



public guardian
Queensland

Child Protection Litigation Model

Submission to the Child Safety

Commission of Inquiry

February 2026



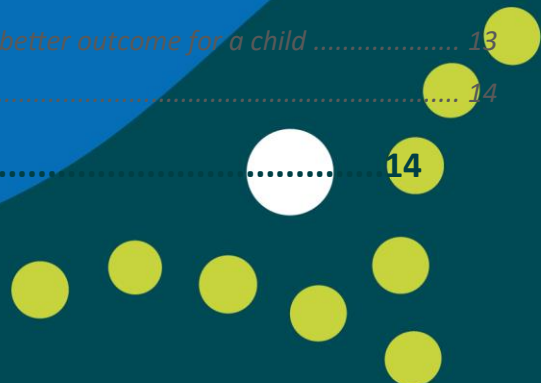


public guardian

Queensland 3

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About the Office of the Public Guardian

The Office of the Public Guardian (OPG) is an independent statutory office which promotes and protects the rights and interests of adults with impaired decision-making capacity and children and young people in the child protection system or staying at a visitable site.

OPG was established on 1 July 2014, following a recommendation by the Queensland Child Protection Commission of Inquiry (QCPCOI). The QCPCOI final report, *Taking Responsibility: A Roadmap for Queensland Child Protection* (June 2013) highlighted the need to provide more individual advocacy and support for the most vulnerable children and young people in out-of-home care.

To achieve these outcomes, it recommended combining the Child Guardian function (individual child advocacy) of the former Commission for Children, Young People and Child Guardian (CCYPCG) with the Adult Guardian function of the Office of the Adult Guardian to form a new independent statutory position and body of Public Guardian the Office of the Public Guardian. The QCPCOI report also recommended that OPG assume the responsibilities of the child protection community visitors and refocus on young people who are considered most vulnerable, and the introduction of a child advocate role to allow for more specialised individual advocacy services related to children's rights.

OPG therefore provides individual advocacy services to children and young people through the following functions:

- child advocacy, which offers person-centred advocacy for children and young people in the child protection system, and elevates the voice and participation of children and young people in decisions that affect them, and
- community visiting, which monitors and advocates for the rights of children and young people in the child protection system including kinship, foster and residential care, and all children and young people staying at visitable sites (including youth detention centres, police watch-houses and authorised inpatient mental health services).

OPG provides an entirely independent voice for children and young people to raise concerns and express their views and wishes. When performing these functions, OPG will seek and take into account the views and wishes of the child to the greatest practicable extent.

Overview of child advocacy services

Child advocacy officers, known operationally as child advocates, provide individual advocacy to children and young people who are subject to a care agreement or Child Safety order such as an assessment order, custody order, or child protection order (relevant children). Child advocates seek to ensure that the views and wishes of children and young people are heard and considered, by supporting them to participate in decision-making that affects them.

Child advocates can ask for information, talk to Child Safety and other stakeholders, and meet with children and young people to discuss and explain legal matters. They may also provide support if the child or young person is involved in the youth justice system. When providing services to children and young people, child advocates must seek and take into account the child or young person's views, wishes and preferences to the greatest extent practicable.

Child advocates support children and young people to navigate and understand complex legal processes, often in court and tribunal settings, ensuring their rights and interests are upheld. Child advocates do not act as legal representatives but can assist the court to understand matters relevant to the child or young person's involvement and experiences, as well as their decision-making capacity. They also strive to ensure the rights of children and young people are upheld in line with relevant legislation, policies and procedures.

Child advocates provide support to children and young people by:

- Providing information about legal issues a child or young person may be concerned with
- Helping to resolve disputes and make complaints regarding a decision made about a child or young person's time in the child protection system
- Supporting, and if desired, speaking for, a child or young person in meetings with Child Safety to express their needs, views and wishes
- Supporting a child or young person to attend and speak for themselves in a court or tribunal, or if desired, speaking for them
- Providing a child or young person with advocacy support relating to decisions about their education
- Seeking a review or participating in a review of a decision before the Queensland Civil and Administrative Tribunal (QCAT) regarding a child protection decision, and
- Seeking review of decisions about a child or young person's education, including decisions to exclude, suspend or refuse to enrol them.

A child advocate may also support a direct legal representative in youth justice proceedings by advocating to ensure children and young people involved in both the child protection and youth justice systems have access to an appropriate placement and service provisions to mitigate the risk of criminalisation and recidivism, particularly for children and young people remanded in detention.

OPG has 12 FTE child advocates that are available to provide advocacy services for relevant children across Queensland. Child advocacy services are based on a referral system, and whether a child advocate is assigned to a child primarily depends on resourcing capacity.

Overview of referral framework

Child advocates may become involved in a child or young person's matter after receiving a referral for advocacy assistance from community visitors, government departments, non-government organisations, or directly from the child or young person. Incoming referrals are received and recorded by the child advocacy team administration officer.

Each referral is assessed using a priority risk assessment tool and having regard to capacity within the team. Referrals for advocacy assistance may be accepted or refused, based on their relevance and the scope of the Public Guardian's child advocate functions under section 13 of the *Public Guardian Act 2014*. If a referral is accepted, it is allocated to a child advocate for action. If a referral is declined, reasons will be provided, and alternative referral pathways identified if applicable. This may include an internal referral to the Community Visiting program. Senior Advocacy Officers within the Community Visiting program provide additional advocacy support to community visitors where a matter is complex or time intensive.

Adult guardian functions

OPG also promotes and protects the rights and interests of adults with impaired decision-making capacity through its guardianship, investigations and adult community visiting functions.

Relevant to this submission, OPG provides personal decision-making services (guardianship) to parents with impaired decision-making capacity for whom the Public Guardian is appointed by the Queensland Civil and Administrative Tribunal (QCAT).

This appointment may be by virtue of an application for guardianship, or a referral to QCAT by the Children's Court of Queensland. In the context of the child protection litigation model such adults range from:

- adults who are named respondents in child protection proceedings before the court
- adults who are the subject of child safety investigations and intervention in relation to their children, and/or
- adults who lack capacity for decision-making in other personal matters such as accommodation, service provision, and contact,

all of which intersect with the adult's protected human rights including right to protection of families and children, cultural rights, and right to a fair hearing.

The *Public Guardian Act 2014* and *Guardianship and Administration Act 2000* provide for OPG's legislative functions, obligations and powers. The *Powers of Attorney Act 1998* regulates the authority for adults to appoint substitute decision makers under an advance health directive or an enduring power of attorney.

Position of the Public Guardian

The Public Guardian welcomes the opportunity to provide a submission to the Commission of Inquiry about the child protection litigation model. This submission explores OPG's role within the child protection litigation model, the experiences of children and young people and parents with impaired decision-making capacity who receive our services, and opportunities for reform. Given OPG's dual role in supporting both parents with impaired decision-making capacity and children and young people in child protection proceedings, this submission raises issues from both perspectives.

The views of the Public Guardian contained in this submission do not represent the views of the Queensland Government.

Issues relating to children and young people

Children's voices

Our child advocates routinely support children and young people in child protection proceedings. OPG receives most referrals for child advocate services from Child Safety. However, children and young people can also be referred to OPG by Youth Justice, a guidance officer, teachers, parents, any government or non-government entity or service provider, or anyone else supporting the child. Children and young people are also able to self-refer to OPG for child advocate services. The majority of OPG's referrals are received for children between the ages of 12 and 18, with referrals from or on behalf of younger children being received occasionally. Child protection proceedings, QCAT matters, and Education or Youth Justice matters are the primary reasons for children or young people being referred to OPG for child advocacy services.

It is OPG's observation that child protection proceedings are generally experienced by children and young people as confusing and intimidating processes. It is important that children are given sufficient information in age appropriate and child friendly formats to understand court applications and child protection proceedings, as well as their rights to participate in proceedings and decision-making.

OPG considers that enabling participation and the requirement for children's voices to be heard about issues that impact their life is a basic human right and is critical to ensuring decisions are made in their best interests. The views of children and young people can be fluid and may change as proceedings progress, as might their decision-making capacity. This needs to be recognised and accommodated in child protection litigation proceedings through ensuring there are ongoing supports and opportunities for their views and wishes to be meaningfully and sensitively sought and included.

In the present system, Child Safety Officers (CSOs) generally include a section in the supporting affidavit to an application summarising the child's views and wishes. The context of the gathering of the views and wishes is not typically provided. It also does not necessarily adequately demonstrate that the child understands the child protection concerns and application. The child's views and wishes, as presented in the affidavit, may not fully reflect the context in which they were obtained. The affidavit does not necessarily include the explanation that the child received regarding the litigation process, or that their views and wishes will be utilised as a supporting element within the decision-making process, the outcome of which has a significant impact on their life. In addition, the affidavit may not provide the opportunity to express nuances around the child's views.

The Children's Court Rules provide for how children may participate and be heard in proceedings (rules 42 and 43). Rule 44 requires the Chief Executive of Child Safety to tell the child about proceedings, including court ordered conferences and being represented by a lawyer. Rule 44 does not compel this in all circumstances, only to the extent is reasonable and practicable in the circumstances, the Chief Executive considers it appropriate having regard to child's age or ability to understand the matter. This potentially places some children and by extension their parents and family at a default disadvantage.

There are significant benefits in having a person independent of Child Safety explain to children and young people what it is occurring in court. For many children and young people, including First Nations children and young people, gratuitous concurrence may significantly impact their ability to challenge or contradict the proposals made to them by adult professionals in authority, family members or carers who all may have a particular view and perspective about what should occur in the best interests of the child or young person. In addition, the contested views from the adults in their lives can create a challenging and at times distressing context for children and young people, impacting on their capacity to fully express their own views and wishes.

The Department of Child Safety has an obligation to inform children and young people about the Charter of Rights for a child in care, under Schedule 1 of the *Child Protection Act 1999*, advise them of the Chief Executive's Charter of Rights obligations, inform them about external agencies who can assist them (i.e. OPG), and explain they can contact Child Safety if they have any questions about their care. OPG's anecdotal experience is that this regularly does not occur, with one of the contributors likely to be a lack of legislative guidance on the regularity or manner in which children and young people must be informed. This can lead to a lack of consistency or accessibility of that information, particularly for children with disability, literacy and cultural diversity. Consequently, children and young people may be insufficiently informed of their Charter Rights. The *Child Protection Act 1999* was amended in 2022 to ensure Child Safety regularly informs children of their Charter Rights and the Chief Executive's obligations regarding those rights (section 74). OPG suggests that consideration be given to furthering these provisions by ensuring the model requires compliance with these obligations to be evidenced in proceedings.

The below case study demonstrates the benefit of the child's views and wishes being heard in child protection proceedings.

Alex*

OPG received a referral for legal permanency advocacy from Alex’s carer. Alex had been placed with kinship carers since her birth and sought to have orders made in the Children’s Court to reflect that her carers were her family. Upon accepting the referral, a child advocate met with Alex to discuss her rights and options for achieving legal permanency. Alex expressed strong views that her carers should be her guardian and that she should have a normal life with the family who had cared for her since birth. The child advocate liaised with the carers and Child Safety for several months, advocating for an application for a Permanent Care Order to be filed. Eventually, the matter came before the Court and was finalised on the second mention. Alex was supported by the child advocate to attend Court and meet with the Magistrate, and she was able to speak with the Magistrate about her family and the impact a permanent care order would have on her. As a result, the Court made the Permanent Care Order, consistent with Alex’s strong views and wishes.

**not their real name*

Representation of children and young people in proceedings

Ensuring the voices, views and wishes of children and young people are relevantly and appropriately understood, heard, weighed and independently conveyed is fundamental to procedural fairness. In practice, OPG has observed that there can be inconsistencies in how, when and by whom children receive independent legal support in child protection proceedings. This inconsistency in accessing legal representation can depend on a range of factors, including the child’s age. This issue is particularly relevant in times of crisis and heightened risk (e.g at removal, placement changes, and contested assessments or decisions), and when decisions are made quickly and changeably (eg. court assessment orders and temporary assessment orders). In these instances, it is critical that children and young people are supported to assert their rights.

In general terms, children up to 6 years of age might be best supported by a separate representative. This representative should meet the child and/or use the Social Assessment Report process, completed by an independent expert to determine the child’s best interests and their views and wishes, to the extent they are able to be ascertained.

Children aged 7–11 years should have access to an OPG child advocate if they want one, noting that this would require a significant increase in child advocate resourcing. Most children this age are able to express views and wishes about where they wish to live and who they wish to see, and when they do and don’t feel safe, even if they do not fully understand the court proceedings that are occurring. Some children as young as 10 years of age have the ability to instruct a legal representative and should be supported to do so if this is their preference, like in youth justice matters.

Young people from the age of 12 years with the ability to understand the proceedings should have access to a legal representative (such as legal aid), or an OPG child advocate, if they wish for support throughout the litigation process.

For First Nations children and young people and families, the *Child Protection Act 1999* outlines the obligation on the department to arrange for an Independent Entity to facilitate meaningful participation in significant decisions and decision-making processes. OPG suggests that system-wide accountability could be considered and achieved through fully embedded, culturally informed advocacy and representation options for First Nations children,

consistent with self-determination principles and independent cultural advice and advisors, based on the mandatory framework for the courts.

The child advocate model is more flexible and child-focused than most legal representation models. For example, child advocates generally meet the child more frequently and visit them in the child's preferred environment, rather than having appointments in an office. Child advocates can also be more flexible and informal with participation options than a legal representative, e.g. helping children write a letter rather than going on the record in proceedings, or attending court for the child rather than 'seeking instructions', to reduce the pressure on children and young people. Across all age groups, child advocates and community visitors provide child-centred, age appropriate and flexible independent advocacy that contextually a legal representative in isolation cannot provide. This model ensures the child's expressed views are not only presented but understood within the broader relational and cultural context.

OPG sees merit in the Victorian framework for legal representation, whereby all children aged 10 years and over are automatically assigned a legal representative from Legal Aid. This also occurs at the first mention proceeding where interim accommodation orders are being sought, which is generally at the point of removal of the child from family (the equivalent of a Court Assessment Order (CAO), Temporary Custody Order (TCO) or Temporary Assessment Order (TAO) in Queensland). The department or the registry supply the list of matters to Victoria Legal Aid, who allocate a lawyer to the child, and then the allocated lawyer proactively reaches out to make contact with that child to explain their role and obtain the child's views and wishes. This allows the child's views to be considered at initial, critical stages of proceedings. As this is typically the point that custody of the child changes, it is often a matter about which the child would have a strong view. OPG suggests that a well resourced child protection litigation model in Queensland could ensure options for representation and support are made available to all children and young people.

A model where a child is automatically offered a legal representative or a child advocate is preferable to the current 'opt in' model, as this places the onus on either the child themselves or others around them to understand that the child is entitled to this service and complete a referral. It is a complex legal jurisdiction and therefore awareness of available services should not be presumed. Resourcing issues can delay a referral being submitted and processed, which typically means interim custody issues have already been determined without the child participating in the decision-making. It also increases the likelihood that the most vulnerable or disadvantaged children are not provided this opportunity.

Geographical challenges can result in children and young people in regional Queensland not being afforded the same participation opportunities as those located in metropolitan Queensland. The use of technology alone, instead of face-to-face visits and support, creates difficulties building rapport with a young person, as well as challenges with confidentiality (for example, it is hard to know if the young person is speaking with their child advocate alone). It may mean that a child is required to attend a Court Ordered Conference (COC) or meeting with a Magistrate without the benefit of an OPG child advocate being there with them in person. Receiving services remotely via technology does not provide the same level of support to these vulnerable children and young people as those who are able to access child advocate services in person, and it means they may be less likely to participate in proceedings.

Proceedings in child protection matters can be lengthy – contributing at times to ongoing uncertainty and instability for children and young people. Matters that finalise very quickly can be equally concerning and reflect a lack of participation in proceedings by parents and children and young people. Remands of proceedings that support engagement such as a referral to the Family Participation Program for a First Nations family for an Aboriginal and Torres Strait Islander Family Led Decision Making process will support significant engagement in case planning processes that necessarily take time. The reduction and elimination of remands that are caused by

unnecessary delays in the provision of material by the department or other government departments such as Queensland Police or Health would be beneficial.

OPG child advocates could be funded to travel on circuit, similar to the Director of Child Protection Litigation (DCPL) applicant lawyers who are funded to travel to regional Queensland on circuit for the same matters. This would allow for default child centred advocates to discharge the functions and intentions of the *Public Guardian Act 2014* in a more fulsome way by providing advocacy to ensure that standard court processes are undertaken in circuit areas, such as the child or young person meeting the Magistrate.

The removal of a child from their family is acknowledged as arguably one of the most intrusive actions under the law. It includes a presumption that the state can and will provide safer care to the child than their parent. As such, when attempting to determine if a child is in need of protection, consideration should be given to where the greater risk lies and whether the state can assure with certainty that state care is safer for the child. Design of a model that balances those considerations should involve:

- mandatory access for children and parents to early legal advice
- requirement for decision-making to take into account the harm of removal from family, particularly for infants
- requirement for decision-making to take into account placement options available post removal
- alternatives to the presumption of removal, and
- reduction in the practice of excess affidavit material which is reflective of the power imbalance between the parties, potential system bias and risk aversion
- oversight and examination of the actual risk posed to the child, noting that current practice can be to remove the child before testing evidence. Once a child is removed, the process for a parent to be reunited with their child is particularly difficult for disadvantaged parents and in the context of the trauma and grief caused by the removal

While the child protection litigation model applies specifically to Children's Court proceedings, child advocates play an important role in supporting children and young people in other court and QCAT proceedings, as well as other decision-making processes. Child advocates provide a continuum of advocacy to ensure that the system fulfils its obligations to the child and in turn the family. This enables the power dynamic between children, families and the government to be rebalanced to ensure due process and procedural fairness, which is in the child's best interests.

The below case studies demonstrate the role of child advocates in supporting children and young people in other proceedings and decision-making processes.

Stella*

OPG received a referral for QCAT proceedings in relation to a reviewable placement decision for Stella. The proceedings related to her mother, who sought the review of a placement decision made by Child Safety to move Stella from Central Queensland to the Gold Coast Hinterland with her foster family, who she had been placed with for some time. Prior to the referral being made, the Tribunal had stayed Child Safety's decision, meaning that Stella remained in Central Queensland with a respite carer while her foster family relocated to the Gold Coast. Stella identified her foster family as her mum and dad and had formed a close attachment to them, expressing that she wanted to move with them and be returned to their care.

A child advocate supported Stella to participate in the QCAT proceedings. At the time of receiving the referral, the matter was listed for a final hearing in the coming weeks. In a short timeframe, the child advocate met with Stella to discuss her rights and options for participating in the matter. The child advocate also met with a separate representative to discuss Stella's views and wishes. The separate representative ultimately supported Stella's views and wishes to return to her foster family's care. The child advocate supported Stella to meet with the Tribunal members on the morning of the final hearing, where Stella was able to articulate her views and wishes, and the impact that the Tribunal's decision to stay Child Safety's placement decision had on her.

Following the meeting with the Members, the Tribunal noted Stella's participation and complimented her ability to articulate her views to the Tribunal during a distressing time. As a result of Stella's participation, with support from the child advocate, and the Tribunal meeting, the applicant withdrew her application to review Child Safety's decision and Stella was able to join her foster family in their new home.

**not their real name*

Jesse*

OPG received a referral in relation to Jesse, who had been suspended from school pending expulsion. Jesse had a significant care history and had experienced abuse and instability for much of their life. Jesse expressed that they wished to return to school, noting that they had achieved stability at school and formed strong relationships with staff and students. A child advocate and Jesse's care team met with the school Principal to discuss the suspension. Jesse also sought to make a written submission regarding the pending expulsion decision, which was supported by the child advocate. The submission highlighted Jesse's trauma history and care experience and linked these factors with the school's policies and procedures for supporting vulnerable children and children in out-of-home care. The submission was ultimately unsuccessful. Despite discussing the option to appeal this decision further, Jesse decided to enrol in another school and start fresh elsewhere. While the expulsion matter was ultimately decided against Jesse, they appreciated the services and support provided by the child advocate during the process.

**not their real name*

Issues relating to parents with impaired decision-making capacity

OPG has identified significant barriers for parents with impaired decision-making capacity under a guardianship order who are named respondents in child protection proceedings before the court.

In OPG’s experience, there can be incorrect presumptions that parents with impaired decision-making capacity cannot overcome their impairment or disability in relation to parenting. The child protection risk identified by Child Safety may not be based on the harm a parent may or may not cause their child, but on the existence of their impairment. Child protection risks present in the same way, regardless of whether the risk arises because of physical harm, drug and alcohol use or neglect. Child protection concerns can only be alleviated if a parent has the opportunity to learn or be taught how to mitigate those risks. The starting point for many people that have the Public Guardian appointed is that the risk arises because of their impaired decision-making capacity, and resources are not used to identify mitigating factors which may overcome the risk to a sufficient level to negate the need for a child protection order.

OPG also hold human rights concerns in relation to Temporary Assessment Orders against parents with impaired decision-making capacity being heard on an ex parte basis, meaning the court makes orders without a clear understanding of the impairment, or opportunity for the parent to make submissions about the orders being made. Such applications have been made under circumstances that may not provide fair process for the adult concerned. For example, applications may be made out-of-hours over the phone or on the papers, adults are on occasion not served properly, or are not provided with an appropriate explanation of the department’s concerns, or reasons why the application has been filed. There is also no consideration of the manner in which adults with impaired capacity are served the court documents. A mandatory requirement for the matter to be brought before the court the next day to allow for proper legal representation for adults to have access to adequately trained duty lawyers and attend the court with their supports may be a way of balancing the need for urgent action by Child Safety and supporting parents to fully participate and be able to represent their views. It is OPG’s experience that regional and remote courts have limited listing times, which causes significant delays, further limiting the adult’s protected human rights to a fair hearing. In circumstances where a Court Assessment Order is filed there are often further delays in filing of material, again limiting opportunity for fair hearing and access to legal representation and delays in the involvement of the Public Guardian which impacts the adult’s ability to properly have their rights protected and ability to litigate.

OPG would like to draw the Commission’s attention to two key reports in this area: the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability’s *Research Report: Parents with disability and their experiences of child protection systems* (July 2023), and the Queensland Public Advocate’s report, *Supporting parents with cognitive disability in Queensland: The need for reform* (May 2025). Both reports explore the significant challenges faced by parents with impaired decision-making capacity when interacting with the child protection system, including discrimination, inaccessibility, lack of appropriate services, and the power imbalance between parents and Child Safety. The reports highlight research into the Western Australian child protection system which identified that mothers with intellectual or cognitive disability were six times more likely than those without to have their children taken into out-of-home care. The Royal Commission report discusses how parents with disability experience disproportionate outcomes in child protection matters when compared to parents without disability. They experience disproportionality in the removal of their children from their care, access to support, engagement and reunification with their children, and permanent removal of their children and subsequent children. These issues are further magnified for First Nations parents with disability. The reports make several recommendations to address these issues and improve the experiences and outcomes for parents with impaired decision-making capacity and their children.

Interventions

Alternate Litigation Pathway

OPG suggests that tertiary intervention should be the last resort, not an outcome which arises because a parent has impaired capacity. To achieve this, OPG supports the creation of an alternate litigation pathway for adults that have impaired decision-making capacity. This could be an alternate pathway focused on a social services

framework, rather than the current litigation framework, and modelled off existing alternate pathways for First Nations families that remove the formality of court proceedings, such as pre-proceeding meetings to discuss support. For example, as a first step, the department and a service provider could have a meeting with the family that is non-confrontational, to see what they can do to assist the family. This includes an acknowledgement of the supports already in place for the parent and supporting them to obtain additional support as appropriate. The department should prioritise family intervention services being available for parents where impaired capacity is a concern. A similar process is followed in the United Kingdom, where emphasis is placed on supporting families before court proceedings are initiated and dictates that assessments should occur outside of the litigation so that they are used to inform how the department works with the family. Parents are also able to be legally represented during the pre-proceedings actions to ensure everyone is accountable for what is agreed during these meetings.

If there were an alternate litigation pathway, specialised practitioners could work with parents to gain an in-depth understanding of their impaired capacity, and actively case manage their matter in a more holistic way with a view to increasing meaningful participation of parents in the court process. This could also help fulfil the Children’s Court obligations to ensure that the parents understand the nature, purpose and legal implications of the proceeding and any order or ruling made by the court, as far as practicable, and to not hear the proceeding without an interpreter or a person to facilitate the parents taking part in the proceeding if required due to a disability (section 106 of the *Child Protection Act 1999*). Measures are required to make the court process more accessible for parents with impaired decision-making capacity. This may include reasonable alterations to court processes, for example, treating parents with impaired capacity as vulnerable witnesses and making appropriate adjustments, or removing the courtroom setting altogether. Investing resources in the early stages of Child Safety interventions will likely lead to less matters going before the court, which will save public funds and the high cost of professional staff attending court events and meetings which arise by virtue of the litigation.

Child Safety support parents to access referral pathways to the Early Intervention Service (Legal Aid)

OPG has seen the benefit of early legal advice for parents who are involved in the child protection system, and the positive outcomes that can be achieved without child protection orders. In circumstances where Legal Aid may have a conflict, an alternate service needs to be identified for a parent that will provide this legal advocacy without a grant of Legal Aid. To address this issue, OPG suggests that consideration should be given to implementing some aspects of the United Kingdom pre-proceedings model introduced in 2014. The Public Law Outline sets out the duties of local authorities (the agencies responsible for bringing child protection litigation in England) when considering whether to take a case to court seeking a statutory order. All parents are eligible for legal aid and can be represented by a lawyer, regardless of merit for public funding. Provision of funding at the initial intervention stage is likely to lead to less pressure on litigation and court resources. This also includes timing limitations which require a clear understanding of the adult’s capacity at the outset and clarity on how they are able to work with the parent and family. This can be done through a series of meetings that allow for voluntary orders and ongoing support for the family with the goal of reunification or identifying ongoing concerns.

Exploration of alternative models

There are limitations in the current model in enabling Magistrates to have direct access to cultural advice and input to inform decision-making for Aboriginal and Torres Strait Islander children and young people. While the *Child Protection Act 1999* includes multiple obligations on Child Safety in relation to First Nations children, the court does not have routine access to independent cultural advice or expertise to validate the evidence presented as to how those obligations have been meaningfully met. Alternative models, including Murri Court and the Youth Koori Court provide practical examples of structures that support an enhanced consideration of cultural factors when considering child protection matters.

Victoria has similar models in practice that allow for an improved First Nations experience in court proceedings. Section 18 of the *Children, Youth and Families Act 2005* (Vic) allows for a court to transfer full case management responsibility from the state to an Aboriginal agency. Further, Victoria introduced the Marram-Ngala Ganbu program to Broadmeadows Children’s Court in 2016 to provide a more effective, culturally appropriate and just response for Koori families by adapting the court process to enable greater participation by family members and culturally informed decision making. The program was evaluated in 2019, finding that it achieved its intended short and medium-term outcomes and was on track to deliver long-term outcomes, with more Aboriginal families staying together following the introduction of the program.

Other models worth exploring further include infant courts and family drug treatment courts.

Practice directions regarding material filed

Affidavits filed in proceedings are often filed late, are very lengthy and there is a perception that all evidence needs to be included in an affidavit to support an application brought by DCPL. For example, an affidavit filed in proceedings concerning a parent with a mental health diagnosis who had the Public Guardian appointed for decision making exceeded 1,000 pages due to exhibits being included about the person’s diagnosis, which was not an issue in dispute. In addition, case plans that are developed by families and presented in formats and ways that are meaningful to them are at times rejected by Magistrates for not fitting with legislative or court requirements. More contemporary and child, young person and family friendly ways of providing material to the court to inform decision-making would strengthen their engagement and support the state in its role as a model litigant in child protection proceedings. For example, using practitioner-led assessments rather than legal-based documents to inform the court’s decision, similar to the United Kingdom model which uses Social Work Evidence Templates (SWET) when applying to the court to start care proceedings. The SWET is a standardised form that supports the provision of consistent and analytical social work evidence to the court.

It is recommended that the practice directions from other jurisdictions are reviewed to potentially identify a better approach to the provision of relevant evidence.

Higher standard of investigation and reporting in Social Assessment Reports commissioned by separate representatives

OPG has observed social assessments that have been developed where there is inadequate understanding of the impairment and its impact on a parent’s functioning and decision-making. Greater onus needs to be placed on the separate representative to ensure that they are instructing appropriate experts, who have skills, knowledge and ability related to the specific impairment. The remit of Social Assessment Reports should extend beyond what order should be made to encompass ongoing familial relationships and what life may look like for a family where one parent (or both) has impaired decision-making capacity.

OPG holds similar concerns in relation to parenting capacity assessments and recommends guidelines about what is to be expected be agreed with benefit of medical or other information relevant to the adult’s impairment. This also extends to the appropriateness of the environments in which the adult is observed.

Evidence needed to demonstrate how placement outside family is a better outcome for a child

Evidence should be required to be provided to the court to demonstrate how a placement outside a child’s family of origin is a better outcome for a child in situations where the only child protection concerns are linked to the parent’s impaired capacity. The onus should be on the state to consider what supports (including NDIS supports) are available to the family to mitigate any risk posed by the parent’s impairment before an order is made by the court.

Amendments would be required to the legislation to require the Court to consider the proposed outcomes regarding case planning goals for the child and that an onus is placed on the state to show why an out of home placement is the safer option.

Delayed Child Protection Proceedings

Child protection proceedings are often delayed and lengthy, increasing distress and uncertainty for families and the potential of re-traumatisation if required to repeatedly return to court. OPG has observed the following reasons for delays in court proceedings:

- Frequent delays occur around family group meeting (FGM) scheduling (3-4 months) and further delays after the FGM while case plan affidavits are drafted.
- It is common for multiple case plans to occur during court proceedings, or for a matter to be otherwise ready to finalise, but delayed because a case plan is about to expire.
- There are often significant delays with listings for final orders after COCs where parties are not opposed to orders. Sometimes this results in parents changing their position and further delay.
- There are often delays of 3-6 months occasioned by Social Assessment Report writers' availability, especially in regional areas.
- Child Safety's failure to serve affidavits in a timely way causes unnecessary and avoidable adjournments.
- Delays occur while Legal Aid applications are considered.
- Delays occur when an initiating affidavit is not filed with the application and the matter is adjourned.

OPG suggests that consistent case management by Magistrates is beneficial for children and young people and results in more robust and consistent decisions, limiting repeated adjournments.

Conclusion

OPG thanks the Commission for the opportunity to provide a submission regarding the child protection litigation model. We trust the Commission will consider the issues raised in this submission in conducting their inquiry and in developing recommendations. OPG welcomes the Commission's examination of the child protection litigation model as an opportunity to improve outcomes for children, parents and families. It is critical that any reforms to the model balance the rights and interests of children and parents with impaired decision-making capacity.



public guardian

Queensland

