group meeting', which is convened by Child Safety.

Child Safety should encourage and facilitate the involvement of the following people in the meeting:

- the child if appropriate
- the child's parents
- other appropriate members of the child's family group
- other people the child has a significant relationship with (e.g. the child's carer)
- any legal representative of the child
- a recognised entity if a child is an Aboriginal or Torres Strait Islander
- other people that are likely to make a useful contribution to the case plan (e.g. teachers or medical professionals) (s 51L Child Protection Act).

To ensure that the people in the meeting can hold open discussions without fear, what is said in the meeting or what is recorded in a case plan cannot be used in any criminal proceedings before a court, other than with the consent of all persons in the meeting, or mentioned in the case plan, unless it relates to an offence committed during the meeting. Also, a person must not be taken to have admitted anything alleged about the person only because the person participated in the development of, or agreed to, a case plan (ss 51YA–51YB Child Protection Act).

A case plan must be reviewed at least every six months (s 51V Child Protection Act), unless the child has a long-term guardian (other than the chief executive). Child Safety must give the above listed people and a relevant service provider reasonable opportunity to participate in the review of the case plan, but this does not have to occur through a family group meeting (s 51W Child Protection Act). A child who has a long-term guardian (other than the chief executive), is to be given an opportunity at least once every 12 months to make comments or queries, or ask for a review of their case plan. The child, a parent or long-term guardian at any time may ask Child Safety to review the case plan. Child Safety may then decide not to review the plan if satisfied that it would not be appropriate in all the circumstances. Otherwise, it must review the plan. The decision not to review a plan is a reviewable decision, and Child Safety is required to give a written notice.

Reviewing a Child Safety Decision

Once Child Safety becomes involved with a family, they may make decisions in accordance with the type of order that has been made. For example, where a custody order has been made, Child Safety will make decisions about where the child will live and what kind of contact the child will have with their family. This is the case even where the order is an interim order.

The Child Protection Act requires Child Safety to consider the views of the parents and the child when making decisions. However, Child Safety is not bound to follow the child's or the parents' wishes.

The following decisions that are made by Child Safety are reviewable:

- refusing a request to review a case plan if a child has a long-term guardian
- what a parent must do under a directive order
- who the child will live with
- not to inform the parents of the child's address
- to restrict or impose conditions on contact (e.g. that contact be supervised)
- to remove the child from the care of a particular carer.

If the child, their parents, a member of the child's family in case of a contact decision or the carer do not agree with a decision in relation to one of the above things, then they can apply to the Queensland Civil and Administrative Tribunal (QCAT) to have Child Safety's decision reviewed (s 247 Child Protection Act). Not every decision Child Safety makes is able to be reviewed (see sch 2 of the Child Protection Act for a list of reviewable decisions). Information on what decisions can be reviewed is available from QCAT.

Complaints about care provided to a child under a child protection order can be made to the Office of the Public Guardian. There is also an internal Child Safety complaints process.

Interface of the Child Protection Act and the Family Law Act

An existing family law order does not affect the ability of the Childrens Court to make a child protection order or stop Child Safety from intervening with a family and dealing with the child protection issues, including taking the child into care.

Once a child protection order is made, it will override a current family law order. For example, if a child protection order is made that says a parent can only have contact with the child if it is supervised by Child Safety, then that child protection order will override any earlier family law order giving the parent unsupervised time with the child.

If a child protection order is already in place, parents can start family law proceedings; however, no family law orders can be made in relation to the child unless the order is worded so that it comes into effect when the child protection order ends or Child Safety consents to the family law application proceeding (s 69ZK *Family Law Act 1975* (Cth)).

If family law proceedings are commenced in the Family Law Court, and that court becomes aware that child protection proceedings are taking place, and a child protection order is likely to be made, then the Family Law Court may, and usually will, adjourn the family law proceedings until the child protection proceedings are finalised.

In some circumstances, Child Safety may consider one parent of a child is not able and willing to protect the child from unacceptable risk of harm, but another parent or relative is. Child Safety may assist that other parent or relative to care for the child, but take no formal steps to initiate child protection proceedings. If there is no formal family law order in place to enable that to occur, the parent or family member will be encouraged to commence family law proceedings.

Child Safety may apply for a child protection order for the child until the appropriate family law order has been made. Families in these circumstances should be mindful that the amount of assistance provided by Child Safety after the family law order is made will be very limited and may not, for example, extend to supervising contact with the parent who poses a risk to the child.

Foster Carers and other Care Providers

Where Child Safety is granted custody or guardianship of a child under an order or a voluntary care agreement, the child may be placed with a licensed care service, approved foster carer, relative (known as kinship carer) or other person considered appropriate.

The licensing of care services and approval of carers are governed by the provisions of the Child Protection Act (ss 124–136).

All foster carers and kinship carers, and any adult members of their households are required to obtain a Blue Card from Blue Card Services.

Where foster carers, kinship carers or adult members of their households are denied a Blue Card or are not approved by Child Safety as carers, they have a right to have those decisions reviewed in the Queensland Civil and Administrative Tribunal.

For more information on becoming a kinship or foster carer please contact Child Safety or Foster Care Queensland.

Legal Notices

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