Legal Aid QUEENSLAND

Commission of Inquiry into Queensland's Child Safety System – Director of Child Protection Litigation and litigation model and the legal process of applying for and making child protection orders.

Submission by Legal Aid Queensland

12 December 2025

Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission to the Commission of Inquiry into Queensland's Child Safety System in relation to the Director of Child Protection Litigation and litigation model and the legal process of applying for and making child protection orders.

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997,* LAQ is established for the purpose of "*giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way*" and is required to give this "*legal assistance at a reasonable cost to the community and on an equitable basis throughout the State*". Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ's services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ's lawyers in the day-to-day application of the law in courts and tribunals. LAQ believes that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

LAQ is the largest legal service provider in Queensland to children, young people, parents, and extended family members in relation to issues arising in the child safety system. LAQ provides legal aid funding for matters related to child protection litigation for LAQ's Child Protection Lawyers and preferred suppliers from private law firms.

LAQ's Child Protection Lawyers provide legal advice clinics, duty lawyer services, ongoing representation in child protection litigation for parents, children, and young people, and are regularly developing and contributing to training for lawyers and community workers engaged in the system. The Brisbane based Child Protection Teams also provide early advocacy through the Child Protection Early Legal Service and aim to increase availability and accessibility of legal support in designated regional areas through the Child Protection Outreach Legal Service.[1] A representative of LAQ attends Court Case Management Committee meetings chaired by the Childrens Court President and attended by the Chief Magistrate, representatives from the Office of the Director of Child Protection Litigation (DCPL), the Office of the Official Solicitor (OCFOS) and other agencies involved in the child safety system.

This submission calls on the expertise and experiences of LAQ's Child Protection Lawyers (referred to throughout this submission as "LAQ Lawyers").

Section 8 of the *Child Protection Act 1999* (CPA) defines a child as "an individual under 18 years". As such the term child is used in this submission to refer to any person under the age of 18. It is acknowledged that older children may identify as a young person rather than a child, however the terms child or children is used consistently for readability and to remove confusion.

The Department of Families, Seniors, Disability Services and Child Safety is referred to throughout this submission as "Child Safety". The Office of the Director of Child Protection Litigation is referred to as "DCPL" and the Child Protection Litigation model is referred to as "CPL model".

[1] See **Annexure "A"** for a more comprehensive explanation of work undertaken by LAQ's Child Protection Lawyers

Submission

Role of the court and legal process for applying and deciding child protection orders

Child protection law is intrusive. It compels the state, when required, with all the power and resources available, to intervene into the private lives of children and their parents, many of whom are vulnerable and socially disadvantaged.

The *Child Protection Act 1999* (CPA) is a piece of legislation that promotes participation and support for families when intervention occurs. When an application is made to the Childrens Court (the court) in relation to the reallocation of rights and responsibilities in respect of children, the CPA provides that the court should ensure during child protection proceeding (the proceeding) that all parties are treated in a way that is open, fair and respectful, and without discrimination.[2]

Amongst other things, the court must, as far as practicable, ensure that a child's parents and other parties to a proceeding (including the child if present) understand the nature, purpose and legal implications of the proceeding and of any order or ruling made by the court.[3]

Procedural fairness

A core component of "success" in the child safety system is the application of procedural fairness for all the parties involved.

For the child protection litigation to be successful, it is vital that each of the parties involved – particularly parents and children – understand:

- why Child Safety has become involved with the family – including what type of harm Child Safety is concerned about and how it has been caused.
- what the goal for the family is (e.g. reunification, long-term out of home care, permanency planning) and what needs to happen for the goal to be achieved.
- what the court will consider when deciding whether to make a child protection order.
- the court process, what will happen at each stage and the role of each of the different agencies and/or people ("players[4]") who are involved in the process.
- the decision made by the court and the reasons why it was made.
- what will happen after the court process is over.

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[2] *Child Protection Act 1999* (CPA) s 5D and *Human Rights Act 2019* (HRA) ss 15 & 31
[3] CPA s 106(1)
[4] See **Annexure "B"**

- how they can express their position and views at each stage of the court proceedings.

- what they want the court, and the other parties (e.g. Child Safety/DCPL/the other parent), to know.

Ensuring that each party understands all of the above components is the role the of court, with the assistance of the relevant "players" (each having their own role to play to achieve the goal of procedural fairness). In practice, this means that:

- Child Safety staff can ensure that the child protection concerns and the goals to be achieved are explained to families in language that is tailored to facilitate understanding.

- A lawyer for the DCPL and for Child Safety can ensure that the evidence before the court is framed with care, consideration, and empathy, bearing in mind how the reading of such material may impact the children and families whose lives it describes.

- Lawyers for the parents, Office of the Public Guardian (OPG) Child Advocates and direct representatives for the child can guide them through each stage of the legal process in a manner appropriate to their capacity and can advocate on their behalf to the court and Child Safety.

- The separate representative can act as an honest broker and assist the court by gathering evidence about the child's best interests and presenting their views and wishes.

And overall, the court and the child protection lawyers for all parties can ensure that legislation and procedural rules are rigorously adhered to throughout the court process.

The impact of the decisions made by the court, by Child Safety, and by the parties to the proceedings will have far-reaching effects on the lives of children and families. The role played by the court and the relevant "players" in safeguarding procedural fairness is therefore a critically important one given that the child safety system contemplates interference by the State into the lives of individuals.

Issues that impact procedural fairness

Multiple "players", tyranny of distance and delays in the proceeding

The child safety system places the child at the centre of a complex web of people and agencies ("players") who interact in relation to a child for whom there are child protection concerns. Decisions made by these players impact on all aspects of a child's life, from where they live and with whom; what time they spend with their parents, siblings, and other family members; how they connect with and understand their culture, history, and community; their day-to-day routine; where they go to school; their access to medical treatment; and so on.

It can be challenging for families (and those supporting families) to understand the role and responsibility of each of the people and agencies with whom they must engage to address the child protection concerns and, as required, participate in the proceeding.

Queensland is a large de-centralised State. The DCPL, which manages the child protection order application litigation, is a centralised agency based in Brisbane, which means in most cases it is separated from the community where the family, Child Safety and the court are based. The physical distance and organisational separation between the DCPL and the Child Safety Service Centre, which has case management of the child protection concerns and administrative decision-making responsibility in relation to placement, contact and similar custody matters presents challenges in relation to working relationships and exchange of information between the agencies. Although the CPL model is based around DCPL and Child Safety working in tandem, it is the experience of LAQ Lawyers that there are often difficulties due to tensions in the relationship and in relation to each agency having a full working understanding of the steps or decisions taken by the other. This can cause delays and cause confusion for parties involved in the child protection order application litigation.

Whilst there have been improvements in the quality of evidence presented to the court and there are benefits in relation to having consistency across the State about the facts and circumstances that will lead to a child protection order application being filed, tensions in the relationship and role of Child Safety and DCPL come to the fore when:

- there is a disagreement between them in relation to the appropriate child protection order.
- Child Safety is exercising its administrative decision-making responsibilities about placement, contact and similar custody matters during the course of the proceeding.

Challenges for families and others in understanding the CPL model are exacerbated when:

- there are conflicting views in relation to child protection orders and the goals the parents need to meet to address the child protection concerns.
- there is confusion about which agency's role and responsibility it is to undertake certain things.
- the court's power has legislative limitations in relation to making orders to override administrative decisions made by Child Safety.

Overall, Child Safety is the face of the child protection intervention, including the child protection order application litigation, with many participants not understanding the DCPL is a separate agency. It is the observation of LAQ Lawyers that it is often forgotten that it is the DCPL that is making the decision about the type of child protection orders that are applied for in child protection order application proceedings, and not Child Safety.

DCPL tends to rely on Child Safety to undertake the mechanics of communication with the parents, children and family about its child protection order application. It is the observation of LAQ Lawyers that the DCPL Applicant Lawyer is often inaccessible. The DCPL has very little engagement or contact with the child or litigants in person. If parents are self-represented, they are often not included in email correspondence that is sent by the DCPL to legally represented parties.

There is little to no explanation from and/or recourse in relation to the DCPL regarding their decision making. For example, it is the experience of LAQ Lawyers that the DCPL can make a decision to change the child protection order it is seeking when there has not been a lot of "movement" in the evidence. It is often difficult to understand the rationale and explain this to parents, children and families.

Whilst DCPL lawyers travel to attend court events, in some instances the relevant representative is a "voice on the phone". In the experience of LAQ Lawyers, it is not unusual to attend a Court Ordered Conference (COC) where all the other "players" are linked in by telephone. The impact of this on the ability of parties to communicate clearly and well is obvious. This is further amplified in matters where the parents or children require interpreters, live with a disability, have difficulty reading or writing, or experience mental health issues.

At times during COCs, the relevant DCPL decision maker is not present which impedes negotiations. It is also noted that negotiations can occur during court mentions, but on these occasions the DCPL is represented by the File Lawyer who is often not able to make decisions relevant to the negotiations.

Similarly, while DCPL is remote from the Child Safety Service Centre, sometimes the Child Safety Service Centre can be remote from the parents and children who are the subject of child protection matters. This has immediate and obvious impacts on the ability of Child Safety Officers to conduct assessments, provide support, and, crucially, build a working relationship with the parents and children.

Staff movement and staff retention is an issue for both Child Safety and DCPL. This means that there can be a number of different lawyers and Child Safety staff involved over the course of the proceeding. Unfortunately, it has been the experience of LAQ Lawyers that some cases have not had an allocated Child Safety Officer for six months. This situation leads to confusion and frustration for other parties in relation to the CPL model.

There is often a lack of availability of services to assist parents to address child protection concerns, and to obtain expert evidence to assist the court. This causes delays and negatively impacts the proceeding.

The lack of availability is even more pronounced in regional areas and is again compounded by distance. For example, parents engaging with a rehabilitation service may involve lengthy and expensive travel or even relocation, which has commensurate negative impacts on their ability to attend regular contact with the children or maintain appropriate housing in their own area. To meet one case plan goal, the parent may be forced to sacrifice progress in other areas. To have an expert report prepared often arrangements are made for either the expert or the parents, children and families to travel for the purposes of interviews. The proceedings then are adjourned to allow sufficient time for travel, interviews and reports to be prepared.

However, it must be noted that even in an urban centre such as Brisbane, these services can also be limited and places hard to come by. There has been a steady decline in the number of professionals with relevant expertise who are prepared prepare reports at legal aid rates for child protection litigation.

The proceeding can be adjourned to enable parents to seek legal advice and/or make an application for legal aid. Challenges arise because there can be delays in processing applications for legal aid where all the necessary information and documentation is not available, and in many areas there are a lack of Legal Aid preferred suppliers to allocate matters to. In an effort to address this issue, LAQ Lawyers travel to a range of locations to attend Childrens Court across Queensland

and meet with clients and Child Safety and to act as separate representative for children. Additionally, files are allocated to LAQ preferred suppliers who act as party lawyers and separate representatives who are based in other parts of the State.

In many cases, due to the distances involved and practicalities, there is often no alternative but to meet with clients via telephone or video conferencing. It can be difficult to build a relationship with a client when face-to-face meetings are not possible. It can also be difficult for clients with disabilities, clients without financial resources, and clients who live in extremely remote locations to access the technology needed for effective remote communication.

In many parts of the State, child protection order application lists occur once per month. In more remote regional areas, the frequency might be less and in higher populated urban areas the frequency might be more. In practical terms this means when a matter is adjourned, it extends the time that a child is in the care of the State by the length of the adjournment (which can be months). If there is a change of circumstances, in regional areas it is harder to bring a matter back before the court urgently between allocated court mention dates.

Delays in CPA Part 3A Case planning

LAQ Lawyers have experienced long waiting times for Family Group Meetings (FGMs) and Case Plan Review Meetings (CPRMs) to be convened. Without a case plan, parents can often be unaware of what steps they need to take to address Child Safety's concerns. In matters where the goal is reunification of children to parents, lengthy periods without a current case plan can have a significantly detrimental effect on the ability of families to reach this goal. The lack of a current case plan can also have a negative impact on child protection litigation by delays in the proceeding being caused by adjournments being sought to allow further time for case planning to occur.

Issues arise because Child Safety, at times, will not communicate with lawyers and/or overlook the fact that parents and children are legally represented and that a Separate Representative has been appointed, when organising FGMs and/or CPRMs. This is notwithstanding the legislative provisions of who should be involved in case planning. [5]

It is the experience of LAQ Lawyers that once the DCPL becomes involved in a matter, Child Safety at times, takes the approach that it is the DCPL's role to communicate with legal representatives about all issues. However, some issues fall within the remit of Child Safety (for example case planning and administrative decision making) therefore communication directly with Child Safety is necessary.

It should also be noted that LAQ Lawyers have noticed that some of the goals that are now set in case plans are noted as being for "evidence for court". This type of notation on a case plan is concerning as it sets a non-collaborative tone between families and Child Safety.

Applications for CPA Part 2 Temporary Assessment Orders or Part 3AA Temporary Custody Orders during Part 4 Child Protection Order Application proceedings

Pursuant to section 15 of the *Director of Child Protection Litigation Act 2016* (DCPL Act), if the Chief Executive 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 Chief Executive must refer the matter to the Director. The Director is then responsible under the DCPL Act for running the litigation.

[5] CPA s 51L

Child Safety continues to make assessments of the circumstances of children and families during the course of the proceeding once an application for a child protection order has been commenced, and it is the responsibility of the DCPL to bring that evidence to the court's attention and make appropriate applications as necessary to protect the best interests of children in accordance with that evidence.

However, in the experience of LAQ Lawyers, instances can arise during the course of child protection order application proceedings, where Child Safety makes an application for a Temporary Assessment Order or Temporary Custody Order. This occurs in cases where there is no child protection order in place in relation to custody of a child. This process is utilised instead of the substantive proceedings being re-listed by the DCPL and/or an application in a case filed in those proceedings and served to seek an interim order for custody to the Chief Executive.

When this situation occurs parents have no opportunity to respond to the child protection concerns that are being raised with the Magistrate and the parents are denied the ability to make submissions about the issue of contact with the child pursuant to CPA s 68.

It is noted that this approach places an after-hours Magistrate in the position where they are being asked to consider making orders "in a vacuum", without access to any of the relevant evidence filed in the substantive child protection order application proceedings.

It is acknowledged that in some regional areas it is harder to bring the proceeding back before the court on an urgent basis between allocated court dates. However, this approach creates a complicated legal situation involving two different applicants acting on behalf of the State and imposes an unfair burden on parents, particularly if they are unrepresented. This is another example of how the separation of Child Safety and DCPL can be problematic.

Difficulties with disclosure of documents relevant to the proceeding

It is the experience of LAQ Lawyers that it can often be difficult to obtain disclosure of relevant documents. Once again, the organisational separation between the DCPL and Child Safety can make this process overly complicated. While the DCPL is the organisation responsible for responding to an application for disclosure, the evidence that is sought is in Child Safety's control within a document management system that DCPL does not have access to. It is often unclear whether all relevant documents have been provided, even in situations where the court has made directions for disclosure.

At times there are significant delays in disclosure documents being provided. The "double handling" of the disclosure request or order between the two independent organisations of Child Safety and the DCPL is often the cause of these delays.

At times, it appears that the documents that are provided by way of disclosure are only those that support the case of the State and delays arise when documents that might be of assistance to the case of the other parties are sought. At times LAQ Lawyers have had to initiate Applications in a Case to seek court orders for disclosure (which contributes to additional costs and delays), and even after successfully obtaining court orders, delays in production of documents continue.

Parenting capacity assessments

An independent parenting capacity assessment is often obtained by Child Safety from an expert to inform their case work. This is treated as a separate piece of evidence from Child Safety's own strengths and needs assessment of the parents. While the ostensible goal of these parenting capacity assessments is said to be providing Child Safety with an expert opinion as to how best they might work with the parents to manage the child protection concerns, it is the experience of LAQ Lawyers that parenting capacity assessments take on a far greater role and significance in the litigation.

The independent parenting capacity assessment is now most often used as a piece of evidence to strengthen the DCPL's child protection order application as opposed to being used by Child Safety to meaningfully inform their management of case work with the parents. LAQ Lawyers have rarely, if ever, seen a parenting capacity assessment that supports the parents' case be entered into evidence. The timing of obtaining these assessments should also, in LAQ's submission, be scrutinised. It is contended that for an expert parenting capacity assessment to properly inform Child Safety's case work, the assessment should occur at the outset of intervention. These assessments should set out clearly what work Child Safety should undertake with the parents in their case management to give the parents a meaningful opportunity to address the child protection concerns. However, it is most often well after the proceeding have been commenced that consideration begins as to whether Child Safety will make a referral for such an assessment.

It is the experience of LAQ Lawyers that these referrals can occur without notice to the court, and without notice or seeking input from the legal representatives for the other parties involved in the proceeding, and at times the DCPL. It is the position of LAQ that the way these assessments are being arranged and then utilised as evidence is an affront to procedural fairness. The centrality that these independent parenting capacity assessments are assuming as evidence within the proceeding means that the process of obtaining them should be subject to the scrutiny of the court.

Parents are often required by Child Safety to attend parenting capacity assessments without a full explanation of what the assessment is for or how the assessment will be utilised. It is rare that parents will be offered the opportunity to seek legal advice before attending parenting capacity assessment interviews that will have an enormous impact on their case. LAQ has been involved in matters where lawyers representing a parent in a child protection order application before the court have not been informed by either Child Safety or DCPL that a parenting capacity assessment has been arranged for their client. On some occasions parents have been informed about the fact that these assessments have been arranged whilst they are having their scheduled contact time with their children. Parents are not given any written information by Child Safety to consider about the proposed assessment. It is the position of LAQ that this style of communication (and in particular lack of communication) is procedurally unfair and inappropriate.

Again, LAQ suggests that the professional separation between the two responsible organisations – DCPL and Child Safety – means that it is often unclear who will assume the role of advising legal representatives and ensuring that parents are able to participate in the assessment with the benefit of legal advice and a clear understanding of the process.

Lack of intensive support for mothers and newborn babies

It is obvious to everyone involved in the child protection system that one of the most critical points of intervention is when a child is born. It is no understatement to say that steps taken in the first few days and weeks of a child's life can have a significant impact on the trajectory of their lives. Child Safety are often given an impossible task of making momentous decisions against the

background of incomplete information, restrictive timeframes, and highly limited resources. They must hold responsibility for the safety of the most vulnerable of children, while balancing this against the need for the newborn child to bond and thrive with a primary caregiver.

In the experience of LAQ Lawyers, early, intensive, and meaningful support at the front end of Child Safety's involvement with mothers and babies is one of the most potent tools for a successful intervention. However, while live-in mother-and-baby care facilities are a hugely important and valuable option, there is a significant lack of resourcing in this area. LAQ Lawyers are aware of facilities in the Brisbane area that have lost funding and are no longer operational. Mother-and-baby care facilities are almost non-existent in regional areas. It is, in the experience of LAQ Lawyers, easier to support a baby being placed in prison with an incarcerated mother than to find a facility that can provide intensive newborn parenting support.

It is noted that busy hospital staff would be unable to provide the support and supervision necessary for mothers and newborn babies who have come to the attention of Child Safety. Specialist centres for this purpose are needed.

It is LAQ's strong view that increasing resourcing for this purpose – including in regional and remote areas – would not only provide better outcomes for mothers and newborn babies but would, in many cases, save considerable expense by potentially avoiding the need for ongoing intervention.

Lack of interpreters

It is the experience of LAQ Lawyers that where a parent is known to require an interpreter in the litigation process, no arrangements have been made for an interpreter to be provided. There is confusion as to whose responsibility it is to arrange interpreters for court events – the court, DCPL, Child Safety and in circumstances where a parent is legally represented, the parent's lawyer. There are often difficulties arranging interpreters to attend court events in person.

Overall, there is a vital need for more interpreter support at all stages of the litigation process. LAQ Lawyers have never seen an interpreter made available to translate court material or letters for a culturally and linguistically diverse person.

LAQ suggests that interpreters should be the norm for every court event and that translated versions of affidavits, court material and letters should be available. It is unrealistic to place the burden of organising interpreters and translators on the linguistically diverse person. There can be issues in retaining interpreters for certain languages (for example First Nations Languages, deaf clients).

Overall, when language is a barrier and there is no interpreter present, this is a significant barrier to procedural fairness for the relevant party.

It is the view of LAQ that Child Safety need to take ownership about assessing whether parents have understood what has been conveyed as part of their practice and evidence. These communications are forming their evidence for litigation. In the experience of LAQ Lawyers, at times Child Safety struggles to articulate what the child protection concerns are. For example, saying a parent has "mental health issues" – this does not provide a link to the harm or risk of harm to the child. Sometimes a genuine obstacle to reunification is that the child protection concerns have not been appropriately communicated – if the parents do not understand what the concerns are, how can they address them?

If there are language barriers Child Safety (and where applicable DCPL) should consider different ways to communicate, as opposed to standard precedent letters and formal emails. There cannot be a "one size fits all" approach. A lot of acronyms and specific terms are used when there is child protection intervention. It is important that plain English is used to explain concepts and that acronyms are fully explained to promote understanding.

In appropriate cases, use of tools such as Blurred Borders Queensland could provide assistance to Child Safety and others to explain concepts and ensure understanding not only with linguistically diverse people, but also children and those with literacy issues and disabilities.[6]

Child Safety and DCPL should be accountable and demonstrate that they have managed communication appropriately.

Gaps in the *Child Protection Act 1999*

Parentage/Paternity

In child protection litigation an issue for determination by the court is whether a child is in need of protection. A child in need of protection is a child who has suffered significant harm, is suffering significant harm, or is at an unacceptable risk of suffering significant harm, and *who does not have a parent able and willing to protect the child from harm*.[7]

Due to the intrusive nature of the proceeding, which involves the reallocation of rights and responsibilities in respect of children, the issue of parentage at times must be explored. The definition of parent in the CPA includes the child's mother or father.[8] However in relation to establishing paternity, challenges arise due to the fact that the CPA does not contain a regulatory framework which can be used in relation to presumptions/recognition of paternity[9] [10], parentage testing procedure or to make a declaration of parentage.

Queensland has a three-tiered system of DNA parentage testing to assist to determine who is the parent of a child. Testing may be conducted in accordance with the family law regulatory framework[11]; in accordance with the State's regulatory framework[12]; or outside any regulatory framework where laboratories may follow the procedures outlined in the regulatory frameworks

[6] Blurred Borders Queensland . It should be noted that LAQ would like to create specific resources for child protection, in line with those available through Blurred Borders WA, however at this time this project is not funded.
[7] CPA s 10
[8] CPA s 11
[9] *Family Law Act 1975 (Cth)* (FLA) – *Division 12 Sub Division D*
[10] *Status of Children Act 1978* s 8
[11] FLA - *Division 12, Sub Divisions D & E*; *Family Law Regulations 2024* (Cth) - *Part 7 Division 7*
[12] *Status of Children Act 1978*; *Status of Children Regulation 2012*

or their own policies regarding certain aspects of parentage testing, which include the conduct of "peace of mind"/ "motherless" testing[13].

It is noted that to have orders made for parentage testing and a declaration of parentage made by the Federal Circuit and Family Court of Australia in accordance with the family law regulatory framework, the parentage of a child must be an issue in proceedings that is before that court[14]. To have orders made for parentage testing and a declaration of paternity made pursuant to the State's regulatory framework, it is necessary to make an application to the Supreme Court of Queensland.

It is the experience of LAQ Lawyers that when parentage testing is carried out in relation to children who are engaged in the child protection system, no party makes an application to the Supreme Court of Queensland to have an order for parentage testing made and/or to have a declaration of paternity made. If the parents participate in the testing this is on a voluntary basis. In relation to a child who is the subject of a child protection order participating in testing, there has been a lack of clarity about the legal basis that this can occur – however case law now provides guidance[15].

It is the position of LAQ that it is very important for the CPA to include a framework in relation to presumptions/recognition of paternity, to regulate parentage testing and to enable the court to make orders for testing and declarations of parentage, as required. Alternatively for the court to be given power to make orders under the *Status of Children Act 1978* where parentage is an issue in the child protection litigation.

Additionally, consideration should be given to adopting an administrative system that is in place in Victoria to enable a parent to be added to a birth certificate by providing a certified copy of the results of a DNA-based parentage test (paternity test), with such test approved by the National Association of Testing Authorities (NATA) [16]. This administrative process is not currently available in Queensland[17].

This suggested administrative process should also allow a person or agency (such as Child Safety) who has a court order for parental responsibility, custody or guardianship for a child or who has an interest in the care, welfare and development of a child[18] to make an application for a parent to be added to that child's birth certificate. This would enable Child Safety to make such an application when a child's parentage has been confirmed by voluntary parentage testing and in circumstances

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[13] Different laboratories have their own policies regarding certain aspects of parentage testing not covered by the regulatory frameworks – for example guidelines about which parent may consent on behalf of a child, the provision of counselling, and the persons to whom parentage testing results should be sent.

[14] FLA s 69W

[15] Director of Child Protection Litigation v JT [2025] QChC 15

[16] https://www.bdm.vic.gov.au/births/add-a-parent-to-a-birth-certificate

[17] https://www.qld.gov.au/law/births-deaths-marriages-and-divorces/birth-registration-and-adoption-records/add-the-father-or-parent-to-your-childs-birth-certificate

[18] It is noted that pursuant to *Status of Children Act 1978* s 10(1)(c) a person who having a proper interest in the result, wishes to have determined the question whether the relationship of parent and child exists between 2 named persons may apply to the Supreme Court for a declaration of parentage and the Supreme Court may, if it is proved to its satisfaction that the relationship exists, make the declaration whether the parent or the child or both of them are living or dead.

where there is no current child protection litigation.

The current system as it stands means that many children in care do not have the benefit of having correct information about their parentage recorded on their birth certificate, noting that a birth certificate is an important life document. The issue of parentage has implications beyond child protection intervention and the proceeding, including but not limited to child support and inheritance entitlements.

Legal Capacity

Many parents who are respondents to child protection litigation live with what is often termed "capacity issues".

There is, unfortunately, often a conflation by Child Safety of "capacity to parent" with "capacity to make decisions for legal matters". All relevant "players" should be mindful that an assessment that concludes that a parent does not have capacity to make decisions about legal matters does not mean that the parent lacks the willingness or ability to protect a child from harm or risk of harm.

In a proceeding for child protection litigation, the court must, as far as practicable, ensure the child's parents and other parties to the proceeding (including the child if present) understand the nature, purpose and legal implications of the proceeding and of any order or ruling made by the court.[19] If the child, parent of a child or other party has a disability that prevents him or her from understanding or taking part in the court proceeding, the court must not hear the proceeding without a person to facilitate his or her taking part in the proceeding.[20] Overall, the issue needs to be managed and determined before the court decides the proceeding.

As an aspect of the general duty to ensure a fair hearing, the court and the legal practitioners involved in the proceeding have a responsibility to ensure, as far as practicable, that a person who lacks capacity to make a decision for legal matters receives the help that they need.[21]

In relation to decision-making for legal matters in the proceeding, it is contended that, a person must have the ability to:

- understand that advice is required in relation to a legal issue (i.e. understand they have a legal problem).
- communicate this requirement to someone who could arrange an appointment with a solicitor for them or arrange such appointment on their own behalf.
- understand the nature of the proceeding, its purpose and possible outcomes.
- This involves:
    - a basic understanding of the child protection concerns that have been raised by Child Safety
    - a basic understanding of the meaning and effect of the orders sought by Child Safety and/or DCPL

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[19] CPA s 106(1)
[20] CPA s 106(2)
[21] DCPL outlines its role in relation to CPA s106 in the Director of Child Protection Litigation – Director's Guidelines, Chapter 6 Court Process, Part 7 Section 106 of the CP Act, page 43

- a basic understanding of any ruling or order that could be made by the court, and the effect of such order
- the ability to instruct a solicitor with sufficient clarity to enable the solicitor to understand the situation and advise appropriately.

- make decisions, freely and voluntarily, in relation to the matter.
- give instructions based on the advice received from the solicitor (including instructions to challenge or not oppose the orders sought by Child Safety and/or DCPL) and give effect to such advice.
- follow the course of the proceeding so as to understand what is happening in court in a general sense, though not necessarily understand the purpose of all the various court formalities. This involves following the proceeding and understanding the roles of the various participants.
- understand the substantive effect of the evidence that may be given. A person must have an awareness of the implications of the evidence that may be given to the court by themselves and the other parties.
- understand and take part in the proceeding in the event that there is no other person available to facilitate their participation.[22] [23]

The current provisions of the CPA that can assist the court to ensure that the child's parents and other parties to the proceeding understand the nature, purpose and legal implications of the proceeding and of any order or ruling made by the court are sections 107, 108 and 109.

CPA s 108(1)(b) provides that, in a proceeding on an application for an order for a child, the child's parents and other parties may appear in person or be represented by a lawyer.

CPA s 109(1) states that if, in a proceeding for an order for a child, a parent of the child appears in court but is not represented by a lawyer, the court may continue with the proceeding only if it is satisfied the parent has had reasonable opportunity to obtain legal representation.[24]

Providing a parent with a reasonable opportunity to obtain legal representation is particularly important in cases where there are concerns about a party's decision-making capacity for legal matters in the proceeding. The case of Goddard Elliott (a firm) v Fritsch [2012] VSC 87 states at

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[22] Goddard Elliott (a firm) v Fritsch [2012] VSC 87 provides a summary of the legal principles in relation to the presumption of legal personality and capacity, and sets out the considerations when there is a potential issue with a party's/client's capacity at paragraphs 545 to 569, pages 155 to 167 of judgment of Bell J

[23] Queensland Handbook for Practitioners on Legal Capacity, Schedule 2 Capacity Tests Applicable to Different Practice Areas, 10 Conducting Civil Proceedings, 10.1 Queensland courts, pages 70 & 71

[24] Parents or other parties can request the court to adjourn the proceeding to allow them the opportunity to seek legal advice and make an application for legal aid to obtain legal representation by contacting LAQ direct or by engaging the services of another legal service provider such as the Aboriginal and Torres Strait Islander Legal Service (ATSILS), the Queensland Indigenous Family Violence Legal Service (QIFVLS), a community legal centre or a LAQ preferred supplier.

paragraph 558:

> *"…the test of capacity which is applied in the case of self-represented persons is more intensive than in the case of represented persons. As has been held, 'the level of mental capacity required to be a "capable" litigant [in person] will be greater than that required to instruct a lawyer because a litigant in person has to manage court proceedings in an unfamiliar and stressful situation. It follows that a person who does not have the mental capacity to represent themselves may have sufficient capacity to be able to give instructions to a lawyer to represent them."*

CPA s 107 enables the court to appoint a person having a special knowledge or skill to help the court on its own initiative or on the application of a party to the proceeding. If there is doubt about whether one of the child's parents or another party to the proceeding understands the nature, purpose and legal implications of the proceeding and of any order or ruling made by the court, pursuant to this section an appropriately qualified expert could be appointed by the court and directions made as to the parameters of the issues about which an expert opinion is required. However, there is currently no available court-based funding or infrastructure in place for this section to be meaningfully utilised.[25]

Whilst some parents may already have a guardian appointed by the Office of the Public Guardian for legal matters, it is the experience of LAQ Lawyers that it can be unclear if parents attempting to access legal advice have the legal capacity to give instructions. However, it cannot be assumed that a party to the proceeding has impaired decision-making capacity for legal matters without evidence. A person should be free to make their own decisions – this right is fundamental to a person's inherent right to dignity.[26] A person can choose not to engage or participate in the proceeding. Similarly, a person can choose unconventional and/or inappropriate lifestyle choices and to make bad decisions.

Concerns about a parent or other party's decision-making capacity for legal matters in the context of the court proceedings can be raised before or during the proceedings within the documents relied on, or, alternatively by the legal representative of the parent or other party.

In cases where a solicitor has concerns about a client's legal capacity, a solicitor often has a conflict in relation to their professional duties. A solicitor must consider the facts and circumstances of

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[25] It is noted that the court at one time had limited funding available to appoint experts via the Court Expert Assistance Pilot in Beenleigh, Cairns, Toowoomba and Townsville. The purpose of the Expert Assistance Pilot was to support the court's access to highly skilled, independent and specialist expertise on complex issues affecting children and/or their families, such as mental health, disability, substance misuse, domestic and family violence and paediatric healthcare, which had not been adequately addressed in the evidence available to the court. The Expert Assistance Pilot targeted complex child protection matters where the court considered that it needed highly specific or specialist expert advice, in addition to any pre-existing expert engagement. The Expert Assistance Pilot complemented existing resources available to the court in child protection proceedings and avoided duplicating pre-existing expert engagements. This pilot is no longer in operation.

[26] *Guardianship and Administration Act 2000* (GAA) s 5 (a)

each individual case to determine an appropriate course of action. At times, this requires the solicitor to undertake investigations to satisfy themselves that their client has capacity to instruct.[27] Such investigations will attract legal professional privilege.[28]

If the court is presented with evidence that supports the position that a person lacks decision-making capacity for legal matters, the CPA, the *Childrens Court Act 1992* (CCA) and the *Childrens Court Rules 2016* (CCR) do not contain provisions to enable the court to manage this issue via the appointment of a litigation guardian/case guardian or the OPG, as a guardian of last resort, during the course of the proceedings.

As the court has no ability to appoint a substituted decision maker for a parent who does not have capacity to make decisions about legal matters and who wishes to participate in the proceeding, a Queensland Civil and Administrative Tribunal (QCAT) invitation (referral) pathway has been created via "trial and error" over time. This is currently the only mechanism that is available to the court to address this issue, if neither the parent or other party (the adult concerned) nor an interested person (on behalf of the parent or other party) makes an application to QCAT under the *Guardianship and Administration Act 2000* (GAA) for the appointment of a substituted decision maker. [29]

The referral pathway is an invitation to QCAT to consider, of its own initiative[30], whether to make a determination about the parent or other party's capacity to make decisions about legal matters. [31] Significant delays to the court proceedings litigation usually result from this process.

An interested person is someone who has a sufficient and continuing interest in the parent.[32] In practical terms, this could be a member of the parent's family, a close friend, a health care or other professional or someone who has a genuine and continuing interest in the welfare of the parent.[33] The Queensland Handbook for Practitioners on Legal Capacity, prepared by Allens and Queensland Advocacy Incorporated is of assistance with this issue.[34]

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[27] It is noted that LAQ has a limited grant of aid available for a capacity assessments. However, along with LAQ preferred suppliers, there has been a decline in the number of experts who are willing to prepare assessment reports at legal aid rates.

[28] DCPL v LGC and DJC [2019] QChCM 1

[29] GAA s 115

[30] See *Queensland and Administrative Tribunal Act 2009* ss 35 & 61(1)(c) and GAA ss 12 & 146

[31] For further information see DCPL Practice Note Guidance on Responding to Concerns about a Parents Decision Making For Legal Matters

[32] GAA s 3 (dictionary in sch 4) and s 126

[33] There are no reported decisions available, however anecdotally examples are known where QCAT has not accepted that a Separate Representative or a representative of Child Safety is an interested person due to bias or perceived bias. It is contended that QCAT would take the same position in relation to a legal officer from the DCPL.

[34] Queensland Handbook for Practitioners on Legal Capacity, in particular Chapter 7 (pages 46 through 52)

The unfortunate reality is that many adults with impaired capacity for decision- making in relation to legal matters often do not have persons in their lives who are willing and who can provide adequate and appropriate support to the adult to either make an application to QCAT under the GAA or become appointed decision makers themselves.

In jurisdictions where there is a legislative framework that provides the court with the ability to appoint a litigation guardian/case guardian, difficulties regularly arise when there is no one available to take on the role. [35] For example, there is a body of case law in the family law jurisdiction that highlights these difficulties.

In other cases, persons in the lives of adults with impaired capacity for decision-making in relation to legal matters do not wish to assume the role of decision maker because taking on this role can create a source of conflict between themselves and the adult, and this has the potential to lead to the breakdown of a source of social support for the adult.

In these cases, to meet the needs of the adult and in the absence of any other appropriate guardian, QCAT will be left to consider appointing the OPG to act as guardian for decisions about legal matters not relating to financial or property matters (GAA s 14(2)).[36]

Overall, it is contended that whilst a solicitor must bring to the attention of the court that there are concerns about a client's capacity to make decisions about legal matters, it is inappropriate for that solicitor to make an application to QCAT for the appointment of a guardian. This is because in most instances this will cause damage to the solicitor/client relationship and create a potential conflict of duties and interests which ought be avoided. Additionally, there is no funding available from LAQ to make such an application.

When a substituted decision maker is appointed, that decision maker should take into account the wishes of the person for whom they are appointed to the maximum extent possible.[37] Failure to take into account a person's wishes and include their support network in decision-making can lead to removal of the substituted decision maker by QCAT. However, the absence of cooperation by the adult does not prevent the substituted decision maker from being appointed and making decisions in the best interests of the adult in relation to the proceeding. In most cases decisions would be made after taking legal advice from a legal representative.

It should be noted that providing services as a substituted decision maker does not fall within the service delivery of LAQ. The OPG is the government agency that provides this service.

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[35] Therefore, it is contented that any proposed legislative change in the child protection jurisdiction which makes provision for the appointment of a litigation guardian/case guardian also should incorporate the ability for the court to appoint the Public Guardian as a guardian of last resort. Alternatively, the QCAT referral (invitation) pathway should be formalised by legislative change.

[36] It is contended that the OPG should be provided with significant further resources to assist them to meet the needs of vulnerable people who lack capacity to make legal decisions that are involved in the proceeding.

[37] GAA s 34(1), sch 1 general principle 7

Finally, it must be noted that further complications arise in relation to this issue when the parent who lacks legal decision-making capacity in the proceeding is a child. The GAA contains legislative provisions for appointing substitute decision makers, as required, for adults only.

Supports for children and families to navigate the system.

Views, voices and participation of the child

The aim is for the players to work together to serve the best interests of the child. In theory, this would include supporting children through the litigation process and beyond, and facilitating their participation to enable their views and voices to be heard in a manner that is meaningful as opposed to tokenistic and/or conditional.

The way children participate in the litigation process will obviously vary depending on their age, understanding, and individual desire to participate. LAQ notes from experience that many children may wish to have their views heard only on a particular issue or narrow range of issues. For example, a child may wish to express a view about a defined issue such as sibling contact but remain silent as to their views on the type of child protection order to be made. Success is when all participants understand that the way children wish to participate will vary from case to case, and that expressing a view on a particular issue will not automatically mean that children will wish to participate in every aspect of the proceeding (nor should they be required to).

However, it has often been the experience of LAQ Lawyers that the sheer number of people involved in the child protection litigation, and their differing understandings of their individual responsibility to support the child and facilitate the expression of their views, makes it very easy for the focus on the child to become lost. A key part of "success" in the child safety system, in LAQ's view, is when the child's views and voice have been heard and understood by all stakeholders, in a way that is appropriate for that individual child.

Reducing numbers of LAQ preferred suppliers

In last 5 years there has been an overall state-wide decline in law firms who are on LAQ preferred supplier panels, which is not just limited to the child safety system legal sector – see the graph in **Annexure "C"**.

It must be noted that there has been a significant reduction in the numbers of legal practitioners willing to undertake child protection work. To ensure that families can receive access to justice and appropriate support during the court process, LAQ submits that it is essential that government give thoughtful consideration to providing funding that enables legal aid rates to be increased to acceptable and sustainable levels to ensure the long-term health and sustainability of the legal assistance sector.

LAQ's expenditure on child protection case work is steadily increasing – see **Annexure "D"**.[38]

[38] Further information can be provided about LAQ's expenditure and available service delivery data upon request.

The legal assistance sector—Legal Aid Commissions, Community Legal Centres, Aboriginal and Torres Strait Islander Legal Services (ATSILS), Womens Legal Services and Family Violence

Prevention Legal Services—is an intricate and interdependent web designed to support people with their legal issues. Despite the new National Access to Justice Partnership (NAJP) 2025-2030, the sector is chronically underfunded. Demand is rising, and services are forced to turn away clients.

Queensland operates under a "mixed model" of service delivery, where LAQ briefs out matters to members of the private legal profession at significantly reduced fee rates compared to private practice fees. This model allows LAQ to draw on the expertise, experience, acumen, and geographic reach of the private profession.

It is important to note that a recent independent review by Dr Warren Mundy[39] highlighted unreasonably low fees are contributing to a crisis in legal aid. This has led to a shortage of private practitioners willing to take on legal aid cases and ultimately hindering access to justice for vulnerable Australians and leaving them without the legal help they need to navigate complex legal systems in times of crisis. The volume and complexity of legal issues in the community continues to outpace any growth in Legal Aid's ability to respond.[40] Alarmingly a 2024 census conducted by National Legal Aid (NLA)[41] confirms that many partner law firms consider they will not be able to continue to perform legal aid work in the next 5 years because of remuneration rates.

As demonstrated in **Annexure "C"** this is already occurring in Queensland, including in child protection. The numbers of practitioners willing to perform representation work for parents and representation of children as separate representatives has reduced significantly and the allocation of matters is becoming increasingly delayed and difficult. In the foreseeable future LAQ expects not to have sufficient practitioners to allocate the work to, which will cause delays in the hearing of matters and the resolution of the proceeding.

Additionally, it must be noted that the "means test"[42] has not been uprated for a significant number of years despite requests to governments to provide additional funding for this. This means that many Queenslanders are not financially eligible despite living in poverty.

However, it must be noted that any increase in the "means test" would cause an increase in demand which would be untenable noting the current environment of reducing preferred suppliers willing to do LAQ funded work. LAQ is not in a position to uprate the "means test" unless there was also an increase in practitioner fees.

Noting the abovementioned challenges, it is the view of LAQ that one of the best checks and balances that can be included in the child safety system, and which could contribute to reducing the numbers of children in the child safety system is ensuring that parents have access to early supports, including legal advice and representation. A lack of accessible support services impacts the ability of parents to address child protection concerns at an early stage. This leads to matters progressing to court.

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[39] Independent Review of the National Legal Assistance Partnership 2020 - 2025

[40] NLA Impact Economics Justice on the Brink – Stronger Legal Aid for a better legal system 17 October 2024

[41] NLA Private Practitioner Census 2024 Report

[42] LAQ Grants Policy Manual – The Means Test

Creation of Parent Advocacy Service

To meaningfully provide support and to assist to ensure that the CPL model is sufficiently accessible, adaptable and flexible to support the diverse and unique needs of different sections of the community, it has been the view of LAQ for some time, that a specific Parent Advocacy Service should be established to provide specialist legal advice and social support assistance to parents, children and other family members involved in the child protection system. This would be an accessible street front service. People would be able to self-refer in and obtain access to legal assistance and social supports.

LAQ suggests that the Parent Advocacy Service could:

- provide legal advice and assistance to parents in circumstances where Child Safety has intervened or is investigating, but an application for a child protection order has not yet been made.
- provide social support assistance to parents at an early stage or make warm referrals to appropriate services.
- give initial and urgent legal advice to parents who have been served with court material or had their children removed.
- assist parents to complete and apply for legal aid.
- provide parents with information about duty lawyer services.
- assist parents with complaints.
- undertake case work.

A Parent Advocacy Service would need to have access to interpreters to ensure that it is accessible to culturally and linguistically diverse clients. LAQ suggests that training in delivering culturally appropriate services would also be required. LAQ also notes that, with clients who have additional complexities such as language or literacy barriers, cultural needs, and/or capacity or mental health issues, the lawyer and/or support worker will need to spend longer periods of time with them to ensure that they understand the process and the advice. Sufficient funding would be required to ensure that the service could adequately meet clients' needs. It is vitally important not to discount the additional time and care that is needed to support clients who live with one or more complexities (in LAQ's experience, this is most parents who experience Child Safety intervention).

A Parent Advocacy Service would directly solve a significant problem that the current child safety system poses for parents. That is, the system is lacking a direct and easy pathway to legal advice and assistance for parents at the early stages of the child protection process. LAQ can provide legal advice at any stage, and grants of aid for legal representation are available for parents who are responding to an application for a child protection order and who meet the means test. However, legal representation for disadvantaged parents is not available in circumstances where Child Safety has intervened or is investigating but a child protection order has not yet been applied for or made (aside from limited circumstances where clients meet the geographical criteria for the Child Protection Early Legal Service, noting that LAQ must manage conflicts of interest and does not have the capacity to give legal advice and assistance to all persons engaged with the child safety system).

In a typical child protection litigation, children will be removed from the care of their parents and the parents served with an application for either an emergent order or a child protection order. At the point of removal, where parents are understandably in significant emotional distress, it is most common for parents to struggle to obtain timely legal advice or representation. Many are unsure how to apply for legal aid or lack the ability to do so. There exist some common 'myths' around the availability of grants of aid for child protection matters – e.g. that legal aid is not available for child protection litigation, or that legal aid is not available to both parents – that persist despite LAQ's best efforts to dispel them. Parents will often self-represent at the first court mention, resulting in an adjournment to allow them to seek legal advice. This is the first of many delays to the litigation that can result from parents not having access to legal representation. In the meantime, parents often struggle to obtain or understand information from Child Safety as to what actions are required to address child protection concerns and work towards contact or reunification with their children.

In LAQ's experience, matters where parents are supported to access legal advice and representation at the earliest possible stage have the strongest prospects of resulting in a less intrusive intervention by Child Safety (where it is safe to do so). Where the current child safety system fails at present is providing a streamlined 'entry point' for parents to access initial services. It is LAQ's view that a properly resourced Parent Advocacy Service could fill this gap.

LAQ is unable to assume responsibility for the delivery of a Parent Advocacy Service. Aside from lack of funding, the conflict issues that would be created for in-house services across the State would be unresolvable. It is envisaged that LAQ would complement a Parent Advocacy Service with existing grants of aid, and through current in-house services such as the Child Protection Duty Lawyer Service, the Child Protection Early Legal Service and the Child Protection Outreach Legal Service.

LAQ again notes the difficulties faced by parents who reside in areas outside the cities or major regional centres. For rural and remote clients, there is a distinct lack of services to support them to engage with the child protection litigation. Aside from access to legal representation, there are limitations in services available to supervise contact, provide counselling and/or provide drug and alcohol rehabilitation or treatment. All these services are required for parents to have the opportunity to address the child protection concerns. Where these services exist, they are often subject to unacceptable delays. Funding for more services, and support for parents who are accessing services remotely, is greatly needed.

Opportunities for early advice and early resolution of matters

In the first place, LAQ refers to comments above with respect to establishing a Parent Advocacy Service. It is the experience of LAQ Lawyers that linking a parent with legal assistance and representation at the earliest possible stage (preferably during Child Safety's investigation phase) gives families the strongest opportunity to negotiate support arrangements which allow for children to remain in the home, where it is safe to do so. A Parent Advocacy Service would provide a streamlined point of contact for parents to access legal advice and increase their ability to engage in supported, early collaborative decision making with Child Safety.

To enable families to have early access to legal representation to ensure that they understand their rights, understand what is happening throughout the litigation process, and are fully informed to participate in the proceeding LAQ refers to comments above with respect to establishing a Parent Advocacy Service. LAQ suggests that this would be the best model for enabling families to have early access to legal representation.

As the applicant in child protection order application proceedings, it is LAQ's strong view that DCPL should be more proactive in referring clients for legal advice. There is a culture within DCPL that to do this is a "conflict of interest", whereas in LAQ's view this should be part of its role as model litigant.

LAQ also suggests that further training and a collaborative approach could encourage a culture shift within Child Safety, such that lawyers could be accepted in the early intervention space and Child Safety could encourage clients to attend court and seek representation.

Creation of mandatory pre-court intervention conference

A second specific suggestion is that a mandatory pre-court intervention conference be introduced. The experience of LAQ is that it is rare, under the current CPL model, for the case issues to be defined until just before the hearing. FGMs are rarely helpful in this regard as they are focused on casework (as opposed to the litigation). A well-defined early intervention with a legislated outcome (i.e., resolution or issues to be tried) could assist to define the direction of the litigation, focus the parties on the relevant evidence, and shorten litigation timeframes. A further potential benefit would be that, in narrowing the issues, there would be less "shifting goalposts" with nebulous details (for example, "substance abuse" or "mental health concerns" as undefined child protection concerns would either be more clearly defined or struck out).

It is LAQ's strong view that it should be a requirement for all parties attending this pre-court intervention conference to be legally represented (including Child Safety). A referral to the Parent Advocacy Service during Child Safety's investigation phase would support parents accessing legal advice and representation prior to and for the pre-court intervention.

It would be critical that a delegated decision maker from Child Safety mandatorily attend. A representative of the DCPL with decision making power (i.e., an applicant lawyer) would also need to attend. It would be necessary, in LAQ's view, for delegated decision makers from both Child Safety and DCPL to attend in order for the pre-court intervention to achieve its intended outcome. In their absence, the risk is that a pre court intervention conference would become simply an additional step in the litigation process rather than effectively supporting early identification and resolution of concerns.

LAQ suggests that the option of calling for a pre-court intervention conference should be made available to the DCPL. That is, the DCPL could accept a referral from Child Safety and then call for a pre-court intervention conference to occur prior to commencing the proceeding. It is noted that this would need legislative change.

A further benefit to a pre-court intervention conference would be that it would provide the DCPL with an opportunity to ascertain if any views had been expressed by the children and incorporate these into their decision making consistent with their CPA s 5E obligations.

If a pre-court intervention conference were to be instituted, there would need to be:

- Adequate resourcing – this would include additional funding to the Child Protection Conferencing Unit and the allocation of designated rooms for conferences to occur, in order to avoid lengthy waiting times (which would defeat the purpose of shortening litigation timeframes).
- Legislative change – as the pre-court intervention conference would often occur during Child Safety's investigation and assessment stage, legislative change would likely be required to confirm that holding a conference would be grounds for an extension of a Court Assessment Order (i.e., a further 28 days). Legislative change would also be required to amend DCPL's options, upon receiving a referral from Child Safety, to include holding a pre-court intervention conference.

Court Ordered Conferences

Pursuant to CPA s 71 anything said at the conference is inadmissible in a proceeding before any court other than with the consent of all the parties.

In the experience of LAQ Lawyers concessions are made and agreements to undertake certain actions are made during the course of Court Ordered Conferences (COCs). However, this information is more often than not, not documented. This can represent a missed opportunity to resolve some of the issues in dispute. Additionally, issues can arise when there is no "follow through" in relation to what parties understood has been agreed to and it is then difficult to seek accountability.

It is suggested that there be a mechanism created to enable the clear documentation of agreements and concessions that have been made during the COC with the consent of all parties.

Any issues to consider for particular people such as Aboriginal and Torres Strait Islander children and families

For many Aboriginal and/or Torres Strait Islander children and families engaged in the child protection system the existing problems within the Queensland system at large are compounded by the difficulties of distance, remoteness and availability of services. In LAQ's experience, this is particularly pronounced for those living on country. Case plans goals set by Child Safety can include engagement with support services that are not available on country, necessitating travel or relocation away from community and family supports and places of cultural connection. Similarly, children placed in out of home care may be long distances away from country and the support provided by their extended family networks. LAQ Lawyers have observed lengthy delays in processing kinship care assessments with the result that children are unable to be placed with family members for unacceptably long periods of time.

Despite aspects of the legislation which work to promote cultural safety and responsiveness, particularly for Aboriginal and/or Torres Strait Islander peoples, it is the view of LAQ that to assist to ensure that all aspects of the CPL model is culturally safe and responsive, both for Aboriginal and/or Torres Strait Islander people and people from culturally and linguistically diverse backgrounds more is required on a practical level.

The Family Participation Program (FPP), in LAQ's experience, is a constructive tool that supports Aboriginal and/or Torres Strait Islander families to participate in child protection decision making. The fact that this service works independently of Child Safety is of great benefit to families. Likewise, LAQ Lawyers have observed that the Family Led Decision Making (FLDM) that is facilitated by the FPP is often a more positive experience for families than a "traditional" FGM, which can often be more adversarial. These processes can support cultural safety and responsiveness for families involved in child protection litigation. However, there are three issues which LAQ sees as detracting from the effectiveness of the FPP/FLDM process:

- There are long waiting times for families to access the FPP, which causes significant delays to the litigation. LAQ suggests that more resourcing should be allocated to FPP to expand the service and ensure that it can be accessed earlier. LAQ also suggests that facilitating FLDM as early as possible in Child Safety's involvement with the family would be of great benefit and could potentially address some of the child protection issues so as to prevent a more intrusive intervention occurring.

- The FPP/FLDM process (and indeed the wider FGM process) is siloed from the litigation as the applicant (DCPL) does not attend and is not represented at the meeting. In the experience of LAQ Lawyers, this can often limit the ability of FLDM/FGM discussions to solve or progress some of the matters in contention at court. It is of particular concern that the applicant is not present during the FLDM process, given that this process purports to give authority to families. It is difficult to see how significant decisions can be taken when the applicant is absent. The inclusion of the applicant in this process would mitigate this issue.

- Most significantly, despite the FPP aiming to give authority to parents, children and families to work together to solve problems and lead decision making, there is not true self-determination given that the final decision-making power still rests with Child Safety (for placement and contact decisions) and the DCPL (for decisions about the child protection litigation). In the experience of LAQ Lawyers, families in a FLDM process are still putting forward proposals aimed at ensuring children's safety which are then either accepted or rejected by Child Safety. LAQ respectfully suggests that this does not constitute self-determination. LAQ discusses a model that provides true self-determination in the submission below.

In terms of the current provisions for an Independent Person or Independent Entity to be involved in the child protection litigation, it is LAQ's experience that this option is rarely utilised. LAQ believes there is utility in having an Independent Person or Entity involved in the litigation process and suggests that more may need to be done to identify and support people or agencies who can act in this role. The same applies to people who may be potential CPA s 113 non-parties – it is LAQ's view that the DCPL and Child Safety should take a proactive role in identifying and contacting those who may wish to seek to become a CPA s113 non-party, and in supporting them in accessing the legal representation to make their application. It is unrealistic to expect that a person with no experience of the legal system will be able to identify themselves as a potential CPA s113 non-party and make an application to the court for CPA s113 status. LAQ suggests that, to encourage a more truly inclusive process, the DCPL as the applicant in child protection order application proceedings should bear the onus of assisting potential s113 non-parties to become involved.

Kin mapping is vitally important for Aboriginal and/or Torres Strait Islander children. It is LAQ's experience that when information about a child's family connections is set out in material, this is often done in a way that is confusing to the independent reader. It would be useful if the information provided clearly articulated the nature of the relationship of the persons named to the child. Overall, more needs to be done to locate family. This would provide potential placement options for children and enable family to be involved in decision making.

As noted above, LAQ Lawyers frequently observe unacceptably long delays in identifying, processing, and approving kinship care placements. Often, the delay is caused by something that is easily resolved: kinship care applicants may be unable to access, complete, or submit the correct forms due to lack of technological know-how, limited availability to the internet or computers, or difficulties with reading and writing. In LAQ's experience, kinship care applications are often delayed at the Blue Card approval stage, with applicants often being unable to provide the requested identifying information. In LAQ's view, more resources should be allocated to the kinship care assessment process to remove the barriers that prevent children being placed with kin.

Sibling contact is unfortunately too often overlooked or not prioritised.

As previously outlined, there is a vital need for more interpreter support at all stages of the litigation process.

True self-determination can only exist when ultimate authority rests with Aboriginal and/or Torres Strait Islander people. For the child safety system to fully incorporate self-determination, LAQ supports the expansion of the delegated authority process such as that piloted by Central Queensland Indigenous Development (QCID). It is noted that delegated authority allows for one or more powers or functions of the Chief Executive (Child Safety) under the CPA to be delegated to a suitable and qualified Chief Executive Officer of an appropriate Aboriginal and/or Torres Strait Islander entity, for an Aboriginal and/or Torres Strait Islander child in need of protection, or likely to become a child in need of protection. The delegation is always case by case and, when making the delegation, consideration must be given to the views of the child and their parents. Expansion of the utilisation of the delegated authority power should be accompanied by appropriate resourcing for the relevant entity.

What should be the overall purpose of the child protection litigation model and what should we look for to ensure the system is working

The checks and balances, and/or oversight mechanisms, that should be included in the CPL model to ensure that it reflects best practice and ensure that statutory decisions are made in, and centred on, the best interests of the child include ensuring that parents have access to early legal advice and representation. LAQ refers to comments above with respect to establishing a Parent Advocacy Service.

LAQ notes the critical oversight and best interests role played by separate representatives in the litigation process and considers it imperative that any changes to the CPL model preserve the current role of the separate representative.

Any other issues that might be relevant to understanding how the child protection litigation model does or should work

Suggested specialist training

As outlined above, the child protection model is complex and decentralised. This is reflected not only in the approach by DCPL and Child Safety to making applications, but also in the judicial approach. LAQ Lawyers have observed Magistrates across the State to take different approaches in managing the proceeding and making orders under the *Child Protection Act 1999*. It is clear from the experience of LAQ Lawyers that all Magistrates strive to make interim and final orders that are in the best interests of the subject child; however, confusions and tensions about the various roles and responsibilities within the child protection system result in legal inconsistencies in the application of relevant legislation.

In a similar manner, challenges associated with a lack of resources are managed differently by different Magistrates. This is particularly apparent in matters where Child Safety seek to place younger children in residential care placements. LAQ Lawyers have appeared before Magistrates who are unwilling to make child protection orders without being assured that a non-residential placement is available for the subject children.[43] However, this is not a uniform approach across the judiciary.

LAQ suggests a form of specialised judicial training for magistrates who manage child protection matters would be beneficial. While it is important to ensure that Magistrates have discretion in making decisions, it is LAQ's view that some form of specialised training could assist to reduce the legal and practical inconsistencies that are evident in Childrens' Courts across the State.

From LAQ's perspective as parent, direct and separate representatives, this training could also include strategies for communicating effectively with parents and young people (including communicating in plain English and avoiding the use of legal jargon). As many children and young people seek to attend court, LAQ suggests that training in facilitating their participation would be of great benefit.

LAQ notes that the Magistrates Court has provided a training schedule of lunch box sessions in conjunction with the Domestic and Family Violence Specialist Courts and LAQ suggests that a similar model could be adopted to provide training to stakeholders in the child protection jurisdiction. For example, specific training in relation to delivering culturally safe and appropriate services would be of benefit for all persons involved in the child protection system. Relevant stakeholders could contribute by facilitating sessions about other topics relevant to the jurisdiction.

Organisation	Legal Aid Queensland
Address	44 Herschel Street Brisbane QLD 4001
Contact number	[redacted]
Approved by	[redacted]
Authored by	[redacted]

[43] See DCPL v Powers & Ors (a pseudonym) [2025] QChCM 2

Legal Aid QUEENSLAND

Annexure "A"

Work undertaken by LAQ's Child Protection Lawyers

Child Protection Duty Lawyer services and legal advice clinics

LAQ delivers a Child Protection Duty Lawyer (CPDL) service in designated Childrens Courts. These services are run by LAQ's inhouse Brisbane based Child Protection Teams and Regional offices, in partnership with preferred suppliers and community legal centres. Duty lawyer services are provided in Brisbane, Beenleigh, Caboolture, Cairns, Cleveland, Gladstone, Gympie, Holland Park, Ipswich, Kingaroy, Maroochydore, Mt Isa, Pine Rivers, Richlands, Rockhampton, Southport, Toowoomba and Townsville Childrens Courts. Some of these services are delivered by the Child Protection Teams under LAQ's Child Protection Outreach Legal Service (detailed further below).

Duty lawyers provide urgent, same-day legal advice and advocacy, including:

- Explaining the nature of proceedings to unrepresented parties.
- Assisting with negotiations, adjournments, or procedural requests.
- Discussing eligibility for legal aid and helping with the legal aid application.
- Referring clients to support services.

The Child Protection Teams conduct telephone legal advice clinics, three afternoons each week between 1:00pm and 4:00pm, bookings are made via LAQ's Contact Centre, First Advice Contact Team referrals and LAQ's referral pathways processes. LAQ's First Advice Contact Team and LAQ's Regional Office also provide legal advice in relation to child protection matters in their legal advice clinics.

Child Protection Early Legal Service

The Child Protection Early Legal Service (ELS) is a targeted early intervention program delivered by LAQ's Brisbane based Child Protection Teams. It provides timely legal advice and advocacy to families before court proceedings commence or in the earliest stages of Child Safety involvement, without a grant of legal aid funding. ELS service delivery is shared across the ten professional permanent positions across LAQ's in-house Child Protection Teams, dependent on need and capacity.

The ELS is grounded in the principle that statutory intervention should be a last resort. By assisting families early—particularly those experiencing heightened vulnerability—the service aims to empower parents to address safety concerns, engage with support services, and avoid unnecessary separation of children from their families, or reach a resolution prior to the commencement of tertiary intervention.

ELS prioritises clients who:

- are engaged with a wrap-around community-based service.
- meet one or more vulnerability criteria, including being under 18, Aboriginal and/or Torres Strait Islander, culturally and linguistically diverse, pregnant, experiencing domestic and family violence, homelessness, disability, or mental health challenges, or having prior involvement with Child Safety as a child.

Referrals are accepted through trusted community partners, who are actively working with the clients, including:

- ATSICHS, Kummara, Kyabra, Micah Projects, UnitingCare, and Mission Australia.

- Government and statutory agencies, including Child Safety Service Centres and the Office of the Public Guardian.
- Specialist services, such as Youth Advocacy Centre, Sisters Inside, and domestic and family violence support providers.

Upon receiving a referral, the ELS team conducts a conflict check and contacts the client within 24–48 hours to arrange an appointment. Initial meetings are tailored to the client's context but typically cover:

- explaining Child Safety's concerns and statutory powers.
- identifying existing supports and safety networks.
- exploring possible pathways for resolution.
- providing clear and transparent advice about risks and responsibilities.

Rapport-building is often prioritised at the first appointment, recognising that families are often in crisis and may have a history of distrust in systems.

As the ELS is currently based out of LAQ's Brisbane office, delivery of the ELS is currently limited to areas that lawyers can drive to and return from within the same day. The ELS is also restricted to LAQ's Child Protection Teams, given the level of work required and the collaboration that is required to be undertaken with referral partners, the clients, and other external stakeholders. It is a highly specialised service and it is unlikely that this work would be financially viable for preferred suppliers, who do not restrict their legal practice to child protection work.

ELS Case examples:

> **Client A:** A 14-year-old pregnant young person was at risk of her baby being removed at birth. ELS supported her to identify safe accommodation, strengthen support networks, and negotiate with Child Safety. The child remained in her care under an Intervention with Parental Agreement.
>
> **Client B:** An 18-year-old pregnant woman facing mental health, and domestic and family violence issues received advocacy and safety planning assistance. Through negotiation, her baby remained in her care under a voluntary agreement.
>
> **Client C:** A culturally and linguistically diverse mother involved in domestic and family violence proceedings received integrated legal assistance across both child protection and domestic and family violence matters. Child Safety subsequently closed its investigation.

Data

Since its pilot in 2017, ELS has:

- assisted approximately 428 unique clients, with over 1,750 individual services delivered.
- delivered an average of four services per client, often extending beyond advice into advocacy at meetings, negotiations with Child Safety, or referrals to support agencies.
- demonstrated strong engagement with First Nations clients, culturally diverse families, and parents experiencing multiple forms of vulnerability.

Child Protection Outreach Legal Service

LAQ's Child Protection Outreach Legal Service (OLS) aims to respond to the geographical challenges of Queensland by providing an easy referral avenue, particularly for clients in regional locations who may have limited or no legal representation options in this jurisdiction. OLS service

delivery is shared across the ten professional permanent positions across LAQ's Child Protection Teams, dependent on need and capacity. The OLS is based out of LAQ's Brisbane offices, but delivers services to the following regional areas:

OLS - CPDL service and advice	OLS – Advice only region
Beenleigh	Biloela
Cleveland	Charleville
Gladstone	Cherbourg
Gympie	Cunnamulla
Kingaroy	Emerald
Murgon	Mount Isa
Richlands	Roma
	Longreach

Whilst all potential clients can contact LAQ themselves or make an application for legal aid funding, the OLS allows the client to consent to the DCPL, Child Safety or a support service to provide a referral direct to the Child Protection Teams to access timely legal advice. These referrals provide the Child Protection Teams with all the relevant information to conduct conflict checks and book the client in for legal advice with details about any communication or contact difficulties, the next court events, and sometimes further information about child protection applications. This avenue alleviates barriers for highly vulnerable clients who sometimes feel the more traditional contact avenues for seeking legal advice to be challenging.

In 2025, roughly 30% of OLS referrals were for First Nations clients, reflecting the service's critical role in ensuring equitable access to justice.

Regarding both ELS and OLS, strong referral pathways are maintained with ATSILS and preferred suppliers to ensure that should LAQ be unable to assist, a warm referral can be made for the client to access and receive legal advice elsewhere.

Ongoing legal representation

The foundation of the Child Protection team's work is legal representation of clients pursuant to grants of aid in applications before the Childrens Court. A large percentage of legal aid funding applications are received through the work conducted in advice clinics, CPDL and OLS referrals. File work is provided by both in-house lawyers and external preferred suppliers, with grants of aid approved under LAQ's guidelines.

LAQ provides assistance to:

- Parents listed as respondents to child protection applications.
- Children and young people as the court ordered Separate Representative.
- Children and young people as their direct representative.
- Other interested parties, including kinship carers or grandparents seeking recognition within proceedings (s. 113 participants).

File work encompasses:

- Applications for child protection orders, inclusive of CAOs filed by OCFOS, or more substantive applications filed by DCPL.
- Contested interim hearings, particularly around placement, contact, or s 113 participation.
- Court ordered conferences.
- Final Hearings.
- Appeals.
- Review matters before QCAT.
- Related advocacy at family group meetings, case plan reviews, and other relevant negotiations.

Training

A key aspect of LAQ's Child Protection Team's service delivery is its commitment to professional development and sector-wide capacity building.

LAQ delivers:

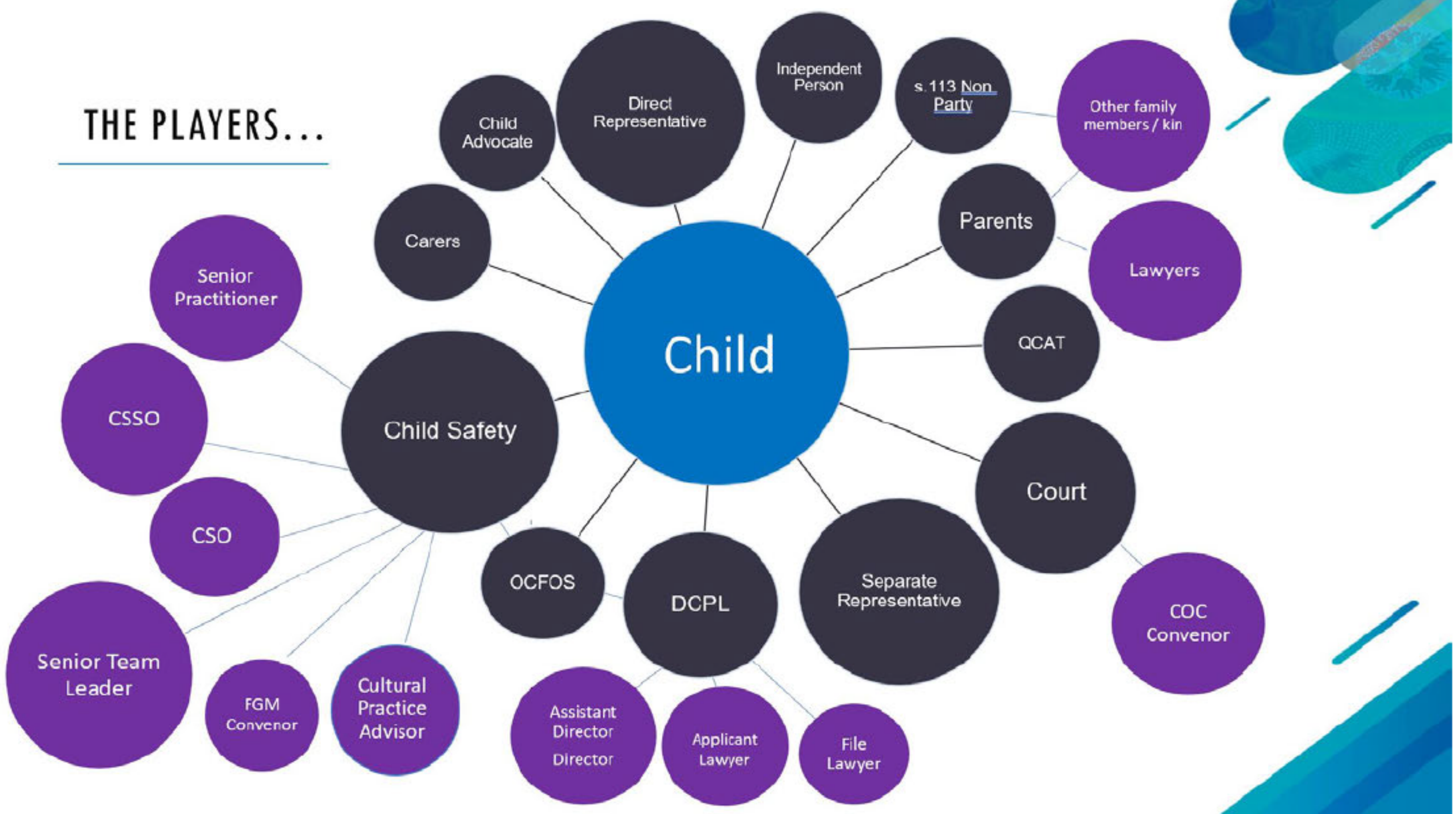
For lawyers (State-wide, internal, preferred suppliers and Community Legal Centres)

- ongoing Continuing Professional Development (CPD) sessions which focus on child protection law, evidence, advocacy, and trauma-informed practice.
- specialist training, including the Child Protection Masterclass and Separate Representative Accreditation & Masterclass, that strengthens the competencies of duty lawyers and child protection advocates across the State.

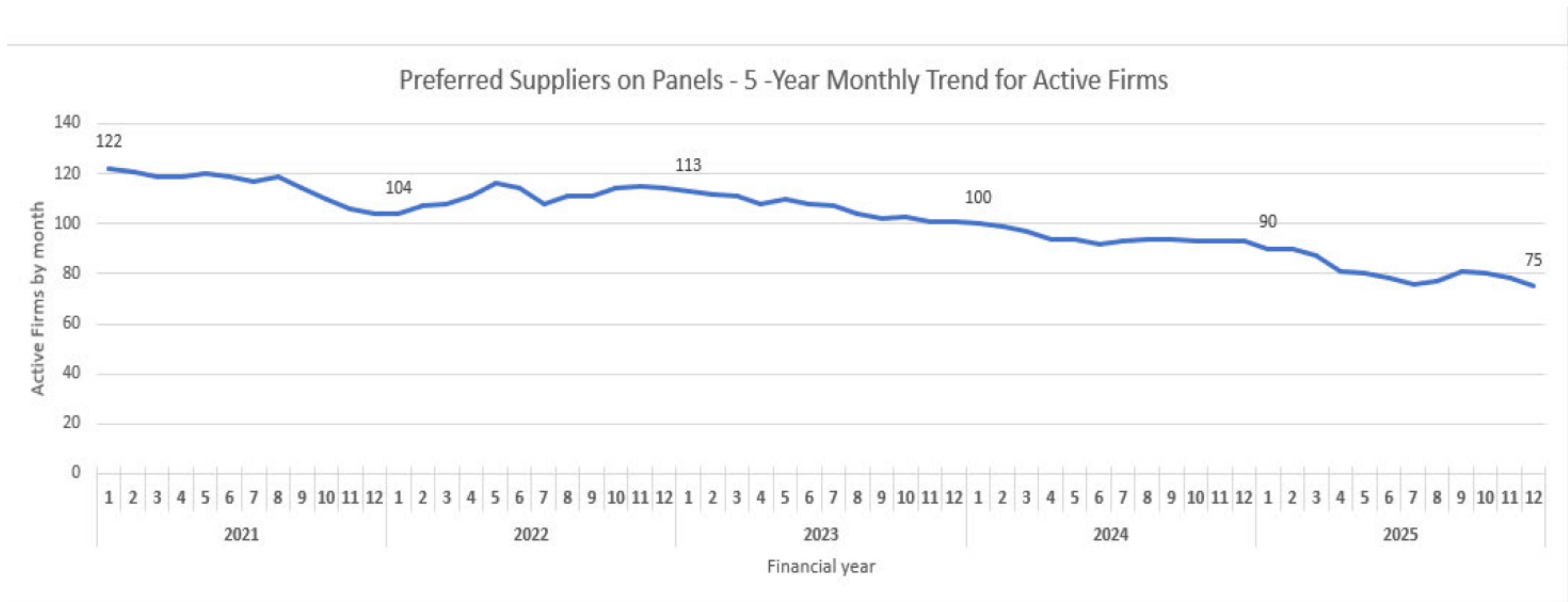
For community workers

- training with community organisations (e.g. QATSICPP), equipping practitioners across disciplines with tools to work effectively with families.
- Community Legal Education (CLE) resources are developed to inform non-legal workers and families about rights, responsibilities, and pathways in the child protection system.

Annexure "B"



Annexure "C"



Annexure "D"

Financial Year ending	Child Protection Casework Commitment Total commitment for party work, direct representation, separate representation, non-party work and appeals (Solicitor fees, Barrister fees and disbursements)
2013	**$638,723**
2014	**$519,126**
2015	**$554,398**
2016	**$579,013**
2017	**$680,741**
2018	**$740,740**
2019	**$1,550,582**
2020	**$1,888,277**
2021	**$2,145,601**
2022	**$1,852,615**
2023	**$1,690,482**
2024	**$1,874,460**
2025	**$2,134,156**