Director of Child Protection Litigation

Director's Guidelines

Current as at 29 October 2018

Queensland Government

Office of the Director of Child Protection Litigation

Director's Guidelines – current as at 29 October 2018 – to replace previous Guidelines

Issued by the Director of Child Protection Litigation under section 39 of the *Director of Child Protection Litigation Act 2016*.

These Guidelines are issued to:

- all staff of the Office of the Director of Child Protection Litigation (ODCPL);
- the chief executive of the Department of Child Safety, Youth and Women (Child Safety) and all staff working in the following areas undertaking work relevant to the functions of the Director of Child Protection Litigation (DCPL):
  - the Office of the Child and Family Official Solicitor (OCFOS);
  - Child Safety Service Centres; and
  - Child Safety's Legal Services;
- lawyers engaged by the DCPL to carry out the Director's functions under the *Director of Child Protection Litigation Act 2016*.

These Guidelines are not issued as mandatory directions. The purpose of the Guidelines is to promote best practice for the collaboration between the DCPL and Child Safety to achieve fair, timely and consistent outcomes for the protection of children in respect of matters including:

- referrals of *child protection matters* to the DCPL by Child Safety, including the form and content of a brief of evidence;
- procedures for dealing with *child protection matters*, including factors the DCPL must have regard to in deciding whether to apply for child protection orders;
- principles and procedures for the conduct of child protection proceedings, including procedures about the roles of the DCPL and Child Safety during the proceedings; and
- procedures about how Child Safety may seek an internal review of a decision of the DCPL for which written reasons are required to be given.

Where terms used in the Guidelines are defined in legislation such as *child in need of protection* that definition is adopted and the term is italicised. The relevant legislative reference is included in the definitions section at the end of the Guidelines (Appendix 1).

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Chapter 1 - Introduction

Part 1 Role of the Director of Child Protection Litigation

1. The Director of Child Protection Litigation (DCPL) is established by the *Director of Child Protection Litigation Act 2016* (the Act). The DCPL is an independent statutory officer located within the justice portfolio representing the State. The main functions of the DCPL are to:
   a. prepare and apply for child protection orders (including applications to extend, vary or revoke child protection orders) and conduct child protection proceedings in the Childrens Court of Queensland;
   b. prepare and apply for transfers of child protection orders or proceedings between Queensland and other participating States; and
   c. prepare, institute and conduct appeals against decisions of the Childrens Court of Queensland on applications for child protection orders, and decisions to transfer a child protection order or child protection proceeding to a participating State.

2. The DCPL also has the following functions on request:
   a. to provide legal advice to Child Safety in relation to the functions of Child Safety under the *Adoption Act 2009* and the *Child Protection Act 1999* (CP Act) and other matters relating to the safety, wellbeing or protection of a child;
   b. to represent the State in legal proceedings under the *Adoption Act 2009* and the *Child Protection Act 1999*; and
   c. to provide advice to the State about a matter to which that Convention of the Civil Aspects of International Child Abduction applications under the *Family Law Act 1975* (Cwlth), section 111B, and to represent the State in proceedings relating to the matter.

Part 2 Role of the Office of the Child and Family Official Solicitor

3. The Office of the Child and Family Official Solicitor (OCFOS) is a legal unit within Child Safety and is the principal point of contact for the DCPL. Key responsibilities of OCFOS include:
   a. providing legal services and advice to Child Safety Service Centres (CSSC) about Child Safety's statutory functions relating to the protection of children;
   b. applying for temporary assessment orders, court assessment orders and temporary custody orders (emergency orders);
   c. working with CSSCs to prepare briefs of evidence for *child protection matters* that are being referred to the DCPL;
   d. working in partnership with the DCPL to prepare matters for filing in the Childrens Court and providing ongoing consultation in the review and management of those matters; and
   e. liaising with CSSCs and the DCPL as necessary to progress *child protection matters* in a timely manner consistent with the safety, wellbeing and best interests of the child, through childhood and for the rest of the child's life.

Part 3 Principles of the Director of Child Protection Litigation Act 2016

4. The principles for administering the Act are contained in sections 5 and 6. A decision by the DCPL to apply for a child protection order or to refer a matter back to Child Safety may have profound implications for a child and their family. The principles apply to all actions taken and decisions made by the DCPL in the exercise of its statutory functions.

Part 4 Model litigant principles

5. As well as applying the principles of the Act, the DCPL, as a representative of the State, has a duty to exercise its statutory functions in accordance with model litigant principles.

6. Model litigant principles reflect the court's and the community's expectation that the State will conduct litigation in a way that is firm and fair. Model litigant principles state that fairness will be achieved when litigation is conducted promptly, efficiently, consistently and proportionately and in a manner that does not take advantage of another party's limited financial or other means. The model litigant principles are published on the Department of Justice and Attorney General's website and are available here: www.justice.qld.gov.au/justice-services/legal-services-coordination-unit/legal-service-directions-and-guidelines/model-litigant-principles

7. Child protection proceedings are unique and should not be conducted in a manner that is overly adversarial. Similarly, court outcomes should not be thought of in terms of 'winning' or 'losing' the case. Instead, the DCPL's overarching obligation is to assist the court to make a fully informed decision in accordance with the provisions of the CP Act and the safety, wellbeing and best interests of the child, both through childhood and for the rest of the child's life.

8. Whilst not an exhaustive list, in complying with its obligation to act as a model litigant the DCPL should:
   a. ensure applications give fair and proper notice of the DCPL's case to parents, children (where appropriate) and other participants in proceedings;
   b. ensure sufficient, relevant and appropriate evidence is filed in support of applications, including evidence that does not support the applications;
   c. ensure all relevant information is disclosed to other parties;
   d. progress application as quickly as possible avoiding any unnecessary delay;
   e. explore opportunities for early resolution of applications;
   f. conduct child protection proceedings in a way that assists the court to make a fully informed decision about the safety, wellbeing and best interests of the child, both through childhood and for the rest of the child's life;
   g. conduct child protection proceedings in a way that is fair to other parties paying particular care not to take advantage of parties who are unrepresented; and
   h. institute appeals that are consistent with the safety, wellbeing and best interests of the child, both through childhood and for the rest of the child's life, and have a reasonable prospect of success.

9. Child Safety should assist the DCPL to comply with its model litigant obligations by:
   a. providing the DCPL with all relevant information commencing with the referral of a *child protection matter* until the matter is finalised either by the Childrens Court of Queensland or by a referral back to Child Safety;
   b. preparing affidavits that are balanced and fair including information that does not support the application, as well as information that supports the application;
   c. taking reasonable steps to obtain further evidence or information requested by the DCPL;
   d. ensuring the DCPL has up to date information about the child prior to court events; and

e. ensuring an officer with relevant case knowledge and authority attends all court events or is otherwise available by telephone.

Part 5 Collaboration between the DCPL and Child Safety

10. The DCPL and Child Safety can promote good outcomes for children by working together collaboratively. Strong collaboration between the DCPL and Child Safety is fundamental to the exercise of the DCPL's statutory functions in a way that promotes the safety, wellbeing and best interests of children, both through childhood and for the rest of the child's life.[1]

11. A strong and effective partnership between the DCPL and Child Safety is promoted by a mutual understanding and respect for each other's role in protecting Queensland's children who have been harmed or are at risk of being harmed from abuse and neglect. Child Safety has expertise and powers for the investigation and assessment of reported child abuse and neglect and statutory responsibility for providing and coordinating support services for the protection of children. The DCPL has expertise in preparing and applying for child protection orders, and conducting child protection proceedings. There is a clear separation between the Child Safety's investigation, assessment and casework responsibilities, and the DCPL's litigation responsibilities. Both agencies have a critical role to play in protecting and promoting the safety, wellbeing and best interests of children in Queensland.

12. In addition to the importance of collaboration between the DCPL and Child Safety generally, the relationship between the DCPL and OCFOS is particularly important. OCFOS has expertise in the assessment of the sufficiency of evidence to support an application for a child protection order and in the preparation of the brief of evidence accompanying a referral to the DCPL. The DCPL should work in partnership with OCFOS to finalise court material in preparation for filing in court and in the ongoing review and conduct of proceedings.

13. Strong collaboration between the DCPL and Child Safety will also be facilitated by the free flow of relevant information between both agencies so that decision making is underpinned by a comprehensive understanding of all of the circumstances of the case.

Part 6 Timeliness

14. The DCPL and Child Safety should work together in a manner that is quick and efficient. Timeliness and avoiding unnecessary delay in decision making and the progress of child protection proceedings promotes the safety, wellbeing and best interests of children who are referred to the DCPL.

Chapter 2 – Referring a *child protection matter* to the DCPL

Part 1 Terminology

15. In this Chapter references to an application for a child protection order should be taken as also referring to an application to extend a child protection order and, where applicable, to

[1] This is reflected in the general principles of the Act at section 6(1)(a).

an application to vary or revoke a child protection order. Chapter 8 of these Guidelines provides further guidance about an application to vary or revoke a child protection order.

Part 2 Who can refer a child protection matter?

16. Only Child Safety, through OCFOS, or as otherwise directed by the Official Solicitor of OCFOS, can refer a *child protection matter* to the DCPL. If an agency or a person other than Child Safety attempts to refer a *child protection matter* to the DCPL, they should be advised to contact Child Safety who is responsible for conducting investigations and assessments, and providing and coordinating support services to children and families where a child is assessed to be a *child in need of protection.*

Part 3 When Child Safety must refer a child protection matter

17. Child Safety must refer a *child protection matter* to the DCPL when satisfied:
    a. a child is a *child in need of protection*; and
    b. a child protection order is appropriate and desirable for the child's protection; or
    c. for a child that is subject to a child protection order (other than an interim order under section 67 of the CP Act)—that the order is no longer appropriate and desirable for the child's protection, or
    d. for a child that is subject to a permanent care order—that the child's permanent guardian is not complying with their obligations under the order in a significant way and that the order is no longer appropriate and desirable for promoting the child's safety, wellbeing and best interests.[2]

Part 4 How a child protection matter can be referred

18. The preferred way for OCFOS to refer a *child protection matter* to the DCPL is electronically.

19. Where the referral cannot be made electronically for any reason, a referred *child protection matter* can be hand delivered, faxed or posted to the DCPL.

Part 5 Telling the child's family about the referral

20. Where Child Safety refer a *child protection matter* to the DCPL, they should tell the child's parents about the referral, explain why they have made the referral and what this means. Child Safety should also tell the child about the referral where Child Safety consider that is appropriate having regard to the child's age or ability to understand.

Part 6 Acknowledgment of receipt

21. The DCPL will provide a written acknowledgement of receipt of every referral, irrespective of how it was received. The written acknowledgement of receipt should be provided

[2] Section 15 of the Act.

electronically within 24 hours of receiving the referral. If Child Safety do not receive this, they should contact the DCPL to confirm the referral has been received.

Part 7 A Referral of Child Protection Matter Summary

22. When Child Safety refer a *child protection matter* to the DCPL, a completed 'Form A – Referral of Child Protection Matter/s Summary Form' should clearly and succinctly address the matters set out in section 16(1)(a), (b) or (c) of the Act as appropriate stating the material facts underpinning the assessment and that are evidenced in the supporting documents. The 'Form A – Referral of Child Protection Matter Summary Form' should not re-produce passages contained in draft supporting affidavits, but may refer to relevant paragraphs of the supporting affidavits or to other relevant documents provided with the referral. Where the child is subject to an emergency order or a child protection order, a copy of the sealed order should be attached to the 'Form A – Referral of Child Protection Matter Summary Form'.

23. The 'Form A – Referral of Child Protection Matter/s Summary Form' should also:
    a. provide contact details for the relevant OCFOS and CSSC staff including afterhours contact details;
    b. state whether Child Safety has applied for an emergency order for the child and the outcome of the application, including:
        i. the type of emergency order;
        ii. the date the emergency order ends; and
        iii. if an emergency order was not made—what were the reasons;
    c. state whether there is an existing child protection order for the child;
    d. list all previous child protection orders that have been made for the child;
    e. state whether there is a care agreement for the child;
    ea. state whether there is no emergency order, existing order or care agreement for the child;
    f. state whether there are other related proceedings[3] or orders, such as:
        i. a proceeding in which a court is exercising jurisdiction conferred on the court under the *Family Law Act 1975* (Cwlth) for the child, or a family law order for the child;[4]
        ii. a proceeding under the *Domestic and Family Violence Protection Act 2012* if each party to the proceeding would be a party to any child protection proceeding, or a domestic violence order already in force if each party to the proceeding would be a party to any child protection proceeding;[5] and
        iii. a proceeding before the Queensland Civil and Administrative Tribunal (QCAT) for an application for a review of a reviewable decision under the CP Act, including the decision that is the subject of the review application, and or any QCAT decision on an application for a review of a reviewable decision;[6]
        iv. related criminal law proceedings;[7]
    g. list any interim child protection order or orders under section 67 of the CP Act that Child Safety has assessed are necessary for the child's protection pending determination of any application made to court. The 'Form A – Referral of Child Protection Matter/s Summary Form' should state the key reasons why the interim order is necessary and

[3] Rule 70 of the *Childrens Court Rules 2016* (the Rules).
[4] Section 52(b) of the CP Act.
[5] Section 43 of the *Domestic and Family Violence Protection Act 2012*.
[6] Section 247 and Schedule 2 of the CP Act.
[7] Section 103 of the CP Act.

the draft supporting affidavits should contain sufficient evidence to support the making of an interim child protection order or orders.

24. A 'Form A – Referral of Child Protection Matter/s Summary Form' is attached to these Guidelines.

Part 8 Brief of evidence

25. When Child Safety refers a *child protection matter* to the DCPL, the referral should also include a brief of evidence that includes:
    a. the reasons why the child is a *child in need of protection*; and
    b. the reasons why a child protection order is appropriate and desirable for the child's protection; and
    c. the type and length of child protection order or orders Child Safety considers appropriate and desirable for the child's protection; or
    d. for a child subject to a child protection order (other than an interim order under section 67 of the CP Act)—the reasons why the order is no longer appropriate and desirable for the child's protection, or
    e. for a child subject to a permanent care order—the reasons why the child's permanent guardian is not complying with their obligations under the order in a significant way and why the order is no longer appropriate and desirable for promoting the child's safety, wellbeing and best interests.[8]

25A. For a brief of evidence as outlined in guideline 25(a) to (c) in respect an assessment that a child protection order (other than an interim order under section 67 of the CP Act) in force should be extended, varied, or revoked and another order made in its place, where this would result in the child being in continuous care under a custody or short-term guardianship order for more than 2 years, the reasons should include how this is in the best interests of the child, and how reunification of the child to their family is reasonably achievable during the longer period of time.

26. Child Safety's brief of evidence should also provide:
    a. draft affidavits with attached exhibits evidencing the matters set out in section 16(1)(a), (b) or (c) of the Act as appropriate;
    b. any other supporting documents that are available to Child Safety; and
    c. all other documents relevant to the referral that are available to Child Safety at the time of the referral.

27. Affidavits are a critical component of the referral to the DCPL. Further guidance about preparing draft affidavits, including originating affidavits, is set out in Chapter 5 of these Guidelines.

Part 9 Confidential and sensitive information

28. When Child Safety refers a *child protection matter* to the DCPL that involves sensitive information that should not be disclosed to a parent, Child Safety is to make this clear on the

[8] Section 16(1)(a), (b) and (c) of the Act.

'Form A – Referral of Child Protection Matter/s Summary Form'. This includes circumstances where:

a. Child Safety has made an administrative decision to withhold details of a carer's address from a parent; and
b. a parent's address is not known to the other parent and disclosure of the parent's address may endanger the parent's physical or psychological health.

29. Confidential information should be redacted from documents provided to the DCPL by Child Safety that are intended to be filed in a proceeding, such as exhibits to draft affidavits. This includes notifier details, carer's addresses (where Child Safety has made a decision to withhold this information) and third party details or information that could reasonably lead to the identification of these things.

Part 10 Referrals for a child subject to a child protection order

30. Where Child Safety decide to refer a child to the DCPL that is subject to a final child protection order, the referral should be made as soon as practicable and where possible not less 28 calendar days before the child protection order ends.

Part 11 Referrals for a child subject to an emergency order

31. Where Child Safety decide to refer a child to the DCPL that is subject to an emergency order the referral should be made as soon as practicable and where possible no later than 24 hours prior to the emergency order ending.

32. If the brief of evidence is not complete by 24 hours before the order ends, the referral should still be made to the DCPL and the brief provided in its current form. The 24 hour period prior to the order ending allows the DCPL time to consider the referral, prepare the application and settle any affidavits. The DCPL and Child Safety also need time to liaise about the need for an extension of an emergency order to be sought by Child Safety. During this 24 hour period Child Safety can continue with the preparation of documents with further information being provided to the DCPL as it is becomes available.

33. Where the emergency order is longer, for example a 28 day court assessment order, Child Safety should take reasonable steps to make the referral to the DCPL earlier than 24 hours before the order ends.

34. The DCPL and Child Safety should liaise closely to determine whether an extension of a temporary assessment order (not being followed by a court assessment order) or a temporary custody order should be sought by Child Safety so that the DCPL will be able to decide the most appropriate action to meet the child's ongoing protection and care needs and start taking that action. Where the DCPL has advised that the DCPL intends to apply for a child protection order and further time is needed, Child Safety should seek an extension from the court.[9]

[9] In granting an extension of a temporary assessment order or a temporary custody order, as well as being satisfied the DCPL intends to apply for a child protection order, under section 34(2) and 51AH(2) of the CP Act, the court needs to be satisfied the original grounds for making the order still exist.

35. Reasons why a temporary custody order or an extension may be necessary include:
    a. so Child Safety can provide further information requested by the DCPL;
    b. to finalise the application for a child protection order;
    c. to finalise, compile and swear or affirm the supporting affidavit; or
    d. to obtain a further affidavit.

36. If the extension is not granted by the court, the DCPL should proceed to deal with the *child protection matter* before the emergency order ends.

37. Child Safety should ensure that relevant staff are available for urgent consultation when a child subject to an emergency order is referred to the DCPL.

38. The DCPL and Child Safety should work together in a way that ensures that a child subject to an emergency order has their ongoing protection and care needs meet.

39. A *child protection matter* referred to the DCPL that concerns a child that is subject to an emergency order must be dealt with by the DCPL deciding to either make an application for a child protection order, or refer the matter back to Child Safety before the emergency order ends.

40. The DCPL and Child Safety should liaise closely to ensure that any consultation takes place prior to the emergency order ending, and with sufficient time for the DCPL to deal with the *child protection matter*.

41. Close collaboration is particularly important for temporary assessment orders (that are not followed by a court assessment order) and temporary custody orders, both of which last for three business days with the possibility of extension for one business day. These orders may be extended for one business day only if the court is satisfied the DCPL has received a referred *child protection matter* and intends to apply for a child protection order.[10] It is, therefore, important that Child Safety refers the *child protection matter* to the DCPL at the earliest possible opportunity.

Part 12 Referrals for a child subject to a care agreement

41A. Where Child Safety decide to refer a child to the DCPL that is subject to a care agreement, the *child protection matter* should be referred as soon as practicable to provide the DCPL with sufficient time to have any application filed and mentioned in court prior to the agreement ending. This timetabling will depend on the court location that any application may be filed.

41B. The DCPL and Child Safety should work together in a way that ensures that a child subject to an agreement has their ongoing protection and care needs met, which may include Child Safety making an application for a temporary custody order.

Part 13 Referrals for a child subject to no order or care agreement

41C. Where Child Safety decide to refer a child to the DCPL that is subject to no order or care agreement, the *child protection matter* should be referred as soon as practicable with Child Safety providing the DPCL with a specific date by when any application the DCPL makes

[10] Sections 34 and 51AH of the CP Act.

should be filed and mentioned in court. This timetabling will depend on the court location that any application may be filed.

41D. The DCPL and Child Safety should work together in a way that ensures that the child has their ongoing protection and care needs met, which may include Child Safety making an application for a temporary custody order.

Chapter 3 –Dealing with a *child protection matter*

Part 1 Initial review following referral of a child protection matter

42. The DCPL should conduct an initial review of the referral and supporting material as soon as practicable after receipt (unless the child is subject to an emergency order, which is dealt with in Chapter 2, Part 11 above). The DCPL's paramount consideration when conducting the review is the safety, wellbeing and best interests of the child, both through childhood and for the rest of the child's life.

43. The purpose of the initial review is to:
    a. assess the referral and the sufficiency of evidence to support the type of child protection order Child Safety considers appropriate and desirable for the child's protection;
    b. identify whether further information or evidence is required under section 17(2) of the Act prior to making a decision; and
    c. identify whether consultation between the DCPL and Child Safety prior to the DCPL making a decision is necessary.

44. Where the DCPL agrees with the type of order Child Safety considers appropriate and desirable for the child's protection and do not intend to request further evidence or information prior to making a decision, the DCPL should proceed to deal with the referred *child protection matter*.

45. Where the DCPL identifies an issue about the sufficiency of evidence to support the type of order Child Safety considers appropriate and desirable for the child's protection or any other matter, the DCPL should contact Child Safety to initiate consultation.

Part 2 Consultation with Child Safety

46. The DCPL should consult with Child Safety as necessary to clarify any issues arising from the DCPL's initial review of the *child protection matter* before reaching a final decision about how to deal with the matter. Consultation should occur in a timely manner.

47. The DCPL must consult with Child Safety about relevant matters, including perceived gaps or weaknesses in the evidence, before deciding to:
    a. apply for a child protection order of a different type, or an order that is otherwise different from, the order Child Safety considers appropriate and desirable for the child's

protection. This includes applying for a child protection order of a different duration to that which Child Safety considers appropriate and desirable for the child's protection; or

b. refer the *child protection matter* back to Child Safety.[11]

48. If after consultation, Child Safety change the type of child protection order and/or duration of child protection order considered appropriate and desirable for the child's protection, Child Safety should provide written confirmation of this to the DCPL.

Part 3 Requests for further evidence or information to assist in decision making

49. The DCPL can request further evidence or information from Child Safety before making a decision about a referral.[12] For example, information about the impact of a parent's drug use on their capacity to meet the protection and care needs of the child.

50. Requests for further evidence or information prior to the DCPL making a decision should be made following the initial review of the referral or as soon as possible after that to ensure there is sufficient time for the request to be considered and actioned by Child Safety.

51. When the DCPL seek further evidence or information from Child Safety about a *child protection matter* before making a decision, the *child protection matter* should not be taken to have been referred back to Child Safety. A *child protection matter* is only referred back to Child Safety when the DCPL makes a final decision to refer the *child protection matter* back to Child Safety under section 17(1) of the Act instead of filing an application for a child protection order.

52. Section 23(2) of the Act requires Child Safety to take reasonable steps to provide the information requested by the DCPL. This applies to information requested under sections 17(2) and 23(1) of the Act. Child Safety should also take reasonable steps to provide further information requested by the DCPL as soon as possible.

Part 4 Making a decision about a child protection matter

53. The DCPL can deal with a *child protection matter* by:
    a. applying for a child protection order; or
    b. referring the matter back to Child Safety.[13]

54. Once a matter has been referred to the DCPL, Child Safety cannot withdraw the referral. The referral can only be dealt with by the DCPL.

55. If a child's circumstances change after a matter has been referred, and Child Safety is satisfied the child is no longer a *child in need of protection* and/or a child protection order is

[11] Section 18(1) of the Act.
[12] Sections 17(2) and 23(1) of the Act.
[13] Section 17(1) of the Act.

no longer appropriate and desirable, this information should be provided to the DCPL and this will be taken into account by the DCPL when making a decision about the matter.

Part 5 Factors the DCPL should have regard to

56. In deciding how to deal with a referred *child protection matter*, the DCPL should have regard to all of the information provided by Child Safety in the brief of evidence.

57. The DCPL should apply for a child protection order if the DCPL is satisfied there is sufficient, relevant and appropriate evidence to establish on a prima facie basis that:
    a. the child is a *child in need of protection*; and
    b. a child protection order is appropriate and desirable for the child's protection.

58. The safety, wellbeing and best interests of the child, both through childhood and for the rest of the child's life, must be the DCPL's paramount consideration in deciding how to deal with a *child protection matter*. Other factors the DCPL should have regard to include:
    a. the sufficiency of evidence to establish that the child:
        i. has suffered significant *harm*, is suffering significant *harm*, or is at unacceptable risk of suffering significant *harm;* and
        ii. does not have a parent able and willing to protect the child from *harm*;
    b. the child's views and wishes;
    c. whether the child's protection and care needs could be met by an order on less intrusive terms than the order Child Safety considers appropriate and desirable for the child's protection. Relevant factors may include:
        i. cultural considerations about how the proposed order may impact on the child's identity and future links to their family and community;
        ii. the nature and impact of any support previously provided to the child and the child's parents by Child Safety or other agencies;
        iii. progress made by the parents toward building their capacity to meet the child's protection and care needs;
        iv. information available about a member of the child's family or community who may be a suitable person to be granted custody or guardianship of the child, and Child Safety's assessment about the suitability of that person including consultation with the person;
    d. whether there is a case plan for the child that is appropriate for meeting the child's assessed protection and care needs;
    e. the principles contained in sections 5B to 5E of the CP Act to the extent they are relevant, including the principles contained in section 5BA for achieving relational, physical and legal permanency for a child.

58A. If the child has been in the continuous care of the chief executive under a custody or guardianship order for approaching 2 years or more at the time of referral, the DCPL must not apply for a further short-term custodial or guardianship order unless satisfied this is in the best interests of the child and that reunification of the child to their family is reasonably achievable during the period of the further order.[14]

[14] Section 62(2B) and (2C) of the CP Act.

59. The DCPL should also identify and consider what other evidence or information not included in the brief of evidence may be available to support an application for a child protection order, and proceed with the application immediately with the further supporting evidence to be filed at a later time. This will be particularly relevant where the child is subject to an emergency order at the time of the referral of the *child protection matter* to the DCPL and a decision must be made urgently. For example, when the concerns relate to physical injuries to a child there may be detailed medical evidence that has not been obtained at the time the *child protection matter* is referred to the DCPL. This medical evidence may be necessary to support an allegation that the child has suffered physical *harm*, or to explain the likely cause of the injury. However, the DCPL should consider whether it is appropriate to apply for a child protection order, relying on preliminary medical information obtained by Child Safety from a doctor or the police, on the basis that when a detailed medical report has been prepared it will be obtained and filed in support of the application.

Part 6 Aboriginal children and Torres Strait Islander children

60. The additional principles in section 5C of the CP Act apply to all decision making by the DCPL for Aboriginal children or Torres Strait Islander children. These principles recognise that Aboriginal and Torres Strait Islander children have a right to be brought up within their own family and community, and Aboriginal and Torres Strait Islander children and families have the best knowledge about the strengths and needs that exist in their families and communities. This underscores the importance of protecting and promoting an Aboriginal child or Torres Strait Islander child's connection to their family, culture and community. The section 5C principles state:
    a. Aboriginal and Torres Strait Islander people have the right to self-determination;
    b. the long-term effect of a decision on the child's identity and connection with the child's family and community must be taken into account; and
    c. the following child placement principles apply in relation to Aboriginal or Torres Strait Islander children:
        i. the ***prevention principle*** – that a child has the right to be brought up within the child's own family and community;
        ii. the ***partnership principle*** – that Aboriginal or Torres Strait Islander persons have the right to participate in significant decisions under this Act about Aboriginal or Torres Strait Islander children;
        iii. the ***placement principle*** – that, if a child is to be placed in care, the child has a right to be placed with a member of the child's family group;
        iv. the ***participation principle*** – that a child and the child's parents and family members have a right to participate, and be enabled to participate, in an administrative or judicial process for making a significant decision about the child; and
        v. the ***connection principle*** – that a child has a right to be supported to develop and maintain a connection with the child's family, community, culture, traditions and language, particularly when the child is in the care of a person who is not an Aboriginal or Torres Strait Islander person.

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61. When the DCPL is making a significant decision about an Aboriginal child or Torres Strait Islander child, the DCPL must have regard to the child placement principles and in consultation with the child and the child's family, arrange for an independent entity (independent person) for the child to facilitate the participation of the child and the child's

family in the decision making process. However, the DCPL is not required to consult with and arrange for an independent person where the DCPL is satisfied:

a. Child Safety has already complied with this requirement to arrange for an independent person for the child in relation to the significant decision, or
b. there is the following exceptional circumstances:
    i. it is not practicable because an independent person is not available or urgent action is required to protect the child, or
    ii. it is likely to have a significant adverse effect on the safety or psychological or emotional wellbeing of the child or any other person, or
    iii. is otherwise not in the child's best interests, or
c. the child or the child's family does not consent to the ongoing involvement in the decision-making process of an independent person for the child.[15]

62. Child Safety should include information in the brief of evidence provided with the referred *child protection matter* to assist the DCPL to have regard to the child placement principles and to be satisfied that Child Safety has in consultation with the child and the child's family, arranged for an independent person for the child to facilitate the participation of the child and the child's family. If the DCPL require further information about the child's Aboriginal tradition or Island custom, the DCPL may request this from Child Safety and may also ask Child Safety to consult further with the child and the child's family on a specified matter. Where an independent person has been arranged for the child and the child's family, the independent person should facilitate this further consultation between Child Safety and the family. For example, the DCPL may consider that additional information about the child's connection to their family, culture, traditions, language and community is required.

63. Where Child Safety has been unable to arrange for an independent person because it has not been practicable as an independent person is not available or urgent action is required to protect the child, Child Safety should advise the DCPL. In these circumstances, Child Safety or the DCPL should in consultation with the child and the child's family, arrange for an independent person as soon as practicable after the referral of the *child protection matter* has been made to facilitate the participation of the child and the child's family in the decision-making process.[16] If the DCPL undertakes this consultation with the family facilitated by their independent person in the absence of Child Safety, DCPL should provide Child Safety with a summary of what was discussed during the consultation.

64. If the DCPL propose to make a decision on a referred *child protection matter* that is different from the type of child protection order Child Safety considers appropriate and desirable for the child's protection, including referring the matter back to Child Safety, where time permits, there should be further consultation between Child Safety and the family, facilitated by the family's independent person about the decision the DCPL proposes to make. Child Safety should provide the DCPL with the outcome of the consultation for consideration by the DCPL in decision making about the referred *child protection matter*.

65. When the Childrens Court exercises a power under the CP Act in relation to an Aboriginal or Torres Strait Islander child, section 6AB provides that the court must have regard to:
    a. Aboriginal tradition and Island custom relating to the child; and
    b. the child placement principles in relation to the child.

[15] Section 6AA of the CP Act.
[16] Section 6(3) of the CP Act.

To inform itself, the court may have regard to the views of an independent person for the child, the child, or a member of the child's family.

66. An independent person, or the child, or a member of the child's family can provide their views about Aboriginal tradition and Island custom to the court orally or in writing.[17]

Part 7 Referring a matter back

67. When the DCPL refers a *child protection matter* back to Child Safety, the DCPL's involvement is at an end. The DCPL cannot give directions to Child Safety about how to deal with the child's case when referring a *child protection matter* back to Child Safety.

68. When referring a *child protection matter* back to Child Safety, the DCPL should provide written feedback to Child Safety about the reasons why the DCPL decided not to apply for a child protection order, including any issues with the sufficiency, relevance and appropriateness of evidence and how this may be addressed. In circumstances where Child Safety do not agree that the matter should be referred back, this information should be included in the written reasons provided to Child Safety under section 18 of the Act (see Chapter 3, Part 10 of the Guidelines). Where Child Safety agree that the matter should be referred back, the DCPL should include this information in the decision notification referred to in guideline 75. Child Safety may request that the DCPL conduct an internal review of the decision to refer a matter back using Form I – Child Safety Internal Review Request Form' attached to these Guidelines.

69. A *child protection matter* that is referred back to Child Safety, can be referred by Child Safety to the DCPL again at any time if:
    a. further information is obtained by Child Safety that is material to determining whether the child is a *child in need of protection* and/or whether a child protection order is appropriate and desirable for the child's protection; or
    b. for a child that is subject to a child protection order (other than an interim order under section 67 of the CP Act)—further information is obtained by Child Safety that is material to determining whether the order is no longer appropriate and desirable for the child's protection; or
    c. there is a material change in the child's circumstances; or
    d. other relevant information or circumstances indicate the DCPL should consider the matter again.

Part 8 Notification of decision

70. When the DCPL makes a decision about a *child protection matter*, prompt written notice of the decision should be provided electronically to Child Safety as soon as practicable, and at the latest by the next business day. If the DCPL has been required to consult with Child Safety about applying for a child protection order of a different type, or an order that is otherwise different from the order Child Safety considered appropriate and desirable, or referring the matter back, Child Safety should provide written confirmation to the DCPL of whether the decision has been with the agreement of Child Safety.

[17] Rule 49A(2) of the Rules.

Part 9 Telling the child's family about the DCPL's decision

71. Child Safety should tell the child's parents about the DCPL's decision and explain what the decision means. Child Safety should also tell the child about the DCPL's decision where Child Safety consider that is appropriate having regard to the child's age or ability to understand.

72. Where the DCPL's decision relates to an Aboriginal child or Torres Strait Islander child, Child Safety should advise the child's parents and the child if appropriate having regard to the child's age or ability to understand of the DCPL's decision, in a way that allows their full participation, and in a place that is appropriate to Aboriginal tradition or Island custom.

Part 10 Written reasons for decision

73. In addition to notifying Child Safety about the outcome of a referral, under section 18(2) of the Act, the DCPL must also provide written reasons to Child Safety when the DCPL decide without the agreement of Child Safety to:
    a. apply for a child protection order of a different type, or that is otherwise different, from the order that Child Safety considered appropriate and desirable for the child's protection; or
    b. refer a matter back to Child Safety.

74. For example, written reasons are required if without Child Safety's agreement the:
    a. DCPL decide not to apply for a child protection order and refer the matter back to Child Safety;
    b. DCPL decide to apply for a child protection order granting long-term guardianship of the child to the chief executive, but Child Safety considered that an application for a short-term guardianship order was appropriate and desirable; or
    c. DCPL decide to apply for a child protection order of the same type but for a different duration to what Child Safety considered appropriate and desirable.

75. The DCPL lawyer that made the decision must complete the 'Form C – Director's Written Reasons for Decision Form' attached to these Guidelines, which should include in clear and unambiguous language the reasons why and the evidence relied upon by the DCPL when deciding to:
    a. apply for a child protection order of a different type, or that is otherwise different, to that considered appropriate and desirable by Child Safety; or
    b. refer the *child protection matter* back to Child Safety.

76. The DCPL is to provide the 'Form C – Director's Written Reasons for Decision Form' to Child Safety within five business days of the date of decision unless the decision relates to a child that is subject to:
    a. a child protection order (other than an interim order under section 67 of the CP Act) that is ending within one week of the date of decision; or
    b. an emergency order.

77. Where the child is subject to a final child protection order that is ending within 14 days of the date of decision, or an emergency order, the written reasons must be provided at the same time as the notification of the decision.

78. If after consultation Child Safety agree with the DCPL's decision about the *child protection matter*, written reasons are not required. If there is no agreement to the DCPL applying for a child protection order of a different type, or an order that is otherwise different from the order Child Safety considered appropriate and desirable, Child Safety may request that the DCPL conduct an internal review of the decision to refer a matter back using Form I – Child Safety Internal Review Request Form' attached to these Guidelines.

Chapter 4 – Ongoing collaboration following a decision to apply for a child protection order

Part 1 Preparing the case for filing

79. Where the DCPL decide to apply for a child protection order, the DCPL and Child Safety should work together closely and efficiently to ensure the application and supporting affidavit are finalised and filed as quickly as possible, prior to the expiry of any current order for the child.

80. In particular, the DCPL and Child Safety should liaise closely to progress the following tasks:
    a. any requests for further information, including requests for further affidavits, under section 23(1) of the Act;
    b. the settling of an affidavit in support by the DCPL;
    c. any consultation necessary to progress the case;
    d. swearing or affirming an affidavit in support; and
    e. providing a copy of the sworn or affirmed affidavit to the DCPL electronically.

81. Affidavits prepared by Child Safety should comply with Part 8, Division 2 of the *Childrens Court Rules 2016* (the Rules). In particular
    a. all pages of the affidavit, including exhibits, should be paginated;
    b. as far as practicable, where there is more than one documentary exhibit, the exhibits should:
        i. be bound in one or more paginated books;
        ii. have a certificate in the approved form on or attached to the front of the book; and
        iii. have an index to the book immediately after the certificate.

82. Child Safety should ensure that a copy of sworn or affirmed affidavits are provided to the DCPL electronically as soon as practicable, so as to provide sufficient time for filing in court prior to the expiry of any current emergency or final child protection order. Child Safety should keep the original on file and if required, provide it to the DCPL to provide it to the court, unless there is an agreement between the DCPL and Child Safety at a particular location.

Part 2 Requests for further information

83. After receipt of a referred *child protection matter*, the DCPL can request Child Safety provide further information from any time until the application for a child protection order has been decided or otherwise determined by the court.[18] This includes requests for further affidavits after an application has been filed in preparation for a court event, including a final hearing.

[18] Section 23(1) of the Act.

It also includes information that may not be in Child Safety's possession at the time of the request. Section 23(2) of the Act requires Child Safety to take reasonable steps to provide the information requested by the DCPL. Child Safety should also take reasonable steps to provide further information requested by the DCPL as quickly as possible.

Part 3 Requests for independent expert assessments

84. When the DCPL decide that an independent expert assessment is necessary to support an application for a child protection order, they should notify Child Safety promptly.

85. Section 23(2) of the Act requires Child Safety to provide information to the DCPL, including an independent expert assessment, where it is reasonable to expect Child Safety to take that step in all of the circumstances of the case.

86. Where Child Safety agree the independent expert assessment is necessary, Child Safety and the DCPL should work together to identify the expert and develop the terms of reference, although Child Safety are ultimately responsible for deciding the content of the terms of reference.

87. Where Child Safety do not agree that an independent expert assessment (or other information requested by the DCPL) is necessary, there should be consultation between DCPL and Child Safety to explore whether there may be other ways to obtain relevant information, such as through a request by Child Safety under section 159N of the CP Act or by way of subpoena.

88. If after consultation Child Safety decide not to engage an independent expert assessment or provide the information requested, this may have implications for the DCPL's assessment of the sufficiency of evidence to support an application for a child protection order.

89. To avoid any doubt, where an independent expert assessment of a person is requested and organised by Child Safety, but the assessment cannot be completed because the person does not consent to participate, Child Safety will have taken reasonable steps to provide the information requested by the DCPL. This assumes the person has refused consent after being fully informed about the nature and purpose of the assessment in a way that is appropriate to support their informed consent.

Chapter 5 – Affidavit evidence

Part 1 Affidavits generally

90. Affidavits should be prepared in a manner that is balanced and fair. As well as including evidence that supports the application, affidavits should also include evidence that does not support the application. It should be apparent that this positive or contrary information has been taken into account in the assessment of the child.

91. Affidavits should contain only relevant information and should be well-structured. They should not be repetitive, and should not contain legal argument.

92. As far as possible, affidavits should not contain hearsay evidence. If an affidavit is to contain a statement based on information and belief, it must include the sources of the information and the grounds for the belief.

Part 2 Originating affidavits

93. The originating affidavit should:
    a. include sufficient evidence to establish that the child is a *child in need of protection*. For example, in risk of *harm* cases there should be sufficient evidence to establish each concern giving rise to an unacceptable risk of significant *harm* to a child. Where it is alleged that a parent's drug use is causing an unacceptable risk of harm to a child, the affidavit should contain sufficient evidence to prove that allegation to the requisite standard (the balance of probabilities). Evidence may include results of drug screen testing, criminal histories, information from police such as police occurrence summaries, observations of Child Safety staff or of other agencies, information from health care providers or drug treatment services or statements made by the parent;
    b. include sufficient evidence to establish that there is no parent able and willing to protect the child from *harm*. This includes evidence of how the concerns impact on the parent's ability to meet the child's protection and care needs. There should be an assessment in respect of each parent, or where the identity or whereabouts of a parent is not known, the affidavit should evidence the reasonable steps taken by Child Safety to ascertain the identity and whereabouts of a parent; and
    c. focus on current concerns. Evidence of a previous or resolved child protection concern should only be included if it is relevant to the current assessment in some way. The affidavit should make it clear that the concern is resolved, or there is no evidence that the concern is current, however, the relevance must be explained.

94. The originating affidavit should also contain information including but not limited to:
    a. the needs of the child and how these are being met;
    b. the views and wishes of the child, and how they have been taken into account in the circumstances and having regard to the child's age or ability to understand;
    c. the nature and impact of any support previously provided to the child and the child's parents by Child Safety or other agencies where relevant;
    d. the parents' compliance with case plan actions and progress made including attendance at contact visits where relevant;
    e. the living and contact arrangements for the child, including contact with siblings and extended family, and how they meet the child's needs (this is an express requirement for long-term guardianship or a permanent care order for the child under section 59(1)(b)(iii) of the CP Act);
    f. why the order sought is necessary, including an assessment of why the child's care and protection could not be achieved by less intrusive means;
    g. for a long-term guardianship order in favour of the chief executive, why guardianship could not properly be granted to another suitable person under a long-term guardianship or a permanent care for the child in preference to the chief executive; and
    h. for an Aboriginal child or Torres Strait Islander child, information about:
        i. the consideration of Aboriginal and Torres Strait Islander people's right to self-determination and the long-term effect of an assessment on the child's identity and that their connection with their family and community has been taken into account;
        ii. how the assessment upholds the child placement principles,

iii. how any decision to apply for a permanent care order has been made if appropriate in consultation with the child, and
iv. Child Safety's engagement and consultation with the child and the child's family and compliance with the requirement to arrange for an independent person for the child in relation to making significant decisions for the child.

Part 3 Complying with rule 13

94A Rule 13 reflects the general principle that the DCPL should consider whether there is sufficient, relevant and appropriate evidence available to decide whether to make an application for a child protection order, which is linked to one of the policy objectives of establishing the DCPL, to ensure that child protection applications filed in court are supported by good quality evidence, promoting efficiency and evidence-based decision making.

94B Rule 13(2) provides a prescriptive list of the types of documents (see Guideline 95) that the DCPL must consider filing as an exhibit to an affidavit in a proceeding, which is then limited under rule 13(3), to only the documents in the possession or control of Child Safety that are also relevant to the proceeding.

95. If the documents listed in rule 13(2) of the Rules are in the possession of Child Safety and are relevant to the referral, these documents should be exhibited to a draft affidavit accompanying the referral. The documents required by rule 13 are:
    a. the assessment of the alleged *harm*, or alleged risk of *harm*, to the child carried out by Child Safety that formed the basis of the referral of the *child protection matter* to the DCPL, including the outcome of that assessment;
    b. the most recent strengths and needs assessment for the child and the child's parents;
    c. documents relating to the most recently completed family group meeting for the child including a case plan if a plan was developed at the meeting;
    d. previous applications or orders made for the child under the CP Act, including temporary assessment orders or court assessment orders;
    e. referrals to an external agency that provides support to the child or a member of the child's family, such as Queensland Health or a domestic and family violence service;
    f. any independent assessment or report about the child or the child's parent, such as a psychological or psychiatric assessment or a social assessment report;
    g. the child's birth certificate;
    h. any child protection history report of a person relevant to the proceeding; and
    i. any criminal history, domestic violence history or traffic history of a person relevant to the proceeding.

96. If it is not practicable for Child Safety to provide a draft affidavit exhibiting the documents listed in rule 13 with the referral, this must be provided to the DCPL as soon as practicable afterward, as unless otherwise provided for, they must be filed within 10 business days after the first appearance for an application. In addition, the 'Form A – Referral of Child Protection Matter/s Summary Form' should include a brief explanation for this and indicate when the draft affidavit is likely to be provided to the DCPL. This information will be used to determine whether an extension of time must be sought from the court and the length of time required.

Part 4 Affidavits prepared after the application is filed

97. Affidavits prepared after the application is filed have the principal purpose of updating the court about matters relevant to the application. Unless otherwise agreed, all affidavits, including updating and hearing affidavits should be reviewed and settled by the DCPL before being sworn or affirmed. These affidavits should not exhibit documents that have been exhibited to earlier affidavits filed in the proceeding. These should be comprised of direct rather than hearsay evidence wherever possible. If an affidavit is to contain a statement based on information and belief, it must include the sources of the information and the grounds for the belief. Where the DCPL request Child Safety prepare a further affidavit ahead of a court event, in the absence of a filing direction, unless otherwise agreed, a draft affidavit should be provided to the DCPL 7 business days before the court event. This will allow the DCPL 2 business days to settle the affidavit, then Child Safety 2 business days to finalise and return it to DCPL for filing, and then service of the affidavit no later than three business days before the court event to which the affidavit relates.

97A. In circumstances where the court is hearing 2 or more applications for orders together[19] and a subject child dies during the proceedings, Child Safety are to prepare a separate affidavit evidencing the death. This will enable the DCPL to seek permission to withdraw the application in a way that is considerate and compassionate.[20]

Part 5 Preparing and exhibiting a child protection history report

98. A child protection history report can provide important information to the court in a case where a child or the child's parent is previously known to Child Safety (or to a child protection agency in another State). It is understood that Child Safety assessments will consider all of the child's circumstances, including things that happened in the past where relevant.

99. However, a child protection history report that is to be filed in in support of an application should be prepared with care. The essence of the task is to balance the requirement to properly inform the court of the broader context in which the current application should be decided; against the requirement to present relevant and, reliable evidence to the court, and to be fair to other parties.

100. A decision about what information to include should be made on a case by case basis. It is not as simple as including substantiated concerns and leaving out unsubstantiated concerns. Unsubstantiated concerns may be relevant in a particular case. For example, where:
    a. the concern was not substantiated at the time of the original investigation and assessment, however, the information is relevant to the current assessment because the concern is the same; and
    b. there was a positive assessment of a parent's willingness and ability to protect the child (particularly if the concern is of a similar nature to the current concerns).

101. Child Safety should exercise caution when including information where no steps were taken to investigate the veracity or reliability of the information.

[19] Section 115 of the CP Act.
[20] Section 57A of the CP Act.

102. If, in preparing a child protection history report, information is not included, for reasons including those set out above, the child protection history report should make this clear, for example, by being titled 'relevant child protection history report'.

Part 6 Information received under Chapter 5A - Part 4 Information Sharing - of the CP Act

103. Where written information received by Child Safety under sections 159MB, 159MC, 159ME or 159N of the CP Act has been taken into account in the assessment, or is relevant to the referral to the DCPL, that document should be attached to a Child Safety affidavit as an exhibit in preference to describing the contents of the document in the affidavit. Consent of the entity or service provider to use the document in court proceedings should be obtained and information relating to how it was sought or obtained should be set out in the affidavit. If consent is not obtained, the information may still be attached to a Child Safety affidavit, because a child's safety wellbeing and best interests are paramount, and the child's protection and care needs take precedence over the protection of an individual's privacy.

104. Where information is received by Child Safety orally under sections 159MB, 159MC, 159ME or 159N of the CP Act, Child Safety should ask the entity or service provider to provide the information in writing and seek their consent to use the document for the purposes of court proceedings. Where this is not practicable or where the entity or service provider is unwilling to provide the information in writing, or to consent to the use of their written information, Child Safety should make a case note of the conversation and attach the case note as an exhibit to the affidavit. After the application has been filed, the DCPL can consider issuing a subpoena to the entity or service provider for the production of documents relevant to the proceeding.

Part 7 Section 105(1) of the CP Act - rule against hearsay

105. Pursuant to section 105(1) of the CP Act, the Childrens Court is not bound by the rules of evidence, but may inform itself in any way it thinks appropriate. This does not mean that the rules of evidence do not apply. The Childrens Court must conduct proceedings in a manner that ensures all parties are afforded procedural fairness. The rules of evidence should, therefore, be adhered to wherever possible, including the rule against hearsay.

106. This means that, wherever possible, evidence should be tendered by the person with direct knowledge of the matter. For example, evidence about the child's contact with a parent should be provided by the person who supervised the contact, such as the child safety support officer providing an affidavit exhibiting their case note of the contact. This is preferable to the information being provided in a hearsay form in the allocated child safety officer's affidavit prepared from Child Safety case notes. If a standalone affidavit is unable to be obtained, a report, letter or case note prepared by the person with direct knowledge of the matter should be exhibited to a Child Safety affidavit. Only in circumstances when an affidavit, report, letter or case note cannot be obtained should the hearsay evidence of the person be included in the affidavit of a Child Safety officer. Where there is a relevant contemporaneous case note, for example of a telephone conversation between a child safety officer and a doctor, it should be attached as an exhibit to the affidavit.

107. Sometimes a person with direct knowledge of the matter may be reluctant to provide an affidavit because they have a relationship with the child or the child's parent, which they do not want to compromise, such as a family support worker.

108. Where the relationship may be damaged if the person provides evidence to the court, the DCPL and Child Safety should consider whether the evidence is necessary, even if it is relevant. If, for example, the case is strong without this evidence, the DCPL may decide not to seek the affidavit or not to seek the affidavit until later in the proceedings when it becomes clear it is necessary. In deciding how to deal with this type of information, the DCPL and Child Safety should have regard to the relationship between the child or parent and the person and, as much as possible, proceed in a way that preserves that relationship.

109. Where the DCPL decide the evidence of a person working with or who has a therapeutic relationship with the child or the child's parent is necessary, Child Safety should ensure the person understands why they are being asked to provide an affidavit so they can make an informed decision about whether to provide an affidavit. It may assist to explain to a person who has reservations about providing an affidavit that:
    a. their evidence is relevant and necessary for the court to make a fully informed decision in the best interests of the child; and
    b. they are being asked to detail relevant factual matters, or opinions where appropriate, for the court's consideration. They are not being asked to take a position against a parent. Their observations or opinions that do not support the application are as relevant as ones that do.

110. The preference for direct evidence does not apply to the evidence of children. There are statutory provisions that provide when a child may give evidence in a child protection proceeding. Only subject children aged 12 years and over can give evidence or be cross-examined; and that this can only happen with the leave of the court, if the child is represented by a lawyer, and if the child agrees.[21] Also, a person can only ask a child, other than a child who is a respondent, to swear or affirm an affidavit with the leave of the court.[22] It follows that it will almost always be preferable for the DCPL to provide a child's evidence to the court in a hearsay form in the affidavit of a Child Safety officer or other appropriate witness.

111. Care should be taken when including things children say about their parents in the 'child's wishes and views' section of an affidavit. The child's relationship with their parents will continue after the litigation has ended, and, as much as possible, should not be adversely affected by the litigation process. Relevant paragraphs should be drafted with care with a view to balancing the requirement to ensure this information is before the court with the importance of preserving enduring family relationships for the child. Often this will come down to not 'what' is said but 'how' it is said.

112. To avoid any doubt, evidence of the child's wishes and views is different from evidence of things the child said that comprise part of the evidence of *harm* or unacceptable risk of *harm*. For example, the child's views about where they are staying or their contact with their parents can be distinguished from disclosures the child has made about *harm* caused to them by a parent. Although this evidence of *harm* will normally be provided in a hearsay form, it is clearly relevant and necessary evidence for the court.

[21] Section 112 of the CP Act.
[22] Rule 81 of the Rules.

Chapter 6 - The court process

Part 1 Court case management framework

113. The court case management framework is comprised of three parts:
    a. The Rules;
    b. The Bench Book; and
    c. Practice Directions made by the Chief Magistrate.

114. Part 7 of the Rules is dedicated to court case management. It provides a framework for how the court must manage a proceeding to ensure the proceeding is resolved in accordance with the objects of the Rules.

115. The overarching objective of the court case management framework is to promote the fair and expeditious resolution of child protection proceedings and to reduce unnecessary delay.

116. The specific aims of the court case management framework are to ensure:
    a. parties to child protection proceedings understand their rights, responsibilities and the court process
    b. there are more consistent and transparent court processes;
    c. the court focuses on the best interests of the child; and
    d. the court actively manages proceedings with assistance from parties.

117. The DCPL and Child Safety should work in partnership to promote the aims of the court case management framework. For example, the DCPL and Child Safety should work together to:
    a. comply with timeframes fixed by the court for the completion of steps in a proceeding; and
    b. assist the child, if they are participating in the proceeding, and the child's parents to understand their rights, responsibilities and the court process, particularly where they are unrepresented.

Part 2 Filing documents in court

118. The DCPL is responsible for filing all of the applicant's material in court, including the application and supporting affidavits (originating documents). A document must be received by the relevant court registry by 4:30pm on a day the registry is open for business for the document to be taken to be filed in the registry that day.[23] Child Safety should ensure that electronic copies of executed affidavits are provided to the DCPL as soon as practicable having regard to filing deadlines.

119. After originating documents are received back from the registry, the DCPL should provide Child Safety with a copy of the sealed:
    a. application; and
    b. front sheet of the affidavit showing the court's seal and the filing date.

[23] Rule 17 of the Rules.

120. These documents should be provided to Child Safety electronically. As the proceeding progresses, the DCPL should also provide Child Safety with a copy of any other filed document electronically as soon as practicable after sealed copies are received from the registry.

121. Where documents are filed electronically, Child Safety will be responsible for making copies of the sealed documents for service on the respondents. Where the DCPL file documents by delivering them to the registry personally or by post, and the registry issues sealed copies, these will be provided to Child Safety for service on the respondents.

Part 3 Service of documents filed by the DCPL

Division 1 Service of documents generally

122. Generally, Child Safety will serve originating documents and other documents filed by the DCPL on the parties to a proceeding, however, other arrangements can be decided on a case by case basis. The exception to this is subpoenas to produce a document or thing, which will be served on the subpoena recipient by the DCPL.

123. Child Safety, wherever practicable, should personally serve a copy of the application on the child's parents.[24] Personal service, particularly of originating material, is important because of the intrusive nature of the order sought, the likely vulnerability of the child's parents, and the fact they are often not represented by a lawyer at that stage of the proceeding. Child Safety should also tell the child about the application in a manner and to the extent that is appropriate having regard to the child's age and ability to understand.[25]

124. Although the child is a party to the proceeding, the Rules provide that, subject to the Act, they may only be served with documents filed in the proceedings if:
    a. they are participating in the proceeding; or
    b. the court has ordered it.[26]

125. A person who personally serves a document on the child's parents should:
    a. explain what the documents are and what the proceedings are about;
    b. tell the child's parents when the first/next court date is;
    c. encourage the child's parents to obtain legal advice and give them information about how to contact their local Legal Aid Queensland office or other local community legal service, or if the parent is Aboriginal or a Torres Strait Islander, assisting them to seek assistance from the Aboriginal and Torres Strait Islander Legal Service (ATSILS);
    d. tell the child's parents they may bring a support person to court, although whether the person is allowed to be present in the court is at the discretion of the court; and
    e. tell the child's parents they can ask the court for permission to attend a court event by telephone or audio visual link if, for example, it will be difficult for them to attend in person. Child Safety should also provide the parents with information about how they can make the request where the parents indicate they may make a request.[27]

[24] Section 56 of the CP Act.
[25] Sections 56 and 195 of the CP Act.
[26] Rule 25(2) of the Rules.
[27] Rule 48 of the Rules.

126. Where Child Safety staff are serving documents filed by the DCPL, they should complete service of the documents as soon as practicable, and no later than three business days before the court event to which the documents relate.[28] If Child Safety are unable to comply with this timescale, they should advise the DCPL. If a party is represented by a lawyer in the proceeding, the DCPL will serve their lawyer, this includes separate representatives.

127. After Child Safety staff have effected service of documents filed by the DCPL, the Child Safety staff member who served the documents should provide an affidavit of service. The affidavit should be executed as quickly as possible after service has been effected, and be provided to the DCPL electronically with the original to follow by post or hand delivery.

Division 2 Service on guardians and the public guardian

128. Where the DCPL is required to serve a document on a person in a proceeding, and the DCPL know the person has a guardian, the document must be served on the guardian.[29] To assist the DCPL to comply with this obligation, Child Safety should advise the DCPL that a parent has a guardian when this is known to them. Where Child Safety reasonably believe a parent has impaired capacity but they are unsure whether the parent has a guardian, they should take steps to ascertain whether the parent has a guardian, for example, by contacting the QCAT registry to find out if QCAT has appointed a guardian for the parent.

129. If the DCPL reasonably believe a parent has impaired capacity but they are unsure whether the parent has a guardian, they should take steps to ascertain whether the parent has a guardian by seeking information from Child Safety or making enquiries themselves.

130. Where the public guardian has given written notice of an intention to appear in a child protection proceeding under section 108B(2) of the CP Act, they should be treated as a party, which includes serving them with copies of all documents filed by the DCPL in the proceedings.[30]

Part 4 Duty of disclosure

Division 1 Duty of Disclosure

131. The DCPL has a duty to make full and early disclosure to the parties of all documents in the possession or control of the DCPL that are relevant to a child protection proceeding. This includes applications to make, vary, extend and revoke a child protection order. It also includes applications where the DCPL is a respondent, such as an application to revoke a child protection order made by a parent.[31] The DCPL should be proactive and forthcoming in discharging its duty of disclosure, which continues until the proceeding is decided.[32] However, the DCPL may refuse to disclose a relevant document in certain circumstances. This is discussed in part 4, division 6 below.

[28] Rule 26(2) of the Rules.
[29] Rule 33 of the Rules.
[30] Rule 39 of the Rules.
[31] Section 189C(1) and the definition of *child protection order* in Schedule 3 of the CP Act.
[32] Section 189C of the CP Act.

132. The duty of disclosure is intended to ensure the DCPL conducts proceedings on behalf of the State fairly and transparently, in a manner that does not disadvantage other parties, particularly in circumstances where they are not represented by a lawyer. Disclosure also ensures parties to a proceeding are equipped with relevant information so they can respond to the DCPL's case effectively.

133. In practice, the DCPL's duty of disclosure is a shared responsibility between the DCPL and Child Safety. Child Safety has a duty to disclose to the DCPL all information that is relevant to a proceeding that is in Child Safety's possession or control. This is also an ongoing duty that continues until the proceeding is finally decided or otherwise ends.[33] The DCPL and Child Safety should work together in a timely way to ensure the duty is complied with and that any directions of the court about disclosure can be fulfilled.

134. This means that all relevant documents that come into the possession or control of Child Safety after the DCPL has provided initial disclosure, should be provided to the DCPL for the purposes of disclosure. This is important to ensure the DCPL complies with its duty of disclosure and the model litigant principles generally. Further, the DCPL cannot tender a Child Safety document in a proceeding that has not been disclosed without the leave of the court.[34]

Division 2 Duty to disclose relevant documents in DCPL's possession or control

135. 'Relevance' combined with 'possession or control' set the parameters of the DCPL's overarching duty of disclosure. Every document in Child Safety's possession or control about a child will not necessarily be relevant to a proceeding. To be relevant, the document must be relevant to the matters in issue in the proceeding. A document will be relevant if it tends to prove or disprove an allegation in issue. This includes a document that is likely to be relevant to a party's response to the applicant's case.

136. If a document is not relevant to an allegation in issue, it does not have to be disclosed. When documents contain information that is both relevant and not relevant to a proceeding, the whole document should be disclosed.

137. Possession or control refers to documents that are physically held by the DCPL and Child Safety, and documents that either agency is able to exercise power or command over such as emails, electronic documents and other documents that lack a physical form. It does not include documents that Child Safety has a power to obtain, such as information that can be requested under section 159N of the CP Act. A document in Child Safety's possession or control is deemed to be in the possession or control of the DCPL.[35]

Division 3 Disclosure Form

138. Under rule 52 of the Rules, the DCPL must file and serve the 'Form D – Disclosure Form' attached to these Guidelines on each party to a child protection proceeding. The DCPL may file and serve a 'Form D – Disclosure Form' at any time on its own initiative or as directed by the court. Subject to a direction of the court to the contrary, the DCPL must file and serve the

[33] Section 24 of the Act.
[34] Section 189D of the CP Act.
[35] Section 189C(7) of the CP Act.

Disclosure Form on the parties within 20 days of the first mention date for the proceeding.[36] As set out in Guideline 127 above, Child Safety will generally undertake service of the Disclosure Form on the parties, however, other arrangements may be agreed on a case by case basis.

139. The 'Form D – Disclosure Form' includes two lists of documents. The first list is found in Box A, and is comprised of the types of documents that are normally held by Child Safety. The second list is found in Box B, and is a list of specific documents that the DCPL has identified are relevant and should be disclosed. The second list may include a document that:
    a. does not fall within the types of documents contained in the first list; or
    b. falls within the types of documents contained in the first list, however, because of its particular relevance, the DCPL decide to list it as a specific document that can be requested.

140. If the 'Form D – Disclosure Form' does not list any documents in Box B, Box B should be deleted.

141. To assist the DCPL to comply with the requirement to file the 'Form D – Disclosure Form' within 20 days of the first mention, Child Safety should provide electronically all relevant documents at the time of the referral and then continue to provide all relevant documents on an ongoing basis, such as:
    a. the documents that Child Safety consider should be exhibited in compliance with Rule 13 ;
    b. other relevant documents in their possession or control that could be disclosed. Child Safety's approach to determining relevance should be inclusive. This means that if Child Safety staff are unsure whether a document is relevant they should provide it to the DCPL;
    c. correspondence and emails;
    d. relevant documents that Child Safety assess the DCPL should refuse to disclose under section 191(2) of the CP Act. Child Safety should provide documents that contain confidential information that require redaction before being disclosed. This includes notifier details, carer's addresses (where Child Safety has made a decision to withhold this information) and third party details or information that could reasonably lead to the identification of these things; and
    e. advise the DCPL of any document Child Safety assess should be listed as a specific document on the 'Form D – Disclosure Form', because it falls outside the types of documents in the first list or because of the document's particular relevance.

142. Child Safety should provide written confirmation to the DCPL as soon as practicable after the above tasks have been completed. If the DCPL believe there may be other relevant documents that have not been provided, the DCPL should consult with OCFOS about this.

143. If the 'Form D – Disclosure Form' lists any documents in Box B, the DCPL should provide OCFOS with a copy of the draft Disclosure Form before it is filed, so OCFOS can provide any feedback to the DCPL before it is filed and served.

144. Where a party is unrepresented, the 'Form D - Disclosure Form' should be served on them personally wherever practicable. This is so the disclosure process, including how they can make a request for disclosure, can be explained. In addition, the party should be shown the

[36] Rule 52 of the Rules.

information section at the end of the Disclosure Form, and be encouraged to obtain independent legal advice. Child Safety will normally serve the Disclosure Form on unrepresented parties. The DCPL may, however, attend to service of the Disclosure Form where this can be done at a court event.

145. Where a respondent's address is not known to the other respondent/s, it must be redacted from the copy of the 'Form D – Disclosure Form' served on the other respondent/s.

146. A copy of the 'Form E – Request for Disclosure Form' attached to these Guidelines, should be provided with the Disclosure Form when it is served on a party to the proceeding.

147. The filing and service of the 'Form D – Disclosure Form' in a proceeding is unlikely to be sufficient to discharge the DCPL's duty of disclosure. The proactive and ongoing nature of the DCPL's duty of disclosure under the Act is reflected in the Rules, which say that the DCPL may disclose a document at any time.[37] The DCPL does not have to wait for the return of the 'Form E – Request for Disclosure Form' before providing disclosure, particularly in a case where there is not a large number of relevant disclosable documents. In these cases the DCPL may provide early disclosure by giving a copy of the relevant disclosable documents to the parties at the earliest opportunity.

Division 4 Requests for disclosure

148. Requests for disclosure of a document or documents by a party should be in writing and may be made using the 'Form E – Request for Disclosure Form'. The request should include an adequate description of the document sought.[38]

149. Where an unrepresented party does not return the 'Form E – Request for Disclosure Form' or otherwise make a written request for disclosure, the DCPL and Child Safety should work together to ensure this is followed up with the party in a timely way. This may involve Child Safety contacting the party to ensure they understand they may request the DCPL disclose a particular Child Safety document/s that that are relevant to the proceeding. Where a party needs assistance to understand the type of documents that are referred to in the first list on the Disclosure Form, they should be given this assistance.

150. The DCPL may also contact a party by telephone and/or in writing to them to make sure they understand the disclosure process, and what they may request the DCPL disclose using the 'Form E – Request for Disclosure Form'. In complying with its disclosure obligation, the DCPL should take reasonable steps to ensure a party has the benefit of disclosure of relevant Child Safety documents in the proceeding. Service of the Disclosure Form, particularly on unrepresented parties, on its own, will not normally be enough to satisfy the duty.

151. Where a party is represented, the DCPL should follow-up the return of the 'Form E –Request for Disclosure Form' with their lawyer.

[37] Rule 55(1) of the Rules.
[38] Rule 53(1) and (2) of the Rules.

Division 5 Providing disclosure

152. The DCPL should be forthcoming in providing disclosure under the CP Act. This may involve proactively disclosing relevant documents in a proceeding at an early stage prior to the return of the 'Form E - Request for Disclosure Form'. In other cases, this may involve providing disclosure following receipt of the Request for Disclosure Form. Complying with the duty of disclosure will require strong collaboration and partnership working between the DCPL and Child Safety. In particular, the DCPL should consult with Child Safety about the documents that have been provided and about whether there are other relevant documents in Child Safety's possession or control that have not yet been provided. Where particular documents or classes of documents are requested by a party, Child Safety should ensure that all requested documents are provided to the DCPL as soon as reasonably practicable. This will assist the DCPL to respond to the request as soon as reasonably practicable as required under the Rules.[39]

153. Responsibility for redaction of confidential information from Child Safety documents and records that are being provided in compliance with the DCPL's duty of disclosure, should be shared equally between the DCPL and Child Safety. This includes redaction of notifier details, carer's addresses (where Child Safety has made a decision to withhold this information) and third party details or information that could reasonably lead to the identification of these things. Where the DCPL undertakes the redaction of confidential information from documents that are otherwise disclosable, DCPL may request Child Safety to review particular redacted documents and provide the DCPL with written confirmation that all confidential information has been redacted.

154. The DCPL is responsible for deciding what documents are being disclosed and what documents are not being disclosed, because they are not relevant or because they fall within a ground for non-disclosure under section 191(2) of the CP Act.

155. Disclosure can be provided either by inspection or service. Inspection may be useful particularly in matters with a large volume of disclosure documents. The DCPL and OCFOS should consult about how disclosure will be provided in each case.

156. Where disclosure is being provided by inspection, this will take place at a location mutually agreed between the DCPL and OCFOS. The DCPL is responsible for providing written notice to the parties of the place and time the documents can be inspected. Where disclosure by inspection occurs at a CSSC, Child Safety should make copies of the documents requested by the inspecting party. The copies should then be provided electronically entitled 'bundle of disclosure documents requested by [name of party] on [date]'. The DCPL is responsible for providing the requested documents to the inspecting party.[40]

157. Where disclosure is being provided by service, the DCPL should provide a bundle of disclosure documents to the party either in hard copy form or electronic form depending on the party's circumstances, including whether they are represented by a lawyer. The DCPL should also provide a copy the bundle of disclosure documents electronically to Child Safety entitled 'bundle of disclosure documents provided to [name of party] on [date]'.

[39] Rule 52(3) of the Rules.
[40] Rule 56(2) of the Rules.

158. Before disclosure is provided, the DCPL must tell parties who inspect and/or receive copies of documents under the disclosure provisions of the CP Act, that it is an offence to, directly or indirectly, disclose or make use of the documents other than for a purpose connected to the proceeding.[41]

159. When the DCPL provides disclosure of documents to a party, the DCPL must be satisfied that the document should not be refused under the non-disclosure grounds under section 191(2) of the CP Act to all parties, as the party may make the document available to any other party to the proceeding. Further, where a party requests disclosure of a document or documents provided to another party, the DCPL must provide immediate disclosure of the document or documents to the other party, subject to the non-disclosure grounds under section 191(2) of the CP Act.[42] If a particular ground for non-disclosure applies to one party but not another party in the proceeding, the DCPL should as per Guidelines 162 and 163 refuse to disclose, and then seek to manage the disclosure through the court on conditions the court considers appropriate. For example, disclosure of document (or part of a document) to one party may be likely to endanger the safety or psychological health of a person, however, disclosure of that information to another party may not give rise to these risks. In this instance, the disclosure should occur by court order with appropriate conditions to manage this risk.

160. The DCPL should be diligent in ensuring that disclosure is up to date by the court ordered conference. If this is not practicable, the DCPL should bring this to the court's attention so the conference can be rescheduled. Disclosure also needs to be up to date before a hearing of an application. The DCPL should seek directions from the court to ensure disclosure is completed before a court ordered conference or a hearing of the application as appropriate.[43]

161. The DCPL does not have to file a document it discloses to a party to the proceeding, unless the Rules require the document to be filed or the court directs that the document be filed.[44] Where the DCPL intends to rely on the document, it should comprise part of the evidence filed by the DCPL in support of the application.

Division 6 Non-disclosure under section 191 of the CP Act

162. When the DCPL is disclosing documents to a party, the DCPL must notify the party of any document the DCPL is refusing to disclose under section 191(2) of the CP Act.

163. Where the DCPL refuses to disclose a relevant document on a ground set out in section 191(2) of the CP Act, the DCPL must give the party written notice of the non-disclosure decision stating:
    a. the ground for non-disclosure;
    b. the DCPL is not required to disclose the document, unless the court orders disclosure, and disclosure will then be on the terms ordered by the court; and
    c. they can apply to court for an order requiring the DCPL to disclose the document under section 191 of the CP Act.[45]

[41] Section 189E of the CP Act.
[42] Rule 57 of the Rules.
[43] Rules 52(4), 55 and 58(2) of the Rules.
[44] Rule 59 of the Rules.
[45] Section 191(4) and (5) of the CP Act.

164. The DCPL should refuse to disclose a relevant document or part of a relevant document that falls within one of the grounds for non-disclosure mentioned in section 191(2) of the CP Act. The DCPL should consult with Child Safety about decisions to refuse disclosure of a relevant document as required.

Division 7 Disclosure compliance notice

165. The DCPL must provide written notice to the court that the duty of disclosure has been complied with ('Form F - Disclosure Compliance Notice Form' is attached to these Guidelines).[46] The DCPL should file and serve the notice on the parties prior to seeking a final determination of an application.[47] Until a 'Form F - Disclosure Compliance Notice Form' has been filed, the court cannot decide the proceeding.[48]

166. Examples of when the DCPL may seek to file a 'Form F - Disclosure Compliance Notice Form' include:
    a. before the hearing of the proceeding; and
    b. prior to asking the court to make a child protection order in accordance with a resolution reached at a court ordered conference.

167. The DCPL may file more than one 'Form F - Disclosure Compliance Notice Form' before a proceeding is finally decided.

Part 5 Subpoenas for production of documents or things

Division 1 Requesting subpoenas to produce

168. A subpoena to produce a document or thing (subpoena to produce) can be requested by a party to the proceeding. A 'subpoena to produce' may also be issued by the court on its own initiative.[49]

169. The DCPL should consult with Child Safety in deciding whether it is necessary to request one or more subpoenas to produce in a particular matter. Child Safety may request the DCPL consider issuing a subpoena to produce a document or thing if it is relevant to Child Safety's assessment. However, the DCPL may refuse to issue the subpoena. The DCPL is responsible for requesting subpoenas to produce in child protection proceedings. This includes drafting the request and filing the request in court. The request must be in the approved form and comply with the Rules.[50]

170. Subpoenas to produce should not be issued as a matter of course in every case. Instead, they should be requested when necessary, and their scope should be appropriately targeted when a particular document or class of documents is sought.

[46] Rule 61 of the Rules.
[47] Rule 26 of the Rules.
[48] Rule 61 of the Rules.
[49] Rule 94(1)(b) of the Rules.
[50] Rule 93 of the Rules.

Division 2 Service of subpoenas to produce

171. The DCPL is responsible for service of subpoenas to produce on the subpoena recipient and the parties.

Division 3 Conduct money

172. Conduct money is a sum of money paid to a subpoena recipient to meet their reasonable expenses of complying with the subpoena, including accessing and copying information. Conduct money is not payable to subpoena recipients who are employees or agencies of the State where they are not a party to or a participant in the proceeding.[51] This means that conduct money will not be payable to a department that is responsible for public health, education, housing services or the police.

173. Where conduct money is payable, the DCPL is responsible for payment. Although the DCPL is generally responsible for service of subpoenas to produce, where Child Safety agree to effect service, the DCPL will provide conduct money, in the form of a cheque, at the same time as the 'subpoena to produce' is provided to Child Safety for service. In these circumstances, Child Safety should ensure that, as well as serving the 'subpoena to produce' on the subpoena recipient, they also provide the cheque in payment of conduct money to the subpoena recipient.

174. Where Child Safety effect service of a 'subpoena to produce', the Child Safety staff member who served the subpoena should provide an affidavit of service. The affidavit should be executed as quickly as possible after service has been effected and be provided to the DCPL electronically, with the original to follow by post or hand delivery.

Division 4 Inspection and copying of material returned under subpoena

175. The DCPL should consult with Child Safety before making an application to inspect and copy material returned under a 'subpoena to produce'. The purpose of the consultation is to discuss whether there are any conditions the DCPL should request the court to impose in granting parties access to the material returned under the 'subpoena to produce'. For example, if the subpoena addresses a personal medical history of one of the parents, where the parties are legally represented, the DCPL may ask that only legal representatives be allowed to inspect and copy material returned under a 'subpoena to produce'.

176. The DCPL is responsible for inspecting material returned under a 'subpoena to produce', and if the court has given permission to copy the documents, for identifying and copying relevant documents. The DCPL should provide Child Safety with a copy of all documents copied.

177. The DCPL is responsible for compiling the bundle of subpoenaed material on which the DCPL intends to rely at a hearing, and for the indexing and paginating the bundle. Where a bundle of subpoenaed material is prepared by the DCPL, the DCPL will provide a copy of the bundle to Child Safety.

[51] Rule 100(2) of the Rules.

Part 6 Witnesses

Division 1 Coordination of witnesses

178. The DCPL and OCFOS should work together to identify witnesses who will give evidence at a hearing. The DCPL with the assistance of OCFOS will liaise with Child Safety witnesses in the lead up to the hearing about availability and other practical matters relating to giving evidence.

179. The DCPL is responsible for coordination of witnesses during a hearing, although the DCPL may be assisted by an OCFOS officer where they are in attendance at the hearing.

Division 2 Giving evidence in person or by audio visual link or audio link

180. Witnesses giving evidence as part of the DCPL's case should attend court in person, particularly Child Safety staff.

181. The DCPL may request permission from the court for a witness, particularly an expert witness, to give evidence by audio visual link or audio link.[52] In exceptional circumstances, the DCPL may request permission from the court for a Child Safety witness to give evidence remotely. For example, when the witness is unable to attend court due to illness or is no longer working for Child Safety, and lives a long distance from the court. Requests can be made in writing prior to the court event or orally at a preceding court event. The court can also make a direction allowing a witness to give evidence remotely at a future court event on its own initiative.

182. The decision about whether to request permission for a witness to give evidence remotely rests with the DCPL. In deciding whether to make a request, the DCPL may consult with Child Safety to discuss the request and to obtain further information relevant to the request, such as the location of the witness and, in the case of an expert witness, the impact of appearing in person on their work commitments. Child Safety may approach the DCPL when they believe a request should be made for permission for a particular witness to give evidence by audio visual link or audio link. Child Safety should make contact with the DCPL about this as soon as possible, and before the review mention is held in the lead up to the hearing.

183. Where the DCPL make a written request for permission for a witness to give evidence by audio visual link or audio link, the request should comply with rule 48(2) of the Rules. In particular, rule 48(2) requires the person making the request to inform the court about:
    a. how and when notice of the request was given to the other participants to the proceeding;
    b. whether any of the other participants object to the request; and
    c. whether they are aware of any issues in the proceeding that are likely to be contested during the appearance.

184. When requested by the DCPL, Child Safety should assist the DCPL by obtaining the information required by rule 48(2) from parties and participants in the proceeding. The DCPL should request Child Safety's assistance to obtain this information as soon as practicable prior to the appearance. Child Safety should take reasonable steps to obtain this information

[52] Rule 48 of the Rules.

and provide it to the DCPL with sufficient time for the DCPL to make the request prior to the court appearance.

Division 3 Subpoenas to attend to give evidence

185. A subpoena for a person to attend court to give evidence (subpoena to attend), can be requested by a party to the proceeding or can be issued by the court on its own initiative.[53]

186. The DCPL should consult with Child Safety as necessary in deciding whether to request one or more subpoenas to attend to give evidence in a particular matter. The DCPL is then responsible for requesting 'subpoenas to attend'. This includes drafting the request and filing the request in court. The request must be in the approved form and comply with the Rules.[54]

Division 4 Service of subpoenas to attend to give evidence

187. The DCPL and Child Safety should work together to ensure that 'subpoenas to attend' are served on a witness with as much notice as possible of the date the witness is required to attend court. Unless agreed, after the 'subpoena to attend' has been issued by the court and returned to the DCPL, the DCPL should, as soon as practicable, provide a copy of the 'subpoena to attend' to Child Safety for service.

Division 5 Notice to Child Safety witnesses

188. The DCPL should provide written notice to Child Safety stating which Child Safety staff are required, including when and where the staff are required to give evidence in a proceeding. The DCPL should give Child Safety as much notice as possible of the date a Child Safety staff member is required to attend court to give evidence.

Division 6 Expert witnesses

189. Where the DCPL calls an expert witness to give evidence in a proceeding, such as a psychiatrist or psychologist, the DCPL should take all reasonable steps to minimise the disruption and inconvenience to the witness. In particular, where the witness is giving evidence in person, the DCPL should ensure the witness is present at court no longer than necessary to give the required evidence. The DCPL should also, in appropriate cases, request permission from the court for the witness to give evidence by audio visual link or audio link.

190. The court can make directions about how expert evidence is to be taken in a child protection proceeding.[55] Directions can be made by the court about various matters including the type and number of experts that will give evidence. Where the DCPL intends to ask the court to make directions under this provision, it should consult with Child Safety about the directions the DCPL intends to seek.

[53] Rule 94(1)(b) of the Rules.
[54] Rule 93 of the Rules.
[55] Rule 66(2) of the Rules.

Division 7 Conduct money, witness allowances and witness losses and expenses

191. Conduct money is payable to a witness who is subpoenaed to give evidence to meet their reasonable expenses of travel to and from court.[56] Conduct money is not payable to subpoena recipients who are employees or agencies of the State where they are not a party to or a participant in the proceeding.[57] This means that conduct money will not be payable to employees of government departments or agencies who attend court to give evidence such as employees of a department that is responsible for public health, education, housing services or the police.

192. Where conduct money is payable, for example, when the subpoena recipient is a general practitioner, the DCPL is responsible for payment. The DCPL will provide conduct money, in the form of a cheque, at the same time as the 'subpoena to attend' is provided to Child Safety for service. In these circumstances, Child Safety should ensure that, as well as serving the 'subpoena to attend' on the subpoena recipient, that they also provide the cheque in payment of conduct money to the subpoena recipient.

193. In addition to the payment of conduct money to a non-State witness who is not a participant in the proceeding, the court can order the party who subpoenaed the witness to pay a travel and accommodation allowance, and losses and expenses, including legal costs, incurred by the witness incurred in complying with the subpoena.[58] However, the court can only make such an order if the subpoena recipient gives notice to the party who issued the subpoena that substantial losses and expenses will be incurred in complying with the subpoena, and gives an estimate of those losses or expenses.[59] Where a subpoena recipient contacts Child Safety and raises a concern about the cost of complying with a 'subpoena to attend', Child Safety should:
    a. draw the subpoena recipient's attention to the notice on the subpoena advising them of their right to seek an order from the court for additional allowances and for substantial losses and expenses incurred in complying with the subpoena under rule 100(3) of the Rules;
    b. ask the subpoena recipient to provide written notice itemising the estimated losses and expenses they anticipate will be incurred in complying with the subpoena; and
    c. provide this information to the DCPL, together with a copy of any written communication from the subpoena recipient. This is so the DCPL can consider whether to take action to reduce the anticipated losses and expenses of the witness by, for example, seeking permission from the court for the witness to give evidence remotely.

194. The DCPL is responsible for payment of allowances, or losses and expenses ordered by the court to a witness where the 'subpoena to attend' was issued by the DCPL.

Division 8 Child witnesses

195. Subject children, or other children, rarely give evidence in child protection proceedings. This is because it is usually not necessary, and not in a child's best interests for them to give evidence. For these reasons, the CP Act and the Rules place restrictions around when a child can give evidence and be cross-examined in child protection proceedings.

[56] Rule 100(3) of the Rules.
[57] Rule 100(2) of the Rules.
[58] Rule 100(3) of the Rules.
[59] Rule 100(3) and 100(4) of the Rules.

196. Only subject children aged 12 years and over can give evidence or be cross-examined, and this can only happen:
    a. with the leave of the court;
    b. if the child is represented by a lawyer; and
    c. if the child agrees.[60]

197. Further, a person can only ask a child, other than a child who is a respondent, to swear or affirm an affidavit with the leave of the court.[61]

198. Despite the tight statutory controls about a child giving evidence in a proceeding, occasionally, a child may give evidence in a case. For example, an older child who is participating in a proceeding, and who has a direct representative, may decide they want to provide an affidavit in response to the application.

199. In the unlikely circumstances that a subject child files an affidavit in response to an application but is unrepresented, the DCPL should be proactive in ensuring the child has a lawyer appointed to represent them in the proceeding.

200. Legal Aid Queensland provides advice and representation services to children in child protection proceedings. The DCPL can help a child to obtain legal representation through Legal Aid Queensland by:
    a. asking Child Safety to assist the child to apply to Legal Aid Queensland for the appointment of a direct representative; and/or
    b. requesting the court to appoint a separate representative to represent the child in the proceeding.

201. The DCPL may also pursue the appointment of an advocate from the Office of Public Guardian to support the child in the proceeding.

202. The DCPL should consider carefully whether it is necessary to cross-examine a child who has filed an affidavit in response to an application when a matter is proceeding to a contested hearing. The child should only be cross-examined if it is necessary. The DCPL should consult with Child Safety before reaching a decision about whether to seek the court's leave to cross-examine a child under section 112(3) of the CP Act. If the court's leave is granted, the DCPL must provide written notice to the child's legal representative that the child is required for cross-examination as soon as possible prior to the hearing.[62]

203. Where a child has filed an affidavit in response to an application made by the DCPL, the DCPL should ensure that a party or participant seeking to cross-examine the child has obtained the requisite leave of the court under section 112(3) of the CP Act for that cross-examination. The DCPL should consult with Child Safety prior to making submissions to the court about whether leave for cross-examination of a child by another party or participant should be granted.

204. Where the court grants leave for cross-examination of the child, the DCPL should ensure the court makes directions about how the child will be cross-examined under rule 102 of the Rules. The DCPL should consult with Child Safety about what directions would be

[60] Section 112 of the CP Act.
[61] Rule 81 of the Rules.
[62] Rule 91(3) of the Rules.

appropriate having regard to all of the circumstances of the case. The DCPL should assist the court to make directions that assist the child to give their best evidence, and to minimise any distress to the child. This could include those things specified by rule 102(2) of the Rules, namely:

a. excluding a person or persons from the court while the child gives evidence;
b. allowing the child to have a support person nearby throughout their evidence; and
c. having the child give their evidence by audio visual link or audio link.

205. Where the child's parent is also a child and has filed an affidavit in the proceeding, the DCPL should consider, in consultation with Child Safety, whether to ask the court to make directions under rule 102(2) about how the child's parent will give evidence.

Part 7 Section 106 of the CP Act

206. The court has a duty under section 106 of the CP Act to, as far as practicable, ensure the parties to the proceeding, including the child (if they are participating) and the child's parents, and other parties understand the nature, purpose and legal implications of the proceeding and any order or ruling made by the court. This includes not hearing a proceeding unless a person who requires help to understand or take part in the proceeding, has the help they need to understand or take part.

207. The DCPL, as a model litigant, has a responsibility to be proactive in considering whether a party or participant is likely to require help to understand or take part in the proceeding, and take appropriate steps.

208. Child Safety should assist the DCPL to comply with its model litigant obligations by advising the DCPL if a party or a person participating in the proceeding requires help to understand or take part. This includes circumstances where a parent or participant:
    a. has difficulty communicating in English; or
    b. has, or may have, a disability including an intellectual or cognitive impairment.

209. Where a party or a participant in a proceeding has a disability that prevents them from understanding the proceeding, the DCPL should assist the court to comply with its obligations under section 106 of the CP Act. The steps the DCPL should take will depend on the particular case, but may include:
    a. asking Child Safety to assist the person to apply to Legal Aid Queensland or a Legal Aid preferred service provider for assistance, or a local community legal centre, or if the person is Aboriginal or a Torres Strait Islander, assisting them to seek assistance from ATSILS;
    b. asking the court to issue a direction under rule 68(3) of the Rules directing the registry to send to Legal Aid Queensland the magistrate's written request that Legal Aid Queensland consider giving the person legal assistance for the proceeding; and
    c. asking the court to make a direction under rule 67(2)(c)(ii) of the Rules, to ensure the person understands and can participate in the proceeding.

Part 8 Interpreters

210. Where a witness appearing as part of the DCPL's case needs an interpreter, the DCPL is responsible for arranging this. The DCPL should ensure that every witness called by the DCPL who needs an interpreter has one. Where Child Safety is aware that a witness may need an interpreter they should advise the DCPL. The DCPL is responsible and for payment of any applicable fees.

211. Where a party or a participant in a proceeding requires an interpreter to understand the proceeding and they are unrepresented, the DCPL should ask the court to appoint an interpreter to attend all court events to facilitate their taking part. This includes:
    a. the child, where they are participating;
    b. the child's parents; and
    c. a person participating under section 113 of the CP Act with all of the rights and duties of a party.

212. Where the court orders the appointment of an interpreter, the costs of the interpreter should be met by the court.

Part 9 Preparation for hearing

213. The DCPL should act with diligence to ensure in a matter where the parties cannot reach an agreement to be considered by the court, that it progresses to a hearing as quickly as possible. Where a matter is set down for a hearing, the DCPL should ensure the DCPL is ready to proceed on the allocated hearing date.

214. The DCPL and Child Safety should work together in the lead up to a hearing to ensure that procedural directions of the court are complied with, and that the DCPL is ready to proceed. In particular, ongoing consultation and collaboration can assist to:
    a. ensure the DCPL is kept updated about Child Safety's casework with the child and family as required;
    b. ensure there is ongoing assessment of the evidence in a matter and how that aligns with the application before the court;
    c. provide an update about Child Safety's consultation and engagement with the child and the child's family and compliance with the requirement to arrange for an independent person for the child in relation to making significant decisions where the application is for an Aboriginal child or Torres Strait Islander child;
    d. provide ongoing disclosure of relevant documents to other parties;
    e. obtain further information or evidence required for the hearing;
    f. settle draft affidavits;
    g. serve filed material on the child's parents and other parties;
    h. serve subpoenas to produce and subpoenas to attend to give evidence on subpoena recipients;
    i. share and discuss material returned under subpoena;
    j. discuss material filed by other parties;
    k. notify Child Safety about when Child Safety staff will be required to attend court to give evidence; and
    l. serve notice on a party that a person who made an affidavit that they filed in court is required to attend the hearing.

215. Responsibility for preparing a matter for hearing lies with the DCPL, including preparation of:
    a. a list of filed material to be relied on at the hearing;

b. a witness list;
c. all witnesses for hearing including Child Safety witnesses;
d. the bundle of subpoenaed material to be relied on at the hearing including indexing and paginating;
e. a chronology;
f. an outline of argument; and
g. draft orders of the court.

216. Where a respondent parent is in custody, the DCPL is responsible for liaising with the court to ensure that timely notice of the hearing is provided to the correctional centre so the parent is brought to court for the hearing.

217. Child Safety should assist the DCPL to prepare for the hearing by:
    a. preparing affidavits and other required material in a timely manner;
    b. serving documents on the child's parents and other parties, and providing affidavits of service;
    c. providing the DCPL with current telephone contacts for all witnesses, including Child Safety witnesses; and
    d. advising which Child Safety staff will be attending with authority to provide the Child Safety position about any issues that arise at court.

218. The DCPL may indicate that a Child Safety witness can be on 'standby' on the day they are due to give evidence. In these circumstances, the Child Safety witness should ensure they remain within or near the relevant CSSC, and are available on the telephone number provided at all times.

Part 10 Appearances by the DCPL

Division 1 Appearing in person

219. The DCPL's preferred mode of appearing in court is in person. In deciding whether to appear at a court event in person, the DCPL should consider:
    a. the nature of the court event;
    b. the complexity and sensitivity of the case;
    c. whether there are any issues that are likely to be contested at the court event;
    d. whether the other parties, or their lawyers where they are represented, object to the DCPL appearing remotely;
    e. whether there are particular characteristics of the proceeding, or a party to the proceeding that would make a remote appearance problematic; and
    f. the distance the DCPL would have to travel to attend the court event.

220. Where an appearance in person is not practicable, the DCPL may seek the court's permission to appear by audio visual link or audio link. For example, where an appearance in person would require a DCPL lawyer to travel a long distance for a single court event. This is consistent with model litigant principles, which require the State to take appropriate steps to manage litigation efficiently. The DCPL may also seek to appear remotely in other circumstances, such as where the legal representative for another party intends to seek an adjournment for the purposes of providing legal advice, and the DCPL does not intend to oppose the adjournment.

Division 2 Appearing by audio visual link or audio link

221. A participant in a child protection proceeding, including the DCPL, can request the court's permission to appear at a future court event by audio visual link or audio link. The request can be made in writing prior to the court event or orally at a preceding court event. The court can also make a direction allowing a participant to appear remotely at a future court event on its own initiative.[63]

222. Where the DCPL decides to make a written request to appear by audio visual link or audio link, the DCPL may ask OCFOS to assist by obtaining information required by the Rules, such as whether the parents object to the request.[64] The DCPL should request Child Safety's assistance as soon as practicable prior to the appearance. Child Safety should take reasonable steps to obtain this information and provide this information to the DCPL with sufficient time for the DCPL to make the request prior to the court appearance.

223. Where permission is granted and the DCPL intend to appear at a court event by audio visual link or audio link, they should advise OCFOS.

Division 3 Engaging lawyers to appear on behalf of the DCPL

224. Section 11 of the Act provides that the DCPL may engage appropriately qualified lawyers to assist the DCPL to carry out its statutory functions (section 11 lawyer). The principal purpose of this section is to give the DCPL the power to engage a local solicitor or Counsel to appear on behalf of the DCPL at a court event. A section 11 lawyer will act as an agent for the DCPL appearing on the DCPL's instructions.

225. The DCPL should advise Child Safety that they have engaged a section 11 lawyer in the proceeding, and provide Child Safety with the name and contact details for the section 11 lawyer.

Part 11 Mentions

Division 1 Roles of the DCPL and Child Safety

226. As the applicant, the DCPL will attend all mentions of an application. The role of the DCPL at a mention is to lead submissions about the progress of the case and about any issues arising at the mention. The DCPL should consult with Child Safety and other stakeholders as required, particularly if there are resource or casework implications for Child Safety. However, the DCPL is responsible for all decision making about an application at a mention.

227. Child Safety have an important role to play at mentions as the DCPL's briefing partner. There are two aspects to this role—
    a. to ensure the DCPL, and ultimately the court, have up to date information about the child and family's circumstances, which are dynamic and can change rapidly; and

[63] Rule 48(1) of the Rules.
[64] Rule 48(2) of the Rules.

b. to participate in consultation with the DCPL and discussion with other parties and participants about issues arising at court, particularly where they relate to Child Safety's casework responsibilities for the child and family.

Division 2 Written updates and consultation with Child Safety before a mention

228. Child Safety, no later than 2 business days prior to each mention of an application, should provide electronically to the DCPL a written update in relation to the matter, and then within 24 hours before the mention, the DCPL and Child Safety should consult about the application and the child and family's current circumstances as required. Child Safety should ensure the DCPL is fully informed about any new developments in terms of case management or other relevant matters. If the DCPL has requested Child Safety prepare an affidavit ahead of a mention, as per Guideline 97, a draft affidavit should be provided to the DCPL 7 business days before the mention. This will allow the DCPL time to settle and arrange for the affidavit to be filed, then served as soon as practicable, and no later than three business days before the mention.

229. In preparation for a mention, the DCPL and Child Safety should discuss relevant topics, which might include, but are not limited to:
    a. where the child is subject to one or more interim orders under section 67 of the CP Act, whether there is any change in the Child Safety assessment about the appropriateness of those orders for meeting the child's care and protection needs;
    b. whether the DCPL should ask the court to make one or more of the orders listed in section 68 of the CP Act, such as ordering that the child be separately represented in the proceeding;
    c. orders that are likely to have resource or financial implications for Child Safety, such as an order that increases the child's contact with their family or that stipulates that contact occur on a weekend;
    d. timescales for holding a family group meeting to develop a case plan and file the case plan in court;
    e. whether the court should make a protection order or vary a domestic violence order under the DFVP Act under rule 70 of the Rules; and
    f. whether the court should make an order under section 114 of the CP Act transferring a proceeding to another court, or an order under section 115 of the CP Act to hear 2 or more applications together.

230. Because of the inherently unpredictable nature of child protection proceedings, particularly where parents are unrepresented, there will be times where issues arise at a mention that were not anticipated. Child Safety should ensure an officer with authority to provide Child Safety's assessment about matters arising at court attends all court events, including each mention of the application, or is otherwise available by telephone.

231. Where an issue arises at court that the DCPL and Child Safety have not previously consulted about, the DCPL and Child Safety should consult as necessary at court. This may require the DCPL to request that the court stand the matter down for consultation between the DCPL and Child Safety on a relevant issue, which should include where required, consultation about Child Safety's capacity in respect of any resource implications, including financial in respect of the issue. Where the issue relates to a case work matter, such as the child's contact with their family, the DCPL must consult with Child Safety prior to providing a position to the court. The DCPL should adopt Child Safety's assessment about a casework issue

unless the evidence does not support the assessment. Where the DCPL takes a position that conflicts with that of Child Safety's assessment, the DCPL should ensure the court is aware of Child Safety's assessment so it can consider this in reaching a decision.

Division 3 Discussions with other parties or participants

232. As the applicant, the DCPL will lead any discussions or negotiations with other parties, participants or their legal representatives at court. Where the DCPL engages in case discussions and a Child Safety staff member is not present, the DCPL should convey the content of the discussions to Child Safety.

Division 4 Appearances by parents who are in custody

233. Where a respondent parent is in custody, the DCPL is responsible for liaising with the court to ensure that timely notice of the mention is provided to the correctional centre so arrangements are made for the parent to appear remotely.

Part 12 Interim orders and other orders on adjournment

Division 1 Section 99 of the CP Act

234. The CP Act provides that the court may adjourn a proceeding for a child protection order for a period decided by the court.[65] In deciding the period of adjournment, the court must take into account the principle that it is in the child's best interests for the application for the order to be decided as soon as possible, and that delay in making a decision for a child should be avoided.[66] On an adjournment, the court pursuant to section 67 of the CP Act, can make an interim order granting temporary custody of the child to Child Safety[67] or a suitable person who is a member of the child's family.[68]

235. On an adjournment of a proceeding, the other relevant provision is s99 of the CP Act, which provides if:
    a. a child is in Child Safety's custody or guardianship, or the custody of a family member under an order; and
    b. before the order ends, an application is made for the extension of the order or for another order;
    c. the order granting custody or guardianship continues while there is a pending decision before the court on the new application, unless the court orders an earlier end to the custody or guardianship.

236. The DCPL in consultation with OCFOS, should actively consider if and when an application should be made requesting the court order an end to the continuation of an earlier order under section 99, and seeking an interim order under s67 of the Act, the factors may include:

[65] Section 66(1) of the CP Act
[66] Section 66(3) of the CP Act
[67] Section 67(1)(a)(i) & (ii) of the CP Act
[68] Section 67(1)(a)(ii) of the CP Act

a. whether the child is in the custody of Child Safety pursuant to a temporary assessment order, court assessment order or temporary custody order;
b. whether the child is in Child Safety's custody or the custody of a member of the child's family pursuant to a child protection order;
c. whether the child is in Child Safety's guardianship pursuant to a child protection order;
d. that where a child is in the custody or guardianship of Child Safety under a child protection order, which includes an interim order pursuant to section 67 CP Act, the child and their parents acquire a right of review with respect to placement[69], save in situations where Child Safety reasonably suspects compliance would constitute a risk to the safety of the child or anyone with whom the child was living[70]. In such situations, there is an obligation on Child Safety to provide information to the child and their parents as to this right of review[71]. Where a temporary assessment order, court assessment order or a temporary custody order continues by virtue of section 99 of the CP Act and no interim child protection order is made pursuant to s67 of the CP Act, then there is no right of review, by a child or parent, in respect of placement[72] and the requirement of Child Safety is simply to notify the parents as the child's placement[73];
e. the effect of the court ordering an earlier end to custody or guardianship under s99 of the CP Act, may change the applicable test in respect of interim custody, from a consideration of the court being satisfied:
    i. that it is necessary to provide interim protection for the child while the investigation is carried out[74]; and
    ii. to there being an unacceptable risk to the child in the adjourned period without the making of the interim order.

Division 2 Interim orders under section 67 of the CP Act

237. When the court adjourns a proceeding, it can make any one or more of a number of interim orders under section 67 of the CP Act.

238. Although section 67(5) of the CP Act provides that an interim order only lasts for the period of the adjournment, an interim order made at the first mention of an application may be continued until the application is finalised, which can be a period of many months. It is critical the DCPL gives careful consideration to an application for an interim order. In particular, the DCPL should:
    a. apply the principles of the Act in decision making about whether to apply for an interim order, including the paramount principle and the principles that emphasise that State intervention in the lives of children and families should be the minimum necessary to meet the child's protection and care needs;
    b. consider carefully the sufficiency of evidence to support an application for an interim order; and
    c. wherever necessary, consult closely with Child Safety about any proposed interim order, and any issues arising in respect of the interim order such as the sufficiency of evidence to support the court making the order.

[69] Section 247 and schedule 3 of the CP Act
[70] Section 86(3) & (4) of the CP Act
[71] Section 86(2) of the CP Act
[72] Section 86(1) of the CP Act
[73] Section 85 of the CP Act
[74] For example section (45(1)(c)(i) of the CP Act

239. Child Safety should ensure the DCPL is aware of any circumstances where the making of an emergency order was contested or appealed by the child's parents.

Division 3 Other orders under section 68 of the CP Act

240. Under section 68 of the CP Act, the court can also make any one or more of a range of other orders on adjournment, including an order:
    a. requiring a social assessment report to be prepared and filed;
    b. authorising a medical examination or treatment of the child and a report about the examination or treatment to be filed;
    c. regulating the child's contact with their family during the adjournment;
    d. requiring Child Safety to convene a family group meeting to develop or revise a case plan for the child, or for another stated purpose relating to the child's wellbeing and protection and care needs;
    e. that a court ordered conference be held between the parties; and
    f. that the child be separately legally represented in the proceeding.

241. The court is required to consider making each of the above orders when it adjourns a proceeding.[75] The DCPL should consult with Child Safety as appropriate in respect of the above orders prior to a mention.

242. Where the court is contemplating ordering the preparation of a written social assessment report about the child and the child's family under section 68(1)(a) of the CP Act on the adjournment of a proceeding, the DCPL should consult with Child Safety about this.[76] As far as possible, the DCPL should seek Child Safety's view about whether the report is necessary, and about the particular issues the report should address before indicating a position to the court. The DCPL should provide Child Safety's views about the proposed report to the court. The DCPL should not ask the court to order the preparation of a social assessment report without first consulting with Child Safety about the necessity of the proposed report, and about Child Safety's capacity to pay the costs of preparing the report.

243. Where the court orders the preparation of a written social assessment report under section 68(1)(a) of the CP Act, the DCPL should liaise with OCFOS to progress its preparation. Child Safety is responsible for payment of the costs of preparing the report. The DCPL should also, as far as possible, ensure the court clearly prescribes the particular issues the report should address.[77]

244. Where the court proposes to make an order under section 68(1)(c) of the CP Act requiring Child Safety to supervise family contact with the child, the DCPL should consult with Child Safety to ascertain whether Child Safety agrees to supervise the contact. Where Child Safety does not agree to supervise family contact, Child Safety should provide reasons why not. The DCPL will then be able to provide this information to the court and other parties. Where Child Safety refuses to supervise the family contact, the DCPL should ensure the court is aware of this and the restriction on the court making an order requiring Child Safety to supervise family contact without the agreement of Child Safety under section 68(5) of the CP Act.

[75] Rules 68, 69 and 71 of the Rules.
[76] Rule 66(1) of the Rules.
[77] Section 66(2) of the CP Act.

245. A further area of consultation between the DCPL and Child Safety is about other orders the court can make under section 68 of the CP Act about the appointment of a separate representative for the child. As indicated above, the Rules require the court to consider the appointment of a separate representative in every case.[78] The DCPL and Child Safety should consult about this before the first mention of every application and at subsequent mentions as appropriate.

Part 13 Orders under the Domestic and Family Violence Protection Act 2012

246. The court must consider whether to make a protection order or vary a domestic violence order under the *Domestic and Family Violence Protection Act 2012* (DFVP Act) in every case.[79] The court can also make a direction about a proceeding under the DFVP Act, such as directing the registrar to request that information from that proceeding be provided to the Childrens Court.[80] The DCPL and Child Safety should consult about this prior to each court event for every case where domestic and family violence is an issue. In particular, the DCPL should seek Child Safety's view about whether the court should make a protection order or vary a domestic violence order and the reasons for that view.

Part 14 Court ordered conferences

Division 1 Holding a court ordered conference

247. Where an application for a child protection order is contested, there must be a conference between the parties or reasonable attempts to hold a conference must have been made.[81] The overarching purpose of a conference is to explore the possibility of the parties reaching an agreement about how the application should be resolved. A conference can also narrow the legal issues that are in dispute between the parties for determination at a hearing. The court may direct parties to try to decide or resolve a particular matter in dispute at a conference. In these circumstances, the court must issue a direction stating the particular matter the parties must try to decide or resolve at the conference.[82]

248. In reaching an agreement to resolve the application at a conference, the safety, wellbeing and best interests of the child, both through childhood and for the rest of the child's life, will be the DCPL's paramount consideration. The DCPL will also consider whether there is sufficient evidence to support the agreement reached by the parties.

249. The court is responsible for notifying parties and participants of the conference (except the child, unless they have filed a notice of address for service).[83] In cases where it may not be immediately clear that a participant should be notified of the conference, such as a person taking part in the proceeding under section 113 of the CP Act, the DCPL should pass this information on to the court.

[78] Rule 68(1)(b) of the Rules.
[79] Rule 70 of the Rules.
[80] Rule 70 of the Rules.
[81] Section 59(1)(c) of the CP Act.
[82] Rule 106 of the Rules.
[83] Rule 108 of the Rules.

249A. Requests by the DCPL for information from Child Safety, to inform the court of the contact details of all participants entitled to attend the conference, should be made in a timely manner, and where possible ahead of the mention at which it is envisaged a conference will be ordered. Child Safety must provide the relevant contact information requested to the DCPL as soon as reasonably practicable and in any event, within two business days of receiving the request.

249B. Child Safety must work collaboratively with the DCPL to ensure the DCPL is able to provide all information relevant to the court ordered conference to the Child Protection Conferencing Unit in a timely manner, and, at least three weeks prior to the conference, unless the court has ordered a conference occur in a reduced timeframe. In particular, Child Safety must provide the DCPL with information and details of any matters which may assist the convenor in mediating the matters in dispute which are not evidenced in any affidavit material filed with the court. Further, Child Safety must provide details, if applicable, of any recent developments that may be relevant to the conference. Child Safety shall provide the information requested as soon as practicable, or within a timeframe as agreed with the DCPL, and at least three weeks' prior to the scheduled conference, unless the court has ordered a conference be held within a reduced timeframe. Where the court has ordered a conference occur within three weeks from the mention, Child Safety must work collaboratively with the DCPL to ensure the DCPL is able to provide all relevant information to the Child Protection Conferencing Unit as soon as reasonably practicable following the mention at which the court ordered the conference to be held.

250. Although the child is a party to the application, they are not required to attend the conference. However, where appropriate, having regard to the child's age and ability to understand the matter, the child must be told about the conference and be given an opportunity to participate.

251. Child Safety are required to tell the child about the conference where appropriate as soon as practicable after receiving notice of a conference from the court.[84] Child Safety should tell the child the date, time and location of the conference, as well as who will be attending and the purpose of the conference. Child Safety should also tell the child they can attend the conference if they want to, but they do not have to. Child Safety should also discuss with the child that, subject to the discretion of the convenor, there is flexibility about how they participate in a conference, for example, they can:
    a. bring a support person;
    b. attend part, but not all, of the conference;
    c. talk to the convenor without other participants being present; and or
    d. provide their views about the application, or a matter relevant to the application, in writing.

252. Where the child indicates an intention to attend the conference, Child Safety should tell the DCPL and pass on any views expressed by the child about how they would like to participate in the conference. In appropriate cases, the DCPL should communicate this information to the convenor for the conference to assist them in their planning and preparation. For example, the child may want to attend the conference, but may not want to speak to the convenor when a particular person is in the room.

253. Where the child attends the conference and they are being given an opportunity to express their views, as far as possible, the DCPL should ensure this is done in accordance with the requirements of section 5E of the CP Act.

[84] Rule 44 of the Rules.

254. As a conference is a court event, Child Safety, no later than 2 business days prior to the conference, should provide electronically to the DCPL a written update in relation to the matter, and then within 24 hours before the conference, the DCPL and Child Safety should consult prior to the conference. The purpose of the consultation is for Child Safety to ensure the DCPL is fully informed about any new developments in terms of case management or other relevant matters about the child's case, and to exchange views about the application and any issues in dispute.

255. Issues to do with the application and about the evidence filed in support of the application discussed at the conference are the responsibility of the DCPL. Issues to do with case management, such as contact and placement, are the responsibility of Child Safety. The relevant agency will normally lead discussion about these matters as they arise at a conference.

256. The DCPL and Child Safety should consult about their respective positions about these matters and discuss what may be negotiable prior to the conference. Where the DCPL is considering a resolution of the application on different terms than those proposed in the application, it should consult with Child Safety about this. The DCPL cannot reach an agreement to resolve an application that includes case management actions that will be carried out by Child Safety, without the agreement of Child Safety. For example, where a parent proposes a resolution to an application that includes the parent having additional contact with the child, the DCPL cannot agree a settlement on these terms unless Child Safety agree to facilitate the additional contact between the child and the parent.

257. If the conference is for an Aboriginal child or Torres Strait Islander child, DCPL and Child Safety should consult ahead of the conference and ensure that in consultation with the child and the child's family, any required arrangements for an independent person for the child to facilitate the participation of the child and the child's family in the conference have been undertaken. An independent person may attend the conference to facilitate the family's participation in the conference.

258. Occasionally, there may be a benefit in holding a further conference in a proceeding. For example, where significant information is received that is relevant to the application after the earlier conference was held. Where the DCPL believes a further conference may be of benefit, it should consult with Child Safety before asking the court to order that a further conference is held.

Division 2 Dispensing with the requirement to hold a conference in a contested matter

259. In exceptional circumstances, for example, where there is a risk to the safety of a party, section 59(1)(c)(ii) of the CP Act provides that the court can make a child protection order in a contested matter even though a conference has not been held. Before the DCPL submits to the court that it would be inappropriate to hold a conference, the DCPL should consult with Child Safety. If the application to dispense with the requirement for a conference is made by another party or by the court of its own motion, where practicable, the DCPL should consult with Child Safety before making submissions to the court about whether a conference should be held.

Part 15 Family group meetings held whilst the application is before the court

260. The function of the family group meeting is to deal with matters relating to a child's protection and care needs or wellbeing.[85] Where the purpose of the meeting is case planning, this includes considering the child's protection and care needs and agreeing on a plan to meet those needs and promote the child's wellbeing.

261. The DCPL will not ordinarily attend a family group meeting held whilst an application is before the court. However, depending on the circumstances of a particular case, the DCPL may attend a family group meeting on the request of Child Safety.[86]

262. Generally, the purpose of the DCPL attending the family group meeting, will be to provide information about evidentiary matters that relate to the child's protection and care needs, or about matters to do with the application before the court. Circumstances when the DCPL may attend include:
    a. for complex matters; or
    b. for the provision of legal advice in case planning for a matter that relates to the child's protection and care needs. For example, in a case where the *harm* to the child was caused by alleged physical abuse of the child by a parent that is the subject of separate criminal proceedings.

263. Following a case planning family group meeting, Child Safety should provide a copy of the documents prepared as part of the case planning process to the DCPL, namely the:
    a. most recent strengths and needs assessment for the child and the child's parents;
    b. case plan; and
    c. review report (if it is a revised case plan).

264. Prior to a case plan being endorsed by Child Safety, the DCPL may be asked to provide advice about whether the case plan:
    a. is appropriate for the child's assessed protection and care needs; and
    b. in the case of a long-term guardianship order, includes satisfactory living and contact arrangements for the child.[87]

Part 16 Interim and final hearings

265. The DCPL is responsible for running all aspects of the DCPL's case at interim and final hearings. The DCPL should, however, continue to work in partnership with Child Safety in carry out this responsibility.

266. Child Safety staff have three roles at interim and final hearings:
    a. to attend court as a witness to give evidence;
    b. to support Child Safety staff who are giving evidence (this applies to OCFOS officers); and
    c. to attend court as the DCPL's briefing partner.

[85] Section 51J(1) of the CP Act.
[86] Section 51(L)(1)(j) of the CP Act.
[87] Section 59(1)(b) of the CP Act.

Division 1 Child Safety staff as witnesses

267. Child Safety staff, in particular child safety officers, are key witnesses at interim hearings (where oral evidence is taken) and at final hearings. The Child Safety assessment for a child is at the centre of the DCPL's decision making and should be at the centre of the court's decision making on an application. A number of child safety officers may give evidence at a hearing including:
    a. the child safety officer that completed the initial investigation and assessment for a child and family that led to the referral of the *child protection matter* to the DCPL;
    b. the child safety officer that is currently allocated to the child's case; and or
    c. child safety officers that have previously been allocated to the child's case during a period of time relevant to the application before the court.

268. A child safety officer who is scheduled to give evidence at a hearing, should not be present in court during the hearing until after their evidence is completed. For this reason, the DCPL may decide to call the allocated child safety officer as their first witness so they can be present in court for the remainder of the hearing.

Division 2 Child Safety staff attending court

269. Child Safety staff have an important role to play at interim and final hearings. There are two aspects to this role—
    a. to ensure the DCPL, and ultimately the court, have up to date information about the child and family's circumstances, which are dynamic and can change rapidly; and
    b. to consult with the DCPL and participate in discussion with other parties about Child Safety's casework responsibilities for the child and family.

270. Child Safety should ensure that an officer with authority to provide the Child Safety assessment about matters arising at court attends all interim and final hearings, or is otherwise available by telephone (also see Guideline 230).

271. Where an OCFOS officer attends an interim hearing (where oral evidence is taken) or a final hearing, they may assist the DCPL with the coordination of witnesses during the hearing.

Division 3 Applications for adjournment of a hearing

272. The DCPL's overarching responsibility as a model litigant conducting court proceedings on behalf of the State, is to ensure that each application is ready to proceed on the allocated hearing date. Requests for an adjournment of a hearing by the DCPL should be rare, and wherever possible, should not be made on the day of the hearing.

273. Where an application for an adjournment of the hearing is made by another party or participant in a proceeding, the DCPL should consult with Child Safety in formulating a position about whether to oppose the adjournment. Consultation with Child Safety allows Child Safety to raise relevant issues including the impact of an adjournment on the child. The DCPL should consider carefully what position to take in response to an application for an adjournment of a hearing, balancing competing factors including:

a. the requirement to resolve child protection proceedings as quickly and efficiently as possible;[88]
b. the requirement to provide procedural fairness to a party to the proceeding; and
c. whether a previous adjournment or adjournments have been granted by the court.

Part 17 Transition orders

274. When the court is deciding an application for a child protection order for a child that is already in the custody or guardianship of the chief executive, or a *suitable person* under a final child protection order, in certain circumstances, the court can make a transition order. A transition order can last for up to 28 days and is made so the child can be gradually transitioned into the care of the parents.[89] Where the possibility of the court making a transition order arises either prior to or at a court event, the DCPL and Child Safety should consult about the proposed order. The DCPL should ensure the court is aware of Child Safety's assessment about the transition order.

Part 18 Court outcome communications

275. Following every court event, including a court ordered conference, the DCPL must provide Child Safety with written notice of the court outcome electronically, using the DCPL court outcome notification form. Along with the court outcome notification form, the DCPL should also provide Child Safety with a copy of any sealed orders or directions made by the court if they have not received them directly from the court. Separate to Child Safety's obligation under section 63 of the CP Act, the DCPL will provide the parties with a copy of any sealed order or directions made by the court.

276. Where possible, the court outcome notification should be provided electronically on the same day as the court event. If this is not possible, it should be provided by 5:00pm on the next business day. Where the court outcome notification cannot be provided during business hours on the same day as the court event, the DCPL must telephone Child Safety and advise them of the court outcome. Before 5:00pm the telephone call should be made to the relevant OCFOS officer. If the relevant OCFOS officer is not available, the DCPL should contact the PO5 OCFOS Legal Officer for the cluster. If it is after 5:00pm, the telephone call should be made to the Child Safety After Hours Service Centre on 1800 177 135 or 3235 9999.

Part 19 Amendment of application to seek a different order after filing

277. Ongoing review of an application and the evidence filed in support, may result in the DCPL deciding that a different child protection order to that sought in the application is considered appropriate and desirable for the child's protection. The safety, wellbeing and best interests of the child, both through childhood and for the rest of the child's life, must be the DCPL's paramount consideration in decision making about the amendment of the application. The DCPL should also have regard to the sufficiency of evidence to support the order.

[88] Section 5B(n) of the CP Act.
[89] Sections 65A and 65B of the CP Act.

278. The Child Safety assessment is also subject to ongoing review. Where Child Safety assess that a different child protection order to that sought in the application is considered appropriate and desirable for the child's protection, they should notify the DCPL. If the different order that is assessed would result in the child being in continuous care under a custody or short-term guardianship order for more than 2 years, the assessment will need to include how this is in the best interests of the child, and how reunification of the child to their family is reasonably achievable during the longer period of time.

279. The DCPL may decide to amend an application in a number of circumstances, including:
    a. following consideration of new information provided by Child Safety or evidence filed by the separate representative or another party; and
    b. as a result of negotiations at a court ordered conference or other court event.

280. Where the DCPL decide that a different child protection order is appropriate and desirable for the child's protection, the DCPL should amend the filed application to reflect the change of position. The amendment may seek to change aspects of the original application including:
    a. the type or duration of child protection order sought;
    b. adding a further child protection order to the application; and or
    c. who custody or guardianship of the child is granted to.

281. Before reaching a decision to amend an application, the DCPL should consult with Child Safety. Where the application is for an Aboriginal child or Torres Strait Islander child, DCPL and Child Safety should ensure engagement and consultation with the child and the child's family and compliance with the requirement to arrange for an independent person for the child in relation to making significant decisions for the child.

282. Where Child Safety are not in agreement with the amendment and further time is necessary for consultation or further assessment, the DCPL should consider whether the application should be adjourned, rather than amended and decided, contrary to Child Safety's assessment. Where the DCPL decide to amend the application without the agreement of Child Safety, the DCPL should advise the court of Child Safety's assessment.

Part 20 Withdrawal of child protection order application

Division 1 written applications for withdrawal

283. Ongoing review of a matter may result in the DCPL deciding that a child protection order is no longer necessary for the child's protection. Where the DCPL is so satisfied, the DCPL should apply to withdraw the application.

284. The Child Safety assessment is also subject to ongoing review whilst they are working with a child and their family. Where Child Safety assess that a child protection order is no longer appropriate and desirable for the child's protection, they should notify the DCPL.

285. An application for a child protection order may only be withdrawn by the DCPL with the leave of the court.[90] The DCPL must consult with Child Safety before deciding to apply for the court's leave to withdraw an application for a child protection order. The DCPL may request

[90] Section 57A of the CP Act.

further information from Child Safety under section 23(1) of the Act relevant to the decision to withdraw an application.

286. When the DCPL decide to withdraw an application for a child protection order, written notice of the decision should be provided electronically to Child Safety.

287. Where the DCPL decide to withdraw an application without the agreement of Child Safety, the DCPL must also provide Child Safety with written reasons for the decision and Child Safety may request an internal review of the decision using 'Form I – Child Safety Internal Review Request Form'. If Child Safety request an internal review of the decision, the DCPL should delay filing the withdrawal application until after the internal review is completed. The DCPL and Child Safety need to act quickly in requesting and completing any review, so that the process is completed prior to the next court event wherever possible.

288. If the DCPL decide, following consultation with Child Safety, that the application should be withdrawn, they should prepare a written application in a proceeding in the approved form.[91]

289. The application should state the reasons why a child protection order is no longer necessary for the child. There should be sufficient evidence to support the application and to allow the court to be satisfied a child protection order is no longer necessary for the child. This will usually require an affidavit to be filed in support of the application evidencing the reasons why the child protection order is no longer necessary. Where the DCPL decide to withdraw the application without the agreement of Child Safety, the DCPL should advise the court of Child Safety's assessment.

Division 2 Oral applications for withdrawal

290. An application for leave to withdraw an application can be made orally as well as in writing.[92] Although the preference is for the application to be made in writing, there may be circumstances when it is appropriate to make the application orally. For example, where all parties are in agreement, and it is in the best interests of the child to resolve the proceedings without delay.

291. The DCPL should consult with Child Safety before making an oral application for leave to withdraw an application. Where Child Safety do not agree with the withdrawal, the DCPL should adjourn the application for further discussion with Child Safety.

Chapter 7 - Children and other parties and participants

Part 1 Participants in a child protection proceeding

292. As well as the parties to the proceeding, the following are participants in a child protection proceeding:
    a. the separate representative for the child;
    b. a person who is not a party to the proceeding, but who the court allows to take part under section 113 of the CP Act;

[91] Rule 73 of the Rules.
[92] Rule 74 of the Rules.

c. where a guardian for a party has filed a notice of address for service, the guardian;[93] and
d. if the public guardian has given written notice of an intention to appear in the proceeding undersection 108B(2) of the CP act, the public guardian.

Part 2 Participation of children in proceedings

293. The subject child is a party to a child protection proceeding. Although the child is not required to participate in the proceeding, the child has a right to attend and participate in the hearing, and to be represented by a direct representative and/or a separate representative under section 108 of the CP Act. In addition to or instead of being represented by a lawyer, the child may be supported by an advocate from the Office of Public Guardian.

294. Whether a child participates in a proceeding, and how the child participates will depend on the circumstances of each case. In particular, it will depend on the child's age and ability to understand the matter, and the child's views about taking part in the proceeding. The child's participation may be limited to the court receiving the child's views in writing, or it may extend to the child being represented by a direct representative and participating in the proceeding as a party.

295. In cases where the child's age and ability to understand mean they are likely to be able to participate in a proceeding (whether to a limited extent or otherwise), the DCPL, as a model litigant, has an obligation to ensure the child, at an early stage, is given information about participating in the proceeding.

296. Child Safety have an important role to play in assisting the DCPL to comply with this obligation by:
    a. telling the child about the proceeding and what it is about, in a manner appropriate to the child's age and ability to understand;[94]
    b. making sure the child is aware they do not have to participate in the proceeding, but they can if they want to;
    c. making sure the child understands there is flexibility about the way they can participate in the proceeding;
    d. explaining to the child they are entitled to have help to participate in the proceeding, which could include being represented by a lawyer, having an advocate appointed to support them or bringing a support person of their choice to court;
    e. assisting the child to access help for the proceeding by, for example:
        i. helping them to make an application for legal aid;
        ii. making a referral to the Office of the Public Guardian; or
        iii. helping the child to identify and make contact with a support person of their choice.

297. Child Safety should ensure the DCPL is fully informed about the child's views about participating in the proceeding, and about any steps Child Safety has taken to assist the child to obtain representation or support.

[93] In these circumstances, under rule 33, documents that are required to be served on the party must be served on the guardian.
[94] As required under sections 56(1)(b) and 195 of the CP Act.

298. The DCPL should assist the court to manage the child's participation in the proceeding in a manner that gives paramount consideration to the safety, wellbeing and best interests of the child. The ways in which the DCPL can assist the court include:
    a. ensuring the court has relevant information;
    b. asking the court to make a direction under rule 42(1) about how the child will participate when appropriate, for example, a direction allowing the child to have a support person nearby during the proceeding. When the child is an Aboriginal child or Torres Strait Islander child, support may be provided to the child by an independent person or another appropriate person in accordance with Aboriginal tradition or Island custom; and
    c. making submissions to the court about the way the court should hear from the child, which may include the examples provided in rule 43(2) of the Rules.

Part 3 Section 113 participants

299. Under section 113 of the CP Act, the court can allow a person who is not a party to the proceeding to take part, such as a member of the child's family or the child's carer. The extent and duration of the person's participation is determined by the court and can include doing some or all of the things a party can do.

300. The DCPL and Child Safety should consider whether there is a person with a relationship with the child who may wish to participate in the proceeding as a non-party. Where a person who may wish to participate is identified, the DCPL and Child Safety should discuss this.

301. Where the DCPL or Child Safety have contact with a person who may want to participate in a proceeding, such as a member of the child's family or the child's carer, they should tell the person that they can make an application to the court for an order allowing them to take part.

302. The DCPL and Child Safety should also:
    a. encourage the person to seek legal advice about making an application to take part in the proceeding; and
    b. tell the person about rules 73 and 74 of the Rules, which deal with making an application in a proceeding.

303. Child Safety is responsible for serving the application on the parties. However, if a party is represented by a lawyer in the proceeding, the DCPL will serve their lawyer, this includes separate representatives.[95]

304. Before making a submission to the court about an application under section 113, the DCPL should consult with Child Safety about the:
    a. person's relationship with the child;
    b. extent to which the person is able to inform the court about a relevant matter;
    c. extent to which the person should be allowed to participate; and
    d. parent's, and, where appropriate, the child's views about the person's participation.

305. Section 113 provides broad flexibility for the court to decide how a non-party will take part in the proceeding. In formulating a position about a non-party's participation in the hearing, the DCPL should consider the person's participation carefully, having regard to all the circumstances of the case. The DCPL's paramount consideration must be the safety,

[95] Rule 73 of the Rules.

wellbeing and best interests of the child, both through childhood and for the rest of the child's life. The DCPL should also have regard to the extent the person can assist the court in its consideration of the application.

306. Where appropriate, the DCPL should ask the court to expressly prescribe the scope of the person's participation under section 113, which may include prescribing certain things in the order. For example, where the child has expressed concern about the person receiving particular information in the filed material, the DCPL may submit that that information is redacted from the material provided to the person.

Part 4 Unrepresented parents and section 113 participants

307. Where a parent, or a person who has been allowed to take part in the proceedings under section 113 of the CP Act, is unrepresented, there is an enhanced duty of fairness on the DCPL. The DCPL should take particular care to apply model litigant principles by taking actions including:
    a. encouraging the parent or section 113 participant to seek legal advice including accessing the duty lawyer service where available, and by providing them with information about how they can apply for legal aid;
    b. explaining the nature of the application and providing information about the court process;
    c. providing the parent or section 113 participant with a further copy of material previously served on them, where they attend a court event without a relevant document and this is impairing their ability to participate effectively;
    d. drawing the court's attention to:
        i. section 106 of the CP Act where relevant, for example, where a parent has a disability, and assisting the court to comply with its obligations under section 106;
        ii. section 109 of the CP Act and the requirement for the court to be satisfied the parent has had a reasonable opportunity to obtain legal representation before proceeding to hear an application; and
        iii. rule 80(3) of the Rules that prohibits the court from drawing any inference from a failure by a parent (or other respondent) to file an affidavit in response the application.

308. The DCPL can assist unrepresented parents and section 113 participants in the ways set out above, but DCPL lawyers should not advise on legal issues, evidence or the conduct of their case.

309. Child Safety should also assist unrepresented parents and section 113 participants by:
    a. explaining the content of documents served on them;
    b. ensuring they are aware of the next court date;
    c. encouraging them to obtain legal advice and representation, and giving them information about how to access Legal Aid Queensland or a local community legal centre, or if they are Aboriginal or a Torres Strait Islander, assisting them to seek assistance from the Aboriginal and Torres Strait Islander Legal Service (ATSILS);
    d. telling them they may bring a support person to court (although whether the person is allowed to be present in the court is at the discretion of the court); and
    e. telling them they can ask the court for permission to attend a court event by telephone (or by audio visual link), and giving them information about how they can make the request.

Part 5 Aboriginal children and Torres Strait Islander children

310. Before exercising a power under the Act for an Aboriginal child or Torres Strait Islander child and in deciding whether to make a permanent care order, the court must consider:
    a. the child's Aboriginal tradition or Island custom; and
    b. the child placement principles in relation to the child.[96]

311. The court must also consider how it is to be informed about these matters, and matters relevant to the additional provisions for placing Aboriginal children and Torres Strait Islander children in care mentioned in section 83 of the CP Act, and whether to issue directions to ensure it is appropriately informed.[97]

311A. When the DCPL file a child protection application for an Aboriginal or Torres Strait Islander child, the DCPL must under rule 14(2) of the Rules, file as soon as practicable after filing the application, a 'Form G – Name and Contact Details of Independent Aboriginal or Torres Strait Islander Entities' Form attached to these Guidelines, that includes the details of any arranged independent person for the child, if any, to the extent the information is known to the DCPL when the Form is filed.

312. The DCPL should assist the court by making submissions where appropriate about any directions the court should make to ensure it is informed about the matters, this will include the DCPL seeking a direction when required that an independent person or a member of the child's family be given a copy of a document filed in the proceeding.[98]

313. If the court seeks the views of an independent person for the child, or a member of the child's family on Aboriginal tradition or Torres Strait Islander custom relating to the child, they can be provided either in writing or orally.[99]

314. Before a court event, DPCL and Child Safety should ensure engagement and consultation with the child and the child's family and compliance with the requirement to arrange for an independent person for the child to facilitate the participation of the child and the child's family in the decision-making process. Child Safety should as part of their written update to the DCPL under Guideline 228, provide the DCPL with any changes in respect of an independent person arranged for the child, if any. This should include providing any relevant names and contact details of any arranged independent person.

315. When an application is amended or withdrawn, the DCPL and/or Child Safety should ensure engagement and consultation with the child and the child's family and compliance with the requirement to arrange for an independent person for the child to facilitate the participation of the child and the child's family in the decision-making process.

Part 6 Communications with legal representatives

[96] Section 6AB and 59A of the CP Act.
[97] Rules 49A and 72 of the Rules.
[98] Rule 72(4) of the Rules
[99] Rule 49A(2) of the Rules.

316. Communications with legal representatives for parties or participants about an application will normally be between the DCPL and the legal representative. The exception to this is where the communication is about a matter that falls exclusively within Child Safety's casework responsibilities. For example, where a legal representative wants to discuss arrangements for a family group meeting or the child's contact with a parent, the communication should be between the legal representative and the CSSC directly. The point of contact in CSSCs for legal representatives who want to discuss casework matters is the relevant OCFOS officer. Where a legal representative contacts the DCPL to discuss a casework matter, the DCPL lawyer should refer the legal representative to the relevant OCFOS officer. OCFOS officers should inform the DCPL about matters discussed with legal representatives when they are material to the application. For example, where Child Safety make changes to the child's contact arrangements with a parent following discussion with a legal representative, they should advise the DCPL.

317. Where a legal representative contacts Child Safety about a matter that relates to an application and is not exclusively about casework, Child Safety should ask the legal representative to contact the DCPL and provide contact details for the relevant DCPL lawyer. Similarly, where Child Safety receive written communication from a legal representative that relates to the application, Child Safety should forward the communication to the DCPL who will respond. Where the DCPL receive written communication about an application from a legal representative, the DCPL should consult with Child Safety before responding if the communication touches on any casework matters, and provide a copy of the communication electronically.

318. The DCPL should keep Child Safety regularly updated about communications with legal representatives for parties or participants, and should consult with Child Safety when appropriate, for example, if an offer to settle the application is made.

Chapter 8 – Applications to vary or revoke a child protection order

Part 1 Referrals by Child Safety

319. Child Safety must refer a *child protection matter* to the DCPL when satisfied:
    a. a child is in need of protection and a child protection order (other than an interim order under section 67 of the CP Act)[100] in force should be extended, varied, or revoked and another order made in its place, or
    b. that a child protection order (other than an interim order under section 67 of the CP Act)in force for a child is no longer appropriate and desirable for the child's protection and should be revoked, or
    c. a child's permanent guardian under a permanent care order is not complying in a significant way with the permanent guardian's obligations under the CP Act and the order should be varied or revoked.[101]

320. As well as stating the reasons why the child protection order is no longer appropriate and desirable for the child's protection, or why a child's permanent guardian under a permanent

[100] Section 65(8) of the CP Act.
[101] Section 15(1)(a), (b) and (c) of the Act.

care order is not complying in a significant way with the permanent guardian's obligations under the CP Act, the referral to the DCPL should state:

a. where the Child Safety assessment is that the child protection order be extended or varied:
   i. the reasons why the child continues to be a *child in need of protection*;[102]
   ii. the type and duration of child protection order that is appropriate and desirable for the child's protection; and
   iii. the reasons why the recommended child protection order is appropriate and desirable for the child's protection;
b. where the Child Safety assessment is that the child protection order be revoked and another child protection order be made in its place:
   i. the reasons why the child continues to be a *child in need of protection*;
   ii. the type and duration of child protection order that should be made in place of the current order; and
   iii. the reasons why the recommended replacement child protection order is appropriate and desirable for the child's protection;
c. where the Child Safety assessment is that the child protection order be revoked:
   i. the reasons why the child is no longer a *child in need of protection*;
   ii. the reasons why the child protection order is no longer appropriate and desirable for the child's protection; and
   iii. where the current order is either a permanent care order or a long term guardianship order in favour of a member of the child's family or other *suitable person,* the reasons why the revocation of the order is consistent with the child's need for emotional security and stability.

321. The DCPL must provide written reasons to Child Safety about decisions relating to applications to vary or revoke a child protection order without the agreement of Child Safety, and the decisions are subject to internal review (see Chapter 11 of these Guidelines).

Part 2 Applications to vary or revoke a child protection order by a parent or child

322. As well as the DCPL, the child or the child's parent can apply to:
   a. vary a child protection order, other than a permanent care order;
   b. revoke a child protection order other than a permanent care order, and make another child protection order in its place; or
   c. revoke a child protection order other than a permanent care order.[103]

323. Where such an application is made, the court is required to provide notice of the application to the DCPL and Child Safety.[104] Child Safety is responsible for personally serving the application on respondents other than the DCPL, and for telling the child about the application.[105]

[102] It is noted that where Child Safety assess that a child protection order granting long-term guardianship of a child to the chief executive should be varied to a suitable person mentioned in s61(f)(i) or (ii), or that a long-term guardianship order should be revoked and a permanent care order made in its place, section 15(1)(a)(i) of the DCPL Act requires that Child Safety must still be satisfied the child is *a child in need of protection* and provide reasons to the DCPL as to why the child continues to be a *child in need of protection*.
[103] Sections 65(1) and 65AA of the CP Act.
[104] Section 65(5)(b) of the CP Act.
[105] Section 65(5)(c) and sections 56 and 195 of the CP Act.

324. If it appears the applicant is not represented by a lawyer, Child Safety should provide the applicant with information about how they can apply for legal representation. If the applicant is a child, as well as providing information about applying for legal representation, Child Safety may also assist the child to obtain the support of an advocate from the Office of the Public Guardian.

325. After the DCPL receive notice of the application, the DCPL should consult with Child Safety to:
    a. discuss Child Safety's current assessment about whether the child is a *child in need of protection* and whether the current child protection order is appropriate and desirable for the child's protection;
    b. obtain Child Safety's feedback about the application and any affidavits filed in support; and
    c. discuss the preparation of draft affidavits in reply, including agreeing a timetable for providing draft affidavits to the DCPL.

326. As well as providing draft affidavits in reply to the DCPL, Child Safety should also provide a statement:
    a. Setting out Child Safety's assessment and the position the DCPL should take in response to the application; and
    b. summarising the reasons for that assessment.

327. Where the DCPL do not agree with the Child Safety assessment, there should be further consultation. Ultimately, the DCPL is responsible for determining how the DCPL will respond to the application.

328. The DCPL and Child Safety should work collaboratively to finalise any affidavits in reply. The DCPL may request further evidence or information from Child Safety in response to an application, and Child Safety should take reasonable steps to provide the information.

329. There should be ongoing consultation between the DCPL and Child Safety until the application is finalised. Child Safety should keep the DCPL updated about any relevant changes in the child's or the parent's circumstances. Child Safety should ensure an officer with relevant case knowledge and authority attends all court events or is otherwise available by telephone.

330. The DCPL does not have to provide written reasons to Child Safety about decisions the DCPL makes as a respondent to an application Child Safety does not agree with, and decisions are not subject to internal review.

Chapter 9 – Interstate transfers of child protection orders and proceedings

Part 1 Introduction

331. There are five types of interstate transfers of child protection orders and proceedings. They are:
    a. administrative transfer of a child protection order from Queensland to another State;
    b. judicial transfer of a child protection order from Queensland to another State;

c. transfer of a child protection order from another State to Queensland;
d. transfer of a child protection proceeding from Queensland to another State; and
e. transfer of a child protection proceeding from another State to Queensland.

332. A table showing the responsibilities of the DCPL and Child Safety for each of these transfers is provided at Appendix 2 to these Guidelines.

333. The DCPL is involved in three types of transfers: judicial transfer of a child protection order to another State; the transfer of a child protection proceeding from Queensland to another State; and the transfer of a child protection proceeding from another State to Queensland.

334. Child Safety and its interstate counterparts are signatories to the Interstate Child Protection Protocol (Protocol). The Protocol and supporting operating guidelines contain agreed principles, procedures and timeframes for the conduct of interstate transfers and requests for assistance. The interstate liaison officers in Child Safety are the Child Safety contact for interstate officers. Interstate liaison officers also advise Child Safety staff about issues relevant to the interstate transfer of child protection orders and proceedings. Where information about the requirements of the Protocol and Child Safety's liaison with interstate officers is relevant to the DCPL's functions in this area, Child Safety should provide this information to the DCPL.

Part 2 Applications for judicial transfer of an order to another State

335. Child protection orders (other than an interim order under section 67 or an order granting long-term guardianship of a child to a person other than the chief executive) may be transferred to another State administratively or by the Childrens Court of Queensland.[106] The DCPL is responsible for making applications for judicial transfer of a child protection order.

336. Where Child Safety determine that an application should be made for judicial transfer of a child protection order to another State, they should make a referral to the DCPL.

337. The referral should state:
a. the reasons why Child Safety are satisfied the order should be transferred;
b. the proposed interstate order including any relevant provisions of the proposed order;
c. how the proposed interstate order equates to the Queensland child protection order;
d. the reasons why the protection sought to be achieved by the proposed interstate order could not be achieved by an order on less intrusive terms; and
e. why it is in the child's best interests that the order be transferred.

338. The referral should be accompanied by a draft affidavit evidencing the matters mentioned above. The draft affidavit should also:
a. address whether a family group meeting has been held or reasonable attempts have been made to hold a family group meeting;
b. exhibit the child's current case plan and review report;
c. include the child's views and wishes about the proposed transfer;
d. state where the child, the child's parents and other persons significant to the child are living;

[106] Sections 206 and 212 of the CP Act.

e. where the child is Aboriginal or a Torres Strait Islander, detail the consultation with the child and the child's family and compliance with the requirement to arrange for an independent person for the child to facilitate the participation of the child and the child's family in the decision-making process, and also consideration that Aboriginal and Torres Strait Islander people have the right to self-determination, the long-term effect of the proposed transfer on the child's identity and connection with the child's family and community, and the child placement principles; and
f. exhibit the written consent of the interstate officer to the transfer.

339. The DCPL should not make an application for the transfer of an order to another State unless an interstate officer has provided their written consent for the transfer. In deciding whether to bring the transfer application, the DCPL's paramount consideration is the safety, wellbeing and best interests of the child, both through childhood and for the rest of the child's life.

340. The DCPL should consult with Child Safety in deciding whether to make the transfer application. If the DCPL propose not to make the transfer application, they must consult with Child Safety before reaching this decision. Where the DCPL decide not to make the application without the agreement of Child Safety, written reasons are required and the decision is subject to internal review using 'Form I – Child Safety Internal Review Request Form'.

Part 3 Applications for transfer of a proceeding to another State

341. The DCPL may apply to transfer a current child protection proceeding to another State.

342. Where Child Safety determine that a current proceeding should be transferred to another State, they should notify the DCPL in writing. The written notice should state:
a. the reasons why Child Safety are satisfied the proceeding should be transferred;
b. the reasons why it is in the child's best interests that the proceedings be transferred; and
c. whether Child Safety assess that the court should make an interim order granting custody of the child or responsibility for supervision of the child to an interstate officer or another person if a transfer order is made.[107]

343. The written notice should be accompanied by a draft affidavit evidencing the matters mentioned above. The draft affidavit should exhibit the written consent of the interstate officer to the transfer and should also include information about:
a. whether there are any child protection orders in force for the child in the other State;
b. whether there are any current, or have previously been any, child protection proceedings for the child in the other State;
c. where the child, the child's parents and other persons significant to the child are living;
d. include the child's views and wishes about the proposed transfer; and
e. where the child is Aboriginal or a Torres Strait Islander, should detail the consultation with the child and the child's family and compliance with the requirement to arrange for an independent person for the child to facilitate the participation of the child and the child's family in the decision-making process, and also consideration that Aboriginal and Torres Strait Islander people have the right to self-determination, the long-term effect of the proposed transfer on the child's identity and connection with the child's family and community, and the child placement principles.

[107] Section 230 of the CP Act.

344. Where the DCPL determine that it may be in the child's best interests for a current child protection proceeding to be transferred to another State, they should consult with Child Safety about this. In particular, Child Safety liaise with the relevant interstate office about the proposed transfer, and should report back to the DCPL about this. The DCPL should not make an application for the transfer of a proceeding to another State unless an interstate officer has provided their written consent for the transfer.

345. The DCPL should consult with Child Safety in deciding whether to make the transfer application. If the DCPL propose not to make the transfer application, they must consult with Child Safety before reaching this decision. Where the DCPL decide not to make the application without the agreement of Child Safety, written reasons are required and the decision is subject to internal review by Child Safety using 'Form I – Child Safety Internal Review Request Form'.

Part 4 Applications for transfer of a proceeding to Queensland

346. Where another State seeks to transfer a child protection proceeding to Queensland under a law of that State, they must first obtain the consent for the transfer from Child Safety. Child Safety must consent to the transfer, unless satisfied it is not in the child's best interests for the proceedings to be transferred.[108] Child Safety should consult with the DCPL before consenting to the transfer.

347. When Child Safety consents to a transfer of a proceeding to Queensland, Child Safety should provide the DCPL with a copy of:
    a. the written consent to the transfer;
    b. the decision from the interstate court to transfer the proceeding;
    c. any interim order issued by the interstate court; and
    d. Child Safety's written notice filed in the court stating that the DCPL is a party to the proceeding in place of the interstate officer.

348. Upon registration of the interstate transfer decision in the court, the DCPL becomes a party to the proceeding in place of the interstate officer.

349. The DCPL and Child Safety (along with other parties including the child and the child's parents) may apply to the court to revoke the registration of the interstate transfer decision. The DCPL and Child Safety should not take this step without first consulting with each other.

Chapter 10 – Appeals

Part 1 Responsibility for appeals

350. The DCPL is responsible for bringing and responding to appeals against the following decisions of the court:
    a. determining an application for a child protection order;

[108] Section 234 of the CP Act.

b. on an application for a child protection order, including interim orders made on the adjournment of a proceeding; and
c. on an application to transfer a child protection order or child protection proceeding from Queensland to another State.

351. Child Safety is responsible for bringing and responding to appeals against a decision of the court on an application for an emergency order. Child Safety may instruct the DCPL to appear on its behalf in these appeals. Further guidance about the DCPL appearing on the instructions of Child Safety in appeals against emergency orders, and other child-related matters is contained in Chapter 12 of these Guidelines.

352. An appeal can be commenced by the DCPL in response to a request from Child Safety or on the DCPL's own initiative. Where Child Safety request that the DCPL bring an appeal, the DCPL will make an independent decision about whether to commence proceedings. Child Safety cannot direct the DCPL to bring an appeal, however, the DCPL should have regard to the reasons why Child Safety say the appeal should be brought.

Part 2 Timeliness

353. Timely decision making about whether to bring an appeal is critical. Both the DCPL and Child Safety should act quickly. Consultation between the DCPL and Child Safety about whether to bring a DCPL appeal should occur in a timely way.

Part 3 Urgent and non-urgent appeals

354. Urgent action in appeal decision making is particularly important for appeals against interim and final decisions on a child protection order application that are determined to place the child at immediate and unacceptable risk of suffering significant *harm* (urgent appeals). Urgent appeals should be brought with utmost speed (ideally on the day of the decision or the next business day) and should normally be accompanied by an application to stay the operation of the decision.

355. Examples of an urgent appeal include appeals against a decision:
a. not to make an interim order granting temporary custody of a child to Child Safety in circumstances where the child has been in the temporary custody of Child Safety and this is determined to be necessary in order to meet the protection and care needs of the child; and
b. to make a protective supervision order for a child who is in the custody of Child Safety at the time of the decision, which is assessed to place the child at unacceptable risk of suffering significant *harm*.

356. Non-urgent appeals relate to decisions of the court that do not give rise to an immediate and unacceptable risk of significant *harm* to the child (non-urgent appeals). For example:
a. a decision to make an order granting custody of the child to Child Safety on an application for a long-term guardianship order in favour of the chief executive;
b. a decision to make an order granting custody of the child to Child Safety for one year on an application for a two year custodial order in favour of Child Safety; and

c. a decision involving an erroneous statement or application of the law that does not result in an outcome that places the child at immediate and unacceptable risk of significant *harm*.

Part 4 Child Safety requests the DCPL bring an appeal

357. Where Child Safety assess that an appeal should be brought, Child Safety should make a written appeal request using 'Form H – Child Safety Appeal Request Form' sent electronically (unless the request relates to an urgent appeal, which can be requested by telephone). If the appeal request cannot be made electronically, it can be hand delivered, faxed or posted to the DCPL. The DCPL should provide a written acknowledgement of receipt of the appeal request electronically within 24 hours of receiving the request.

358. The appeal request should state the reasons why Child Safety believe an appeal should be brought including:
    a. the impact of the court's decision on the safety, wellbeing and best interests of the child; and
    b. the proposed grounds of appeal including a statement of how the court erred.

359. This information should be set out in summary form in the 'Form H – Child Safety Appeal Request Form' attached to these Guidelines.

360. Written requests for appeals other than urgent DCPL appeals, should be made as soon as practicable and within five working days of the date of the court's decision. This is to allow time for an internal review of the DCPL's decision before the appeal period ends, if the DCPL decide not to bring an appeal without the agreement of Child Safety.

Part 5 Consultation and collaboration with Child Safety

361. The DCPL should consult with Child Safety in deciding whether to commence an appeal. In particular, the DCPL must consult with Child Safety before deciding not to bring an appeal requested by Child Safety. The DCPL should also consult with Child Safety before deciding to commence an appeal on the DCPL's own initiative.

362. There should be ongoing consultation between the DCPL and Child Safety until the appeal is resolved. The DCPL and Child Safety should consult prior to appeal court events to ensure the DCPL has up to date information about the child's circumstances and to discuss relevant casework matters. Child Safety should ensure an officer with relevant case knowledge and authority attends all appeal court events or is otherwise available by telephone.

363. The DCPL and Child Safety should also work together on the preparation of any further evidence to be filed in the appeal. Where an appeal is accompanied by an application for a stay of the operation of a decision, the DCPL may file a further affidavit evidencing the steps Child Safety has taken to mitigate the risk of *harm* to the child arising from the decision appealed against, such as safety planning, home visits and police welfare checks. The DCPL and Child Safety should work together quickly and efficiently to ensure further evidence is filed in a timely way.

Part 6 Deciding whether to bring an appeal

364. In deciding whether to bring an appeal, the DCPL's paramount consideration must be the safety, wellbeing and best interests of the child, both through childhood and for the rest of the child's life.

365. The DCPL should also consider whether:
    a. there are grounds for the appeal and a reasonable prospect of success; and
    b. the appeal raises issues of general importance to the application of the Act, the CP Act or other relevant legislation.

366. Decisions about whether to bring an urgent appeal, whether on request by Child Safety or on the DCPL's own initiative, should be made urgently and by the end of the next business day following the court's decision.

Part 7 Notification of decision

367. If the decision relates to an urgent appeal, immediate notification of the DCPL's decision about whether to bring an appeal, should be provided to Child Safety by telephone and followed up with written notification of the decision.

368. Decisions about whether to bring a non-urgent appeal, should be made as soon as practicable. Where Child Safety makes a non-urgent appeal request, it should be decided and written notification of the decision provided within five business days of receipt of the appeal request.

Part 8 Written reasons for decision and internal review

369. Where the DCPL decide not to commence an appeal requested by Child Safety, the DCPL must provide written reasons for the decision (unless Child Safety, following consultation, agree that an appeal should not be brought).

370. The written reasons must be prepared by the DCPL lawyer that made the decision. The written reasons should:
    a. be in the 'Form C – Director's Written Reasons for Decision Form' attached to these Guidelines;
    b. use clear and unambiguous language;
    c. state the reasons why the DCPL decided not to bring an appeal;
    d. explain the basis for the decision;
    e. be provided to Child Safety:
        i. for urgent DCPL appeal requests, by the end of the next business day following receipt of the request, and at the same time as notification of the decision is provided; and
        ii. for non-urgent DCPL appeal requests, within five business days of receipt of the request and at the same time as notification of the decision is provided.

371. Child Safety may request an internal review of a decision not to bring an appeal requested by Child Safety using 'Form I – Child Safety Internal Review Request Form'. Internal reviews

should be made and dealt with in accordance with the procedure set out in Chapter 11, Part 4 of these Guidelines.

Part 9 Responding to appeals

372. Where the DCPL is a respondent in an appeal brought by another party, the DCPL should consult with Child Safety in responding to the appeal. In particular, the DCPL should consult with OCFOS in the preparation of the DCPL's outline of argument and any further affidavits to be filed in the appeal. The DCPL should also consult with Child Safety in preparation for appeal court events.

373. The DCPL do not have to provide written reasons to Child Safety about decisions the DCPL makes as a respondent in an appeal that Child Safety does not agree with, and decisions are not subject to internal review.

Chapter 11 – Miscellaneous

Part 1 Ongoing matter review

374. A decision by the DCPL to apply for a child protection order is subject to ongoing review until the application is finalised. This is particularly important because of the dynamic nature of the lives of children and families. Ongoing review will involve regular consultation with Child Safety and ongoing assessment of the evidence about whether:
    a. the child is a *child in need of protection*; and
    b. the order sought is appropriate and desirable; or
    c. where the child is subject to a child protection order, whether revocation of the order is still appropriate and desirable for the child's protection.

375. Ongoing case review may also involve the DCPL requesting further information or evidence from Child Safety under section 23 of the Act to ensure the sufficiency, relevance and appropriateness of the evidence before the court.

376. The Child Safety assessment is also subject to ongoing review whilst they are working with a child and their family. Where Child Safety assess that different intervention to that sought in the application is appropriate and desirable for the child's protection, they should notify the DCPL. For example, whilst an application is before the court, Child Safety may assess that a more or less intrusive order, or that no order should be made for the child. In these circumstances, the DCPL and Child Safety should consult, so the DCPL can decide whether the application before the court should be amended or withdrawn.

377. Child Safety may also assess that, due to a change of circumstances, the interim protective measures in place to protect a child are no longer appropriate to meet the child's protective needs. For example, Child Safety may assess that a child that is the subject of an application for a protective supervision order has suffered *harm* or is at unacceptable risk of suffering *harm* if the child is not taken into custody. In these circumstances, Child Safety and the DCPL should engage in urgent consultation so the DCPL can consider whether there is sufficient evidence to support an application for temporary custody, and can make arrangements to have the application brought on urgently for mention. In some cases it may be necessary for

Child Safety to take a child into custody under section 18 of the CP Act. However, generally the DCPL and Child Safety should engage in urgent consultation with a view to ensuring the child's protective needs are met by seeking the appropriate interim orders on adjournment of the application for a child protection order.

Part 2 Transcripts of proceedings

378. The DCPL is responsible for deciding whether to obtain a transcript of proceedings for applications for child protection orders and appeals. Where the DCPL decide to obtain a transcript of proceedings, the DCPL is responsible for payment of any applicable fees.

Part 3 Section 99MA of the CP Act – notification of suspension to the DCPL

379. Section 99MA of the CP Act provides for the mandatory suspension of a QCAT *review proceeding* about a Child Safety contact decision, when the person who commenced the *review proceeding* is also a party to a child protection proceeding before the court. The purpose of the provision is to allow decisions about a child's contact with a parent or family member to be made in one jurisdiction.

380. Where a *review proceeding* is suspended by QCAT, the *tribunal registrar* must notify the parties to the review and court of the suspension. Child Safety is then required to notify the parties to the child protection proceeding of the suspension. Child Safety should provide notice of the suspension to the DCPL and other parties as soon as practicable and prior to the next court event. The notification to the DCPL, along with a copy of the notifications sent by Child Safety to the parties should be provided to the DCPL electronically.

Part 4 Internal review of the DCPL's decision

Division 1 Reviews generally

381. Where the DCPL is required to provide written reasons for a decision to Child Safety under section 18 of the Act, Child Safety may request that the DCPL conduct an internal review of the decision. Written reasons are required when the DCPL:
    a. make a decision on a *child protection matter* that Child Safety disagree with (section 18(1)(a) or (b) of the Act);
    b. decide to withdraw an application for a child protection order without the agreement of Child Safety (section 18(1)(c) and Chapter 8 of the Guidelines);
    c. decide not to bring an appeal requested by Child Safety, where Child Safety still want the appeal to be brought following consultation (section 18(1)(c) and Chapter 10 of the Guidelines);
    d. decide not to make an application to transfer a child protection order to another State without the agreement of Child Safety (section 18(1)(c) and Chapter 9 of the Guidelines); and
    e. decide not to make an application to transfer a child protection proceeding to another State without the agreement of Child Safety (section 18(1)(c) and Chapter 9 of the Guidelines).

382. Internal reviews must be conducted on the same information the DCPL considered in reaching the decision. Where Child Safety have new information and they want the DCPL to reconsider the child's case, Child Safety should make a new referral of a *child protection matter* to the DCPL including the new information.

383. Internal reviews should be dealt with by the DCPL as quickly as possible and prior to the expiry of any current order or appeal period, unless the review request is received after the order or the appeal period has ended.

384. The request should:
    a. be made in writing using 'Form I – Child Safety Internal Review Request Form' attached to these Guidelines and sent electronically;
    b. be made as soon as practicable and within 5 business days of the date the DCPL notified Child Safety of the decision. If the review relates to a child that is subject to a current order, the request should be made as soon as practicable prior to the expiry of the order. If the review relates to a non-urgent DCPL appeal, the request should be made as soon as practicable and within 5 business days of the date the DCPL notified Child Safety of the decision not to appeal;
    c. state briefly the reasons why Child Safety disagree with the DCPL's decision and indicate any matters Child Safety want the DCPL to take into account in the review; and
    d. not include new information.

385. The DCPL should provide a written acknowledgement of receipt of the review request electronically within 24 hours of receiving the request.

386. The review must be conducted by a different decision maker of the same or a higher level to the original decision maker.

387. The review should be completed within 5 working days of receipt of the request or earlier if the order or appeal period ends during this time. The review should either confirm the original decision or make a different decision to the original decision.

388. The decision on the review should:
    a. be recorded in the 'Form J – Director's Review Decision Notification Form' attached to these Guidelines;
    b. state the reasons for the decision;
    c. list any actions arising from the decision; and
    d. be provided to Child Safety as soon as possible and within one business day of the completion of the review.

389. Where the decision on the review is to make a different decision to the original decision, the DCPL should communicate this to Child Safety immediately by telephone with the completed 'Form J – Director's Review Decision Notification Form' to be provided as soon as practicable after that. The DCPL should take any steps required to action the new decision on an urgent basis. For example, if the original decision was to refer the matter back to Child Safety and, on review, the DCPL decide to apply for a child protection order, the application (and supporting material) should be finalised and filed as a matter of urgency.

Division 2 Reviews where the child is subject to an emergency order

390. Where Child Safety make a review request for a child that is subject to an emergency order, the DCPL and Child Safety should work together efficiently to ensure that, wherever possible, the review can be completed and any resulting action taken before the emergency order ends.

391. In order to achieve this, a review request for a child subject to an emergency order:
    a. should be made urgently following receipt of the written reasons for decision;
    b. can be made orally by telephoning the DCPL; and
    c. should be decided urgently and, wherever possible, before the emergency order ends.

392. Similarly, the DCPL should communicate the outcome of a review request to Child Safety immediately by telephone with the completed written internal review outcome to be provided as soon as practicable after that.

Division 3 Reviews of the DCPL decision not to bring an appeal

393. Generally, requests for internal review of a decision not to bring a DCPL appeal requested by Child Safety should be made quickly and as soon as practicable after receipt of the DCPL's written reasons for decision.

394. Where the review relates to an urgent DCPL appeal, it should be dealt with urgently without delay and by the end of the next business day following receipt of the request. Internal reviews relating to non-urgent appeals should be dealt with expeditiously and before the appeal period ends.

Part 5 Information sharing between the DCPL and Child Safety

395. In performing its statutory functions, the DCPL may receive information about a child the subject of an application or their family that is relevant to Child Safety's ongoing intervention with the child. For example, a member of the child's family may provide information to the DCPL at a court event about a parent's drug use that suggests the child may be suffering *harm* or is at risk of suffering significant *harm*. As well as advising the family member to pass this information on to Child Safety directly in light of Child Safety's frontline child protection responsibilities, the DCPL should also provide this information to Child Safety. The information should be provided as soon as practicable after receipt of the information. In the first instance, the DCPL may provide the information orally or in writing electronically. Where the DCPL provide the information orally, this should be followed by subsequent written confirmation of the information provided.

396. Where the information received by the DCPL suggests a child may have been the victim of an offence, or that an offence has occurred that gives rise to a risk of significant *harm* to the child, the DCPL should provide the information to police. The information should be provided to police in writing as soon as practicable after receipt or on an urgent basis depending on the nature of the information received. Before the DCPL provide information to the police, the DCPL should provide the information to Child Safety and advise Child Safety the information is also being provided to police.

Part 6 Child Protection (International Measures) Act 2003

397. The *Child Protection (International Measures) Act 2003* (Qld) (CP(IM) Act) provides for Queensland's involvement in implementing the child protection aspects of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (Child Protection Convention). The Child Protection Convention is an international agreement about parental responsibility and measures to protect children, which aims to ensure there is international cooperation and jurisdictional clarity for the protection of children across international borders. The child protection aspects of the Child Protection Convention are the responsibility of the States and Territories.

398. The Director-General of Child Safety is designated as the central authority for implementing the child protection aspects of the Child Protection Convention.[109] Circumstances when Child Safety's obligations under the CP(IM) Act are engaged include where:
    a. urgent protective measures are required for a child who is present in Queensland although habitually resident in a Convention country other than Australia; or
    b. a Convention Country requests that Queensland seek protective measures for a child whose habitual residence is the requesting Convention Country but the child is present in Queensland for the time being.

399. As the designated central authority for implementing the child protection aspects of the Child Protection Convention, Child Safety is responsible for all communication with Convention Countries about the Child Protection Convention. If an officer from a Convention Country contacts the DCPL about a child, the DCPL should:
    a. explain that the Director-General of Child Safety is designated as the central authority for implementing the child protection aspects of the Child Protection Convention; and
    b. ask the Convention Country to contact the Legal Services Branch of Child Safety and provide the relevant contact details.

400. Child Safety's obligations under the CP(IM) Act include conducting investigations and assessments of children and families, providing support on a voluntary basis and pursuing compulsory intervention in the court through an application for an emergency order and/or by making a referral to the DCPL recommending that an application for a child protection order be made.

401. When Child Safety assess that a child to whom the CP(IM) Act applies is:
    a. a *child in need of protection*; and
    b. that a child protection order is appropriate and desirable for the child's protection;

402. Child Safety should refer the child to the DCPL. The referral should comply with Chapter 2 of these Guidelines.

403. The DCPL should make a decision about how to deal with the referral in accordance with section 17 of the Act and Chapter 3 of these Guidelines. The DCPL is not obliged to file an application for a child protection order for a child that is referred to it, to which the CP(IM) Act applies. The DCPL should assess the referral including considering the sufficiency of evidence to make an application in the normal way.

[109] Section 29(1) of the CP(IM) Act.

Part 7 Media and publications

404. DCPL lawyers are not permitted to make public comment in their professional capacity about any aspect of their work without the permission of the Director. Section 19 of the Act imposes a duty of confidentiality on persons who gain information about a person's affairs through the administration of the Act. This information may only be recorded and disclosed to someone else in accordance with the provisions of section 19(3) of the Act. Sections 187 and 188 of the CP Act also impose a duty of confidentiality on persons who gain information about a person's affairs through the administration of the CP Act. This information may only be used or disclosed in accordance with the provisions of sections 187(4) and (5) and section 188(3) of the CP Act.

Part 8 Alleged Child Safety contravention of the CP Act or an order, or contempt of court

404A. If in a proceeding there is an allegation that a Child Safety officer has contravened the CP Act or an order made under the Act, or is charged with contempt of court, the DCPL should apply to adjourn the matter to afford the Child Safety officer with the opportunity to obtain legal advice and if necessary, to allow the attendance of either OCFOS or Child Safety's Court Services Unit, or an independent lawyer.

Part 9 Family Law Proceedings

404B. Section 69ZK of the *Family Law Act 1975 (Cwlth)* provides that a court exercising family law jurisdiction must not make an order in relation to a child who is under the care of a person under a child welfare law, unless the order is to come into effect when the child ceases to be under that care, or the order is made with the written consent of Child Safety.

404C. Where Child Safety is aware of a current family law proceeding at the time of referring a *child protection matter* to the DCPL, this information must be included within Part 10 of the Form A – Referral of Child Protection Matter/s Summary Form, and a copy of any family law order (including interim orders) for the child should be provided in the brief of evidence. Where a family law proceeding is commenced whilst a child protection proceeding is before the court, Child Safety is required to notify the DCPL as soon as practicable after receiving notice of the family law proceedings.

404D. Where Child Safety consents to the family law jurisdiction whilst the child protection proceedings are before the court, Child Safety should ensure the court hearing the family law proceeding is aware of the DCPL's position in the child protection proceeding.

Chapter 12 – Providing advice and representation to Child Safety

405. The Act allows the DCPL to provide legal advice and representation upon request to Child Safety.[110]

[110] Section 9(2) of the Act.

406. The DCPL may provide legal advice to Child Safety when requested about:
    a. the functions of the chief executive of Child Safety under the *Adoptions Act 2009* and the CP Act;
    b. other matters relating to the safety wellbeing and best interests of a child; and
    c. matters involving the State's obligations under the Convention on the Civil Aspects of International Child Abduction (Hague Child Abduction Convention) as applied under section 111B of the *Family Law Act 1975 (Cwlth)*.

407. The DCPL may also represent the State in legal proceedings when requested:
    a. under the *Adoptions Act 2009* and the CP Act;
    b. relating to the safety wellbeing and best interests of a child; and
    c. under the *Family Law (Child Abduction Convention) Regulations 1986* pertaining to the State's obligations under the Hague Child Abduction Convention.

408. In each of these circumstances, the DCPL acts on the instructions of Child Safety and on a fee for service basis. Child Safety should provide formal instructions to the DCPL by hand delivering, posting or faxing a letter of instructions together with any other relevant information to the DCPL.

Director's Guidelines – current as at 29 October 2018

Nigel A. Miller

Director of Child Protection Litigation

Appendix 1 - Definitions & Abbreviations

Definitions

- *child protection matter* - has the meaning given to it in Schedule 1 of the Act
- *child in need of protection* - has the meaning given to it in section 10 of the CP Act
- *harm* - has the meaning given to it in section 9 of the CP Act
- emergency order – temporary assessment order, court assessment order and temporary custody order
- final child protection orders – child protection orders specified in section 61 of the CP Act
- *review proceeding* - has the meaning given to it in section 99MA(9) of the CP Act
- *suitable person* - has the meaning given to it in Schedule 3 of the CP Act
- *tribunal registrar* - has the meaning given to it in section 99MA(9) of the CP Act
- chief executive (child safety) – the chief executive of Child Safety

Abbreviations

- Chief executive of the Department of Child Safety, Youth and Women – Child Safety
- *Child Protection Act 1999* – CP Act
- Child Safety Service Centre – CSSC
- Director of Child Protection Litigation – DCPL
- *Director of Child Protection Litigation Act 2016* – the Act
- Office of the Director of Child Protection Litigation – ODCPL
- Office of the Child and Family Official Solicitor – OCFOS

Appendix 2 - Interstate transfers of child protection orders and proceedings

The table shows responsibility for the transfer of orders and proceedings to and from Queensland between the DCPL and Child Safety.

Type of transfer	DCPL responsibility	Child Safety responsibility
Administrative transfer of an order to another State[111]	• no involvement	• Child Safety responsibility
Judicial transfer of an order to another State[112]	• makes the application • conducts the application	• liaises with interstate officer to obtain consent to transfer and the provisions of proposed interstate order • makes referral to the DCPL • serves application on parties • arranges a family group meeting • obtains the child's views and wishes where appropriate • notifies parties to application of the court outcome
Transfer of an order to Queensland[113]	• no involvement	• Child Safety responsibility
Transfer of proceedings to another State[114]	• makes the application • conducts the application	• liaises with interstate government officer to obtain written consent for the transfer of the proceeding • serves application on parties • notifies parties to application of the court outcome
Transfer of proceedings to Queensland [115]	• following registration of the interstate transfer decision in the Childrens Court the DCPL becomes a party to the proceedings in place of the interstate government officer • conducts the application	• chief executive decides whether to provide written consent for transfer of the proceedings to Queensland • chief executive files copy of the interstate transfer decision and any interim orders of interstate court in the Childrens Court • where an interstate government officer is a party to the proceeding, the chief executive files a notice stating that the DCPL is a party to the proceeding in place of the interstate government officer

[111] Sections 206 to 211 of the CP Act.
[112] Sections 206 and 212 to 219 of the CP Act.
[113] Sections 220 to 224 of the CP Act.
[114] Sections 225 to 232 of the CP Act.
[115] Sections 233 to 238 of the CP Act.

Appendix 3 – Guidelines Forms

Contents:

- Form A – Referral of Child Protection Matter/s Summary Form
- Form B – Deleted
- Form C – Director's Written Reasons for Decision Form
- Form D – Disclosure Form
- Form E – Request for Disclosure Form
- Form F – Disclosure Compliance Notice Form
- Form G – Name and Contact Details of Independent Aboriginal or Torres Strait Islander Entities Form
- Form H – Child Safety Appeal Request Form
- Form I – Child Safety Internal Review Request Form
- Form J – Director's Review Decision Notification Form

Form A – Referral of Child Protection Matter/s Summary Form

This form is to be completed by an Office of the Child and Family Official Solicitor (OCFOS) officer[116] or a Child Safety Service Centre Officer when Child Safety is referring a child protection matter to the Director of Child Protection Litigation (DCPL).[117]

If the referred child protection matter involves a child/ren subject to an emergency order/s, the referral should be made as soon as practicable and where possible no later than 24 hours prior to the emergency order ending.[118]

If the referred child protection matter involves a child/ren subject to a child protection order/s in force, the referral should be made as soon as practicable and where possible not less than 28 calendar days before the child protection order/s ends.[119]

Part 1 Form Completion Information			
Date referral completed:		Officer completing referral:	

Part 2 Proposed Court Location			
Proposed court location:		If proposed court location is not where the child/ren or parents live, provide reasons and include the views of the parents and child/ren if known:	

Part 2A Child Safety Service Centre with ongoing case management responsibility	
If the DCPL applies for a child protection order/s, which Child Safety Service Centre will have ongoing case management responsibility:	

Part 3 Child Safety Information			
OCFOS Officer:		Phone:	
		Email:	
Child Safety Service Centre:		Phone:	
Child Safety Officer:		Email:	
Team Leader:		Email:	
After Hours Contact:		Phone:	
		Email:	

Part 3A Child Safety CourtShare Information			
CourtShare Record ID:		CourtShare Record name:	

Part 4(a) Child's Information *(if there is more one child, complete a part per child in order of oldest child to youngest child)*			
Child's given name/s:		Child's family name:	
Date of birth:		Child's ICMS no:	
Gender:	☐ Female ☐ Male ☐ Not stated/prefer not to say		

[116] Guidelines 16, 22 – 24 of the Director's Guidelines.
[117] Section of the 15 *Director of Child Protection Litigation Act 2016*.
[118] Guideline 31 of the Director's Guidelines.
[119] Guideline 30 of the Director's Guidelines.

Cultural identity:	☐ Aboriginal ☐ Torres Strait Islander ☐ Aboriginal and Torres Strait Islander ☐ Neither Aboriginal nor Torres Strait Islander ☐ Not stated/prefer not to say		
Name and relationship of person caring for child:[120]			
Address of child:			
Phone:		Email:	
Mother's given name:		Mother's family name:	
Date of birth:		Mother's ICMS number:	
Mother's address:			
Mother's phone:		Email:	
Cultural identity:	☐ Aboriginal ☐ Torres Strait Islander ☐ Aboriginal and Torres Strait Islander ☐ Neither Aboriginal nor Torres Strait Islander ☐ Not stated/prefer not to say		
Legal representative Name and firm:		Email:	
		Phone:	
Postal address:			
Father's given name:		Father's family name:	
Date of birth:		Father's ICMS number:	
Father's address:			
Father's phone:		Email:	
Cultural identity:	☐ Aboriginal ☐ Torres Strait Islander ☐ Aboriginal and Torres Strait Islander ☐ Neither Aboriginal nor Torres Strait Islander ☐ Not stated/prefer not to say		
Legal representative Name and firm:		Email:	
		Phone:	
Postal address:			

Part 4(b) Second Child's Information *(delete this part if there is only one child. Duplicate the part if there is more than two children. If a mother's or father's details are the same as a previous child, record 'Same as [name of child]')*			
Child's given name/s:		Child's family name:	
Date of birth:		Child's ICMS no:	
Gender:	☐ Female ☐ Male ☐ Not stated/prefer not to say		
Cultural identity:	☐ Aboriginal ☐ Torres Strait Islander ☐ Aboriginal and Torres Strait Islander ☐ Neither Aboriginal nor Torres Strait Islander ☐ Not stated/prefer not to say		
Name and relationship of person caring for child:[121]			
Address of child:			
Phone:		Email:	
Mother's given name:		Mother's family name:	
Date of birth:		Mother's ICMS number:	
Mother's address:			

[120] Complete part 8 if there has been a decision not to tell the child/ren's parent/s in whose care the child/ren are placed and where the child/ren are living
[121] Complete part 8 if there has been a decision not to tell the child/ren's parent/s in whose care the child/ren are placed and where the child/ren are living

Mother's phone:		Email:	
Cultural identity:	☐ Aboriginal ☐ Torres Strait Islander ☐ Aboriginal and Torres Strait Islander ☐ Neither Aboriginal nor Torres Strait Islander ☐ Not stated/prefer not to say		
Legal representative Name and firm:		Email:	
		Phone:	
Postal address:			
Father's given name:		Father's family name:	
Date of birth:		Father's ICMS number:	
Father's address:			
Father's phone:		Email:	
Cultural identity:	☐ Aboriginal ☐ Torres Strait Islander ☐ Aboriginal and Torres Strait Islander ☐ Neither Aboriginal nor Torres Strait Islander ☐ Not stated/prefer not to say		
Legal representative Name and firm:		Email:	
		Phone:	
Postal address:			

Part 5 Independent Aboriginal or Torres Strait Islander entity (independent person/s) for the child/ren *(complete this part if a child is Aboriginal and/or Torres Strait Islander. Duplicate the part if there is more than one arranged independent person)*

Name of independent person:		Phone:	
		Email:	
Address:			
For which child and or family member/s has the independent person been arranged:			
Date chief executive satisfied independent person is suitable:			
Details of significant decision/s:			

Part 6 Emergency Order Information[122] *(complete this part if there is an existing temporary assessment order/s (TAO), court assessment order/s (CAO) or temporary custody order/s (TCO) for the child/ren, or if an emergency order/s was sought and not made, the reasons for it – also attach a copy of the order to the completed Form)*

Is there an existing emergency order for the child/ren:			☐ Yes *(complete the appropriate order section below)* ☐ No *(complete last section of table)*		
Which type of order/s:	☐ TAO	Date order/s end/s:		Magistrate location:	
Provisions of order/s:	☐ Authorised contact with child/ren				
	☐ Child/ren in chief executive's custody				
	☐ Medical examination or treatment of child				

[122] Guideline 23(b) of the Director's Guidelines.

	☐ Parent not to have contact (direct or indirect) with the child *(if selected, provide name of parent/s subject to order)*:				
	☐ Parent not to have contact (direct or indirect) with the child unless a person or a person of stated category is present *(if selected, provide name of parent/s subject to order and details)*:				
	☐ Enter and search a place to find the child				
Which type of order/s:	☐ CAO	Date order/s end/s:		Court location:	
Provisions of order/s:	☐ Authorised contact with child/ren				
	☐ Medical examination or treatment of child				
	☐ Child/ren in chief executive's temporary custody				
	☐ Child/ren's contact with their family during chief executive's custody *(if selected, provide details)*:				
	☐ Parent not to have contact (direct or indirect) with the child *(if selected, provide name of parent/s subject to order)*:				
	☐ Parent not to have contact (direct or indirect)with the child unless a person or a person of stated category is present *(if selected, provide name of parent/s subject to order and details)*:				
	☐ Enter and search a place to find the child				
Which type of order/s:	☐ TCO	Date order/s end/s:		Magistrate location:	
Provisions of order/s:	☐ Authorised contact with child/ren and take the Child/ren into, or keep in chief executive's custody				
	☐ Medical examination or treatment of child				
	☐ Parent not to have contact (direct or indirect) with the child *(if selected, provide details subject to order)*:				
	☐ Parent not to have contact (direct or indirect)with the child unless a person or a person of stated category is present *(if selected, provide name of parent/s subject to order and details)*:				
	☐ Enter and search a place to find the child				
If an emergency order/s was sought and not made, what were the reasons:					

Part 7 Existing Child Protection Order Information[123] *(complete this part if there is an existing child protection order/s for the child/ren. If more than one type of order is made for a child, or if 2 or more children are being referred under existing orders, indicate which type of order relates to each child – also attach a copy of the order/s to the completed Form)*			
Is there an existing child protection order for the child/ren:	☐ Yes ☐ No	Date order/s end:	
Which type of order/s:	☐ Directive order – other *(if selected, provide name of parent/s subject to order and what directed to do or refrain from doing)*:		
	☐ Directive order – contact:	☐ directing no contact with child/ren *(if selected, provide name of parent/s subject to order)*: ☐ directing supervised contact with child/ren *(if selected, provide name of parent/s subject to order)*:	
	☐ Supervision order *(if selected, provide details of the matters Child Safety is to supervise)*:		
	☐ Custody order	☐ to suitable person who is member of child's family (STC-SPF) *(if selected, name of suitable person)*: ☐ to chief executive (STC-CE)	
	☐ Short-term guardianship – to chief executive (STG-CE)		
	☐ Long-term guardianship	☐ to suitable person who is member of child's family (LTG-SPF) *(if selected, name of suitable person*: ☐ to another suitable person nominated by chief executive (LTG-SPO) *(if selected, name of suitable person)*: ☐ to chief executive (LTG-CE)	
	☐ Permanent care order - long-term guardianship to a suitable person nominated by chief executive (LTG-PCO) *(if selected, name of suitable person)*:		
Has there been previous child protection order/s for the child/ren?[124] *(if yes, please provide a list of all previous child protection orders including date/s made, and provide a copy of any order/s in SharePoint)*	☐ Yes ☐ No		

Part 8 Care Agreement Information[125] *(complete this part if there is an existing care agreement for the child/ren – also attach a copy of the agreement to the completed Form)*			
Is there a care agreement for the child/ren:	☐ Yes ☐ No	Type of agreement:	☐ Assessment care agreement ☐ Child protection care agreement
Date agreement commenced:		Date agreement will end:	
Has there been previous care agreements, and or has the agreement been extended for the child/ren: *(if yes, please provide a list of all previous care agreements, and or extensions of the*	☐ Yes ☐ No		

[123] Guideline 23(c) of the Director's Guidelines.
[124] Guideline 23(d) of the Director's Guidelines.
[125] Guideline 23(e) of the Director's Guidelines.

agreement including date/s agreements entered and ended, and provide a copy of the agreement/s in SharePoint)	

Part 8A No Emergency Order, Existing Child Protection Order or Care Agreement[126] *(complete this part if there is no emergency order/s, existing child protection order/s or a care agreement/s for the child/ren)*	
Is there no emergency order/s, existing child protection order/s or a care agreement for the child/ren:	☐ Yes ☐ No
If the DCPL applies for a child protection order/s, what date for a first mention before the court has been assessed as being appropriate and desirable for the child/ren's protection:	
Provide reasons why the specific date has been assessed as being appropriate and desirable for the child/ren's protection:	

Part 9(a) Details of the referred child protection matter (child/ren in need of protection and a child protection order/s is appropriate and desirable for the child/ren's protection)[127]	
Is the chief executive satisfied that the child/ren are in need of protection and a child protection order/s are appropriate and desirable for the child/ren's protection – this includes an assessment that an existing child protection order should be extended, varied, or revoked and another order made in its place: *(if yes, complete this part. If no, complete part 9(b))*	☐ Yes ☐ No
Has the chief executive substantiated alleged harm and, or alleged risk of harm:	☐ Alleged harm ☐ Alleged risk of harm
What is the type of alleged abuse and or neglect:	☐ Physical abuse ☐ Psychological abuse ☐ Emotional abuse ☐ Neglect ☐ Sexual abuse or exploitation
Briefly describe what is the action/s or lack of action/s (behaviours by the parent/carer) that have been assessed to have caused the alleged abuse or neglect or alleged risk of abuse or neglect:	
What is/would be the harm – the resulting detrimental effect of a significant nature on the child (impact experienced by the child):	☐ Physical ☐ Psychological ☐ Emotional
Provide reasons why the child/ren are in need of protection:	
Provide reasons why a child protection order/s	

[126] Guideline 23(ea) of the Director's Guidelines.
[127] Guidelines 17 & 22 of the Director's Guidelines.

<table>
<tr><td>is appropriate and desirable for the child/ren's protection</td><td colspan="2"></td></tr>
<tr><td rowspan="8">What type of order/s is considered appropriate and desirable for the child/ren's protection: (If Child Safety considers more than one type of order appropriate and desirable for a child, or if it is proposed that 2 or more applications for orders will be heard together, indicate which type of order relates to each child)</td><td colspan="2">☐ Directive order – other (if selected, provide name of parent/s subject to order and what directed to do or refrain from doing, and duration of order):</td></tr>
<tr><td>☐ Directive order – contact:</td><td>☐ directing no contact with child/ren (if selected, provide name of parent/s subject to the order, and duration of order):</td></tr>
<tr><td></td><td>☐ directing supervised contact with child/ren (if selected, provide name of parent/s subject to the order, and duration of order):</td></tr>
<tr><td colspan="2">☐ Supervision order (if selected, provide details of the matters Child Safety is to supervise, and duration of order):</td></tr>
<tr><td>☐ Custody order</td><td>☐ to suitable person who is member of child's family (STC-SPF) (if selected, name of suitable person, and duration of order):</td></tr>
<tr><td></td><td>☐ to chief executive (STC-CE) (if selected, provide duration of order):</td></tr>
<tr><td colspan="2">☐ Short-term guardianship – to chief executive (STG-CE) (if selected, provide duration of order):</td></tr>
<tr><td>☐ Long-term guardianship</td><td>☐ to suitable person who is member of child's family (LTG-SPF) (if selected, name of suitable person and details):</td></tr>
<tr><td></td><td>☐ to another suitable person nominated by chief executive (LTG-SPO) (if selected, name of suitable person and details):</td></tr>
<tr><td></td><td>☐ to chief executive (LTG-CE)</td></tr>
<tr><td colspan="2">☐ Permanent care order - long-term guardianship to a suitable person nominated by chief executive (LTG-PCO) (if selected, name of suitable person):</td></tr>
<tr><td colspan="3"></td></tr>
<tr><td rowspan="4">What interim order/s have been assessed as being appropriate and desirable for the child/ren's protection:[128] (If Child Safety considered more than one type of order interim or is appropriate and desirable for a child, or if it is proposed that 2</td><td colspan="2">☐ Child/ren in temporary custody of the chief executive</td></tr>
<tr><td colspan="2">☐ Child/ren in temporary custody of suitable person who is member of the child/ren's family (if selected, name of suitable person):</td></tr>
<tr><td colspan="2">☐ Parent not to have contact (direct or indirect) with the child (if selected, provide name of parent/s subject to proposed order):</td></tr>
<tr><td colspan="2">☐ Parent not to have contact (direct or indirect)with the child unless a person or a person of stated category is present (if selected, provide name of parent/s subject to proposed order and details):</td></tr>
</table>

[128] Guideline 23(g) of the Director's Guidelines.

or more applications for orders will be heard together, indicate which type of interim order relates to each child)	☐ Authorised contact with child/ren ☐ Enter and search a place to find the child
Provide details of why proposed interim orders have been assessed as being appropriate and desirable for the child/ren's protection:	

Part 9(b) Details of the referred child protection matter (child protection order/s in force and is no longer appropriate and desirable for the child/ren's protection)[129]	
Is there a child protection order/s, other than an interim order, in force for the child/ren, and the chief executive satisfied that the order/s are no longer appropriate and desirable for the child/ren's protection and should be revoked: *(if yes, complete this part and ensure the details of the existing order/s have been entered into Part 7 above)*	☐ Yes ☐ No
Provide reasons why the existing child protection order/s is no longer appropriate and desirable for the child/ren's protection:	

Part 9(c) Details of the referred child protection matter (permanent care order/s in force and is no longer appropriate and desirable for the child/ren's protection)[130]	
Is there a child protection order/s (a permanent care order) in force for the child/ren, and the chief executive satisfied that the permanent guardian under the order is not complying, in a significant way, with the permanent guardian's obligations under the *Child Protection Act 1999*, and the order is no longer appropriate and desirable for the child/ren's protection: *(if yes, complete this part and ensure the details of the existing order/s have been entered into Part 7 above)*	☐ Yes ☐ No
Provide reasons why the permanent guardian under the order is not complying, in a significant way, with the permanent guardian's obligations, and why order/s is no longer appropriate and	

[129] Guidelines 17 & 22 of the Director's Guidelines.
[130] Guidelines 17 & 22 of the Director's Guidelines.

desirable for the child/ren's protection:	

Part 10 Other relevant proceedings and orders[131] *(complete this part if there is other relevant proceedings or orders for the child/ren)*	
Is there a proceeding in which a court is exercising jurisdiction conferred on the court under the *Family Law Act 1975* (Cwlth) for the child/ren, or an existing family law order for the child/ren: *(if yes, please provide details and include a copy of any order/s in SharePoint)*	☐ Yes ☐ No ☐ Unknown
Details:	
Is there a proceeding in the Magistrates Court under the *Domestic and Family Violence Protection Act 2012* involving the child/ren's parents: *(if yes, please provide details, and include any relevant material in SharePoint)*	☐ Yes ☐ No ☐ Unknown
Details:	
Is there is a domestic violence order already in force involving the child/ren's parents, and if so, is the chief executive of the view that the order should be varied in terms of the date it ends or the terms of the order: *(if yes, please provide details for the view, including who is the aggrieved/applicant and who is the respondent, and include a copy of any order/s in SharePoint)*	☐ Yes ☐ No ☐ Unknown
Details:	
Is there a proceeding before the Queensland Civil and Administrative Tribunal (QCAT) for an application for a review of a reviewable decision, or any QCAT decision on an application for a review of a reviewable decision involving the child/ren: *(if yes, please provide details, including who is/was the applicant, the decision that is/was the subject of the review application, and include a copy of any related material in SharePoint)*	☐ Yes ☐ No ☐ Unknown
Details:	
Is there a related criminal law proceeding/s in a court involving the child/ren: *(if yes, please provide details, and include a copy of any related material in SharePoint)*	☐ Yes ☐ No ☐ Unknown

Part 11 Confidential and sensitive information[132] *(complete this part if there is some confidential and sensitive information that should not be disclosed)*	
Is there any safety concerns for the child/ren, their parents or any other prospective participants:	☐ Yes ☐ No
If yes, who of the following do the concerns relate to: *(please provide details of the safety concerns and include a copy of any related documents in SharePoint)*	☐ Child/ren ☐ Mother ☐ Father ☐ Carer ☐ Child Safety Officer ☐ Team Leader ☐ Legal representative ☐ Other

[131] Guideline 23(f) of the Director's Guidelines.
[132] Guidelines 28 & 29 of the Director's Guidelines.

Details:	
Has there been a decision not to tell the child/ren's parent/s in whose care the child/ren are placed and where the child/ren are living: *(if yes, please provide details, and include a copy of any related documents in SharePoint)*	☐ Yes ☐ No
Details:	
Is there any other confidential and or sensitive information that has not been or should not be disclosed under section 186 and or section 191 of the *Child Protection Act 1999*: *(if yes, please provide details, including if Child Safety received the information from a prescribed entity or service provider and if they have been consulted about the disclosure of the information, and address the relevant ground/s under ss186 and, or 191 of the Act, and include a copy of any related documents into the withheld folder in SharePoint)*	☐ Yes ☐ No
Details:	

Part 11A Additional Issues *(complete if there is are additional issues that need to be mentioned)*

Part 12 List of attached documents *(the types of documents to include are copies of the emergency application, emergency order, adjournment order, previous Child Protection Orders, care agreements, supporting affidavit (including date filed), and attachments would include, criminal histories, child protection history reports, case plan, most recent review report, any expert reports that are relevant. A copy of each document listed should be included in SharePoint)*

No.	Document type (including attachments)	Author	Date of document
1			
2			
3			
4			
5			
6			

Form C – Director's Written Reasons for Decision Form

This form is to be completed by a Director of Child Protection Litigation (DCPL) lawyer[133] when providing written reasons to Child Safety about how the DCPL has dealt with a referred child protection matter[134] or a request for the DCPL to institute an appeal against a decision on an application/s for a child protection order.

Part 1 Form completion information					
Lawyer completing form:		Date form completed:		Date of decision:	

Part 2 Form A – Referral of Child Protection Matter/s Summary Information Form, or Form H – Child Safety Appeal Request Form			
Officer completed referral/request form:		Date referral/request completed:	

Part 3 Director of Child Protection Litigation information					
DCPL file lawyer:		Phone:		Email:	

Part 4 Child Safety information			
OCFOS Officer:		Phone:	
		Email:	
Child Safety Service Centre:		Phone:	
Child Safety Officer:		Email:	
Team Leader:		Email:	
After Hours Contact: *(if required)*		Phone:	
		Email:	

Part 5(a) Child's information *(if there is more one child, complete a part per child in order of oldest child to youngest child)*			
Child's given name/s:		Child's family name:	
Date of birth:		Child's ICMS no:	

Part 5(b) Child's information *(delete this part if there is only one child. Duplicate the part if there are more than two children)*			
Child's given name/s:		Child's family name:	
Date of birth:		Child's ICMS no:	

[133] Guidelines 75 and 370 of the Director's Guidelines.
[134] Section 17 of the *Director of Child Protection Litigation Act 2016* (DCPL Act).

Part 6 For a referred child protection matter/s[135], type of order/s Child Safety considered appropriate and desirable for the child/ren's protection[136] *(if this form relates to a request by Child Safety for the DCPL to institute an appeal against a decision on an application/s for a child protection order go to Part 10)*		
What type of order/s is considered appropriate and desirable for the child/ren's protection: *(if Child Safety considers more than one type of order appropriate and desirable for a child, or if it is proposed that 2 or more applications for orders will be heard together, indicate which type of order relates to each child)*	☐ No order[137]	
	☐ Directive order – other *(if selected, provide name of parent/s subject to order and what directed to do or refrain from doing, and duration of order)*	
	☐ Directive order – contact:	☐ directing no contact with child/ren *(if selected, provide name of parent/s subject to the order, and duration of order)*
		☐ directing supervised contact with child/ren *(if selected, provide name of parent/s subject to the order, and duration of order)*
	☐ Supervision order *(if selected, provide details of the matters Child Safety is to supervise, and duration of order)*	
	☐ Custody order	☐ to suitable person who is member of child's family (STC-SPF) *(if selected, name of suitable person, and duration of order)*
		☐ to chief executive (STC-CE) *(if selected, provide duration of order)*
	☐ Short-term guardianship – to chief executive (STG-CE) *(if selected, provide duration of order)*	
	☐ Long-term guardianship	☐ to suitable person who is member of child's family (LTG-SPF) *(if selected, name of suitable person and details)*
		☐ to another suitable person nominated by chief executive (LTG-SPO) *(if selected, name of suitable person and details*)
		☐ to chief executive (LTG-CE)
	☐ Permanent care order - long-term guardianship to a suitable person nominated by chief executive (LTG-PCO) *(if selected, name of suitable person)*:	

Part 7 Did the DCPL consult with Child Safety about the referred child protection matter/s[138]			
Did the DCPL consult with Child Safety:	☐ Yes ☐ No	Date of consultation:	

[135] Section 15(1)(a) and (b) of the DCPL Act.
[136] Sections 16(1)(a)(iii) and 16(1)(b) of the DCPL Act.
[137] Section 16(1)(b) of the DCPL Act.
[138] Section 18(1) of the DCPL Act.

Name/s of OCFOS and or Child Safety officers consulted:	

Part 8 How has the DCPL dealt with the referred child protection matter/s

Did the DCPL decide to apply for an order/s:[139]	☐ Yes ☐ No	
What type of order/s did the DCPL decide to apply for: *(if the DCPL considers more than one type of order appropriate and desirable for a child, or if it is proposed that 2 or more applications for orders will be heard together, indicate which type of proposed order relates to each child)*	☐ No order[140]	
	☐ Directive order – other *(if selected, provide name of parent/s subject to order and what directed to do or refrain from doing, and duration of order)*:	
	☐ Directive order – contact:	☐ directing no contact with child/ren *(if selected, provide name of parent/s subject to the order, and duration of order)*:
		☐ directing supervised contact with child/ren *(if selected, provide name of parent/s subject to the order, and duration of order)*:
	☐ Supervision order *(if selected, provide details of the matters Child Safety is to supervise, and duration of order)*:	
	☐ Custody order	☐ to suitable person who is member of child's family (STC-SPF) *(if selected, name of suitable person, and duration of order)*
		☐ to chief executive (STC-CE) *(if selected, provide duration of order)*:
	☐ Short-term guardianship – to chief executive (STG-CE) *(if selected, provide duration of order)*:	
	☐ Long-term guardianship	☐ to suitable person who is member of child's family (LTG-SPF) *(if selected, name of suitable person and details)*:
		☐ to another suitable person nominated by chief executive (LTG-SPO) *(if selected, name of suitable person and details)*:
		☐ to chief executive (LTG-CE)
	☐ Permanent care order - long-term guardianship to a suitable person nominated by chief executive (LTG-PCO) *(if selected, name of suitable person)*:	
Did the DCPL decide to refer the matter/s back to Child Safety:	☐ Yes[141] ☐ No	
Did the DCPL apply for an order/s of a different type, or order/s that were otherwise different from, the order/s Child Safety considered appropriate and desirable for the child/ren's protection:	☐ Yes[142] ☐ No	

[139] Section 17(1)(a) of the DCPL Act.
[140] Section 16(1)(b) of the DCPL Act.
[141] Written reasons will be provided for the decision within 5 business days, unless child is subject to an order ending within one month of the date of the decision or an emergency order – see section 18(2) of the DCPL Act and Guidelines 75 & 76 of the Director's Guidelines.
[142] Written reasons will be provided for the decision within 5 business days, unless child is subject to an order ending within one month of the date of the decision or an emergency order – see section 18(2) of the DCPL Act and Guidelines 75 & 75 of the Director's Guidelines.

Part 9 DCPL reasons for decision on the referred child protection matter/s[143] *(include identification of any deficiencies in evidence if applicable, and give reasons why the matter/s was referred back to Child Safety or why the DCPL decided to apply for an order/s of a different type, or order/s that were otherwise different from, the order/s Child Safety considered appropriate and desirable for the child/ren's protection?)*

Part 10 The decision that Child Safety has requested the DCPL to institute an appeal against *(complete this part if the decision relates to a request by Child Safety for the DCPL to institute an appeal against a decision on an application/s for a child protection order)*

Date order/s made:		Court location:		Name of magistrate	

If the decision Child Safety has requested the DCPL institute an appeal against a final decision on an application/s for a child protection order, what is the type of order/s the court has made: *(if the court has made more than one type of order for a child, or heard 2 or more applications for orders together, indicate which type of order relates to each child)*	☐ No order	
	☐ Directive order – other *(if selected, provide name of parent/s subject to order and what directed to do or refrain from doing, and duration of order)*:	
	☐ Directive order – contact:	☐ directing no contact with child/ren *(if selected, provide name of parent/s subject to order, and duration of order)*:
		☐ directing supervised contact with child/ren *(if selected, provide name of parent/s subject to order, and duration of order)*:
	☐ Supervision order *(if selected, provide details of the matters Child Safety is to supervise, and duration of order)*:	
	☐ Custody order	☐ to suitable person who is member of child's family (STC-SPF) *(if selected, name of suitable person, and duration of order)*:
		☐ to chief executive (STC-CE) *(if selected, duration of order)*:
	☐ Short-term guardianship – to chief executive (STG-CE) *(if selected, duration of order)*:	
	☐ Long-term guardianship	☐ to suitable person who is member of child's family (LTG-SPF) *(if selected, name of suitable person)*:
		☐ to another suitable person nominated by chief executive (LTG-SPO) *(if selected, name of suitable person)*:
		☐ to chief executive (LTG-CE)

[143] Section 18(2) of the DCPL Act.

	☐ Permanent care order - long-term guardianship to a suitable person nominated by chief executive (LTG-PCO) *(if selected, name of suitable person)*:
If Child Safety has requested the DCPL institute an appeal against an interim decision on an application/s for a child protection order, provide details of the decision:	
Does Child Safety's appeal request relate to all or part of the decision on an application/s for a child protection order:	☐ All of the decision ☐ Part of the decision *If part, provide details:*

Part 11 For a request for the DCPL to institute an appeal, what has Child Safety assessed to be appropriate and desirable for the protection of the child/ren

What type of final order/s has Child Safety assessed to be appropriate and desirable for the child/ren's protection: *(if Child Safety considered more than one type of order appropriate and desirable for a child, or if 2 or more applications for orders were heard together, indicate which type of order relates to each child)*	☐ No order	
	☐ Directive order – other *(if selected, provide name of parent/s subject to order and what directed to do or refrain from doing, and duration of order)*:	
	☐ Directive order – contact:	☐ directing no contact with child/ren *(if selected, provide name of parent/s subject to the order, and duration of order)*:
		☐ directing supervised contact with child/ren *(if selected, provide name of parent/s subject to the order, and duration of order)*:
	☐ Supervision order *(if selected, provide details of the matters Child Safety is to supervise, and duration of order)*:	
	☐ Custody order	☐ to suitable person who is member of child's family (STC-SPF) *(if selected, name of suitable person, and duration of order)*:
		☐ to chief executive (STC-CE) *(if selected, provide duration of order)*:
	☐ Short-term guardianship – to chief executive (STG-CE) *(if selected, provide duration of order)*:	
	☐ Long-term guardianship	☐ to suitable person who is member of child's family (LTG-SPF) *(if selected, name of suitable person and details)*:
		☐ to another suitable person nominated by chief executive (LTG-SPO) *(if selected, name of suitable person and details)*:

		☐ to chief executive (LTG-CE)
	☐ Permanent care order - long-term guardianship to a suitable person nominated by chief executive (LTG-PCO) *(if selected, name of suitable person)*:	
If Child Safety has requested the DCPL institute an appeal against an interim decision on an application/s for a child protection order, provide details of what Child Safety has assessed to be appropriate and desirable for the protection of the child/ren:		

Part 12 Did the DCPL consult with Child Safety about the appeal request[144]			
Did the DCPL consult with Child Safety:	☐ Yes ☐ No	Date of consultation:	
Name/s of OCFOS and or Child Safety officers consulted:			

Part 13 How has the DCPL dealt with the appeal request		
Did the DCPL decide to institute an appeal:[145]	☐ Yes ☐ No *(if yes, complete the below section)*	
If the DCPL have decided to institute an appeal, what type of final order/s will the DCPL seek: *(if the DCPL considers more than one type of order appropriate and desirable for a child, or if it is proposed that 2 or more applications for orders will be heard together, indicate which type of order relates to each child)*	☐ No order	
	☐ Directive order – other *(if selected, provide name of parent/s subject to order and what directed to do or refrain from doing, and duration of order)*:	
	☐ Directive order – contact:	☐ directing no contact with child/ren – *(if selected, provide name of parent/s subject to the order and duration of order)*:
		☐ directing supervised contact with child/ren *(if selected, provide name of parent/s subject to the order and duration of order)*:
	☐ Supervision order *(if selected, provide details of the matters Child Safety is to supervise, and duration of order)*:	
	☐ Custody order	☐ to suitable person who is member of child's family (STC-SPF) *(if selected, name of suitable person and details, and duration of order)*:

[144] Guideline 361 of the Director's Guidelines.
[145] Section 9(1)(c)(i) of the DCPL Act.

		☐ to chief executive (STC-CE) *(if selected, duration of order)*:
	☐ Short-term guardianship – to chief executive (STG-CE) *(if selected, duration of order)*:	
	☐ Long-term guardianship	☐ to suitable person who is member of child's family (LTG-SPF) *(if selected, name of suitable person and details)*:
		☐ to another suitable person nominated by chief executive (LTG-SPO) *(if selected, name of suitable person and details)*:
		☐ to chief executive (LTG-CE)
	☐ Permanent care order - long-term guardianship to a suitable person nominated by chief executive (LTG-PCO) *(if selected, name of suitable person)*:	
If the decision Child Safety has requested the DCPL institute an appeal against, is an interim decision on an application/s for a child protection order, what does the DCPL consider appropriate and desirable for the protection of the child/ren:		

Part 14 DCPL Reasons for decision on appeal request [146] *(include identification of any deficiencies in evidence if applicable, and give reasons why the DCPL decided not to institute an appeal)*

[146] Section 18(2) of the DCPL Act.

Registry: Click here to enter text.
Number: Click here to enter text.

Form D – Disclosure Form

Note to respondent parents: there is important information about this document in the attached disclosure process information sheet.

Child's details

These are the same details as appear on the application for a child protection order form.

Given name	
Family name	
Date of birth	
Gender	*Click on the appropriate box* ☐ Male ☐ Female ☐ Not stated/prefer not to say
Cultural identity	*Click on the appropriate box* ☐ Aboriginal ☐ Torres Strait Islander ☐ Aboriginal and Torres Strait Islander ☐ Neither Aboriginal nor Torres Strait Islander ☐ Not stated/prefer not to say

Applicant

The applicant is usually the person applying to the court for the making or extension of a child protection order (normally the Director of Child Protection Litigation). It can also be the person the person applying to the court to vary or revoke a child protection order.

Applicant's name	
Relationship to child	

First respondent

For applications to make or extend a child protection order, respondents usually include anyone who is a 'parent' as defined under section 52 of the Child Protection Act 1999. *If a parent makes an application to vary or revoke a child protection order, the Director of Child Protection Litigation is a respondent along with each other parent.*

Given name	
Family name	
Relationship to child	

Second respondent (if applicable)

Delete the below box if there is only one respondent. Add additional boxes if there are more than two respondents.

Given name	
Family name	
Relationship to child	

Additional participants (if applicable)

Sometimes additional people are included in a child protection proceeding as though they are a party (e.g. a separate representative appointed for a child under section 110 of the Child Protection Act 1999). These participants' details should be included here. Add additional boxes if there is more than one additional participant in this proceeding. Delete this box if there are no additional participants in this proceeding.

Given name	
Family name	
Role in proceeding	

Notice to respondents and participants:

Under section 189C of the Child Protection Act 1999, the Director of Child Protection Litigation (the Director) has an ongoing duty to disclose to you all documents in the Director's possession or control that are relevant to the proceeding.

*The Director is giving you a list of the types of documents in **Box A** that are ordinarily in the possession or control of Child Safety to help you decide which documents you may want to access. Each of these documents may not be in the possession or control of Child Safety in every case. The Director has also given you a list of additional, specific documents in **Box B** that are in in the Director's possession or control that the Director thinks you may want to access. (Delete this sentence if Box B of this template is not completed).*

If you request disclosure of a document, the Director must give you access to the document unless the Director is permitted to refuse access under section 191(2) of the Child Protection Act. If you request a document, the Director may refuse to disclose the document to you if the Director is of the view that disclosure should be refused because of section 191(2). The Director must tell you about this refusal and explain the reason why you are being refused access to the document. For more information about what you can do if the Director refuses to give you access to documents, see the attached disclosure process information sheet.

Box A: Types of documents that are normally in the possession or control of Child Safety

- information received by Child Safety where it is suspected a child has been, is being, or is likely to be harmed including:
  - notifications (subject to section 186 *Child Protection Act 1992*); and
  - child concern reports;
- assessments about whether the child is a *child in need of protection* including investigation and assessment outcomes and attached documents;
- records of interview;
- structured decision making assessments including:
  - safety assessments;
  - family risk evaluations and family risk re-evaluations; and
  - reunifications assessments;
- assessments of the child's strengths and needs;
- assessments of a parent's strengths and needs;
- case plans and review reports;
- referrals from Child Safety to another agency;
- information received by Child Safety about the child or their parents from another agency;
- referrals and minutes from Suspected Child Abuse and Neglect Team meetings, Domestic Violence Collaborative Agency Meetings and carer agency meetings;
- about the child prepared by an external reporter or assessor;
- reports about a parent prepared by an external reporter or assessor;
- case notes made by Child Safety, for example, about a child's contact with a parent or a Child Safety visit to a parent;

- child protection history report(s);
- criminal, domestic violence, or traffic history of any person relevant to the proceeding;
- cultural support plans; and
- correspondence between Child Safety and a parent.

Box B: Specific documents that are in the possession or control of the Director of Child Protection Litigation (delete if not applicable)

- Director of Child Protection Litigation to complete as required.

Addresses for service

This form is to be given to all other parties to the proceeding by the Director of Child Protection Litigation.

First respondent's details

Full name	
Address	
Phone	
Mobile *(if applicable)*	
Fax *(if applicable)*	
Email *(if applicable)*	

Second respondent's details (if applicable)

Full name	
Address	
Phone	
Mobile *(if applicable)*	
Fax *(if applicable)*	
Email *(if applicable)*	

Director of Child Protection Litigation's address for service

Full name	
Address	
Phone	
Mobile *(if applicable)*	
Fax *(if applicable)*	
Email *(if applicable)*	

Director of Child Protection Litigation (authorised officer details)

Signed	
Full name	
Date	

Filed in the *insert court location* registry on *insert date of filing*:

Registrar
Signature and seal of registrar

Disclosure process - why have I been given this form?

You have been given this form because section 189C of the Child Protection Act 1999 provides that the Director of Child Protection Litigation (the Director) has an ongoing duty to disclose to each other party all documents in the Director's possession or control that are relevant to the proceeding. This form is how the Director tells you about the documents which it has an obligation to disclose to you.

Although the Director has an obligation to disclose relevant documents to you, you can also ask the Director for any particular relevant documents that you want disclosed to you.

Under rule 52 of the Childrens Court Rules, the Director must file and serve this disclosure form on you within 20 days of filing an application for a child protection order. The Director may also give this form to you again at any other time it thinks it is appropriate to or because the Childrens Court has ordered it to.

How do I access documents?

*If you tell the Director you want access to particular documents you should read the following information. There are two lists of documents. The first list (in **Box A**) explains the types of documents the Director normally has access to because they are documents that are normally held by the Department of Child Safety, Youth and Women (Child Safety). This list is to help you decide if there are any particular documents you want to be disclosed. The second list (**Box B**) is a list of additional, specific documents the Director has decided are relevant and you might want to be disclosed to you. (Delete sentence if Box B does not list specific documents.)*

*If you want to access a particular document you can request it by filling out the **request for disclosure form** which has been given to you with this form. You should try and be **as specific as you can** when describing the documents that you want so that the Director can locate the document for you and organise the best way for you to have access to it. Information that can help the Director locate documents for you include:*

- *Who the document is about*
- *What the document is about*
- *The date of the document or the time period to which the period relates*

How will the Director let me access documents?

*You can indicate to the Director how you would prefer to access the documents when you fill in the **request for disclosure form**. For example, you may ask that the Director post the documents to you or send them to you by email (if an electronic copy of the document is available).*

The Director will consider your request but it is ultimately up to the Director as to how you will be given access to the documents. For example, if you request a large number of documents be sent to you, the Director may ask that you come to an office to inspect the documents instead and take copies of the documents that you need.

Can the Director refuse to give me access to any documents that I ask for?

The Director may refuse to give you access to certain documents or information in the circumstances outlined in section 191(2) of the Child Protection Act. If you ask the Director for access to a document and the Director refuses to give you access to the document, the Director will explain to you why the Director is refusing to give you access.

If the Director tells you that the Director refuses to give you access to a document under section 191(2), the Director is not required to disclose the document unless the Childrens Court orders disclosure. If the Childrens Court orders disclosure, the disclosure is on the terms ordered by the Childrens Court.

What do I do if I don't agree with the Director's refusal to give me access to a document?

If you do not agree with the Director's refusal to give you access to a document you should seek independent legal advice from a lawyer. The lawyer may be able to help explain why you have been refused disclosure of a document.

You may apply to the Childrens Court under s 189(5)(c) to ask the Childrens Court to order the Director to disclose the document to you. A lawyer might be able to help you apply to the Childrens Court to seek an order for the Director to disclosure the document to you.

Registry: Click here to enter text.
Number: Click here to enter text.

Form E – Request for Disclosure Form

Child's details

These are the same details as appear on the application for a child protection order form

Given name	
Family name	
Date of birth	
Gender	*Click on the appropriate box* ☐ Male ☐ Female ☐ Not stated/prefer not to say
Cultural identity	*Click on the appropriate box* ☐ Aboriginal ☐ Torres Strait Islander ☐ Aboriginal and Torres Strait Islander ☐ Neither Aboriginal nor Torres Strait Islander ☐ Not stated/prefer not to say

Details of party requesting disclosure

Put your details here.

Name of person requesting disclosure	
Relationship to child	
Role in proceeding *(delete the one that does not apply to you)*	I am the applicant *(you will normally be the applicant if you are applying to vary or revoke an existing child protection order)* I am the/a respondent *(you will normally be the respondent if the Director of Child Protection Litigation has commenced a proceeding for a child protection order and you are responding to their application)*

Details of the documents that I would like access to:

*In the **disclosure form** that Director of Child Protection Litigation (the Director) gave you (which is attached to this form), the Director explained that the Director has an obligation to disclose all documents relevant to the proceeding under section 189C of the Child Protection Act 1999. The Director also listed the documents and types of documents that are normally held by the Director and/or Child Safety (Box A). The Director may have also included additional specific documents that the Director thinks you might want to access (which may have been Box B).*

You can request access to any documents in the possession or control of the Director that are relevant to the proceeding.

The Director explained that the Director may refuse to disclose documents to you under section 191(2) of the Child Protection Act 1999. The Director will have given you a list of documents that the Director is refusing to disclosure to you because of section 191(2) (which may have been Box B or C). The Director might refuse documents that

you have requested because the Director, when reviewing them, has realised that there is a reason to refuse to disclose them to you because of section 191(2). If this happens, the Director will explain to you why the Director has refused to disclose the documents.

If you would like access to any documents then you should write those documents in the box below. Remember, as per the requirements in section 190 of the *Child Protection Act 1999*), t*ry to give as much information as you can about each document, so that the Director can find it for you and can work out how best to give you access to it, such as*

- who the document is about
- what the document is about
- the date of the document or what period of time the document relates to

I would like access to the following documents:

How would you like to access the documents?

The Director of Child Protection Litigation will try and give you the documents in the way that you specify below. However, sometimes the Director can't give you the documents in the way that you would like. If the Director can't give you the documents in the way that you have requested the Director will explain why.

If you are unhappy with the way that the Director has decided that you should have access to the documents, you should seek advice from a lawyer about what to do.

Please select the boxes

I would like to **inspect** the documents (only answer question 1) *If you want to receive copies of the documents, do not tick the box below. Go to the box.*
☐ I would like to **inspect** the requested documents *Selecting this option means that you are asking the Director to arrange for you to attend at an office to look at the documents you have requested in this form. You can then ask to make copies of the ones that you think that you might need for when you go to court.*
I would like to **receive copies** of the documents *If you want to inspect the documents, do not tick the box below. Go to the box above.*
☐ I would like to **receive copies** of the requested documents. *Selecting this option means that you are asking the Director of Child Protection Litigation to send you the documents that you have requested in this form.* I would like to receive copies of the requested documents: ☐ by post ☐ by email ☐ by fax

What do I do now?

You have to give this document to the Director. You don't have to give this document to anyone else.

You can give this document to the Director in person (you can do this by giving it to one of the Director's staff, for example, at court). You can also send it to the Director by post, email or fax (just select the one you prefer) using the details below:

☐ Post: *insert postal address*
☐ Email: *insert email address*
☐ Fax: *insert fax no*

Director of Child Protection Litigation (lawyer details)

Full name	
Date	

OFFICE USE ONLY
Received by the Director on:

Registry: Click here to enter text.
Number: Click here to enter text.

Form F – Disclosure Compliance Notice Form

Child's details

Given name	
Family name	
Date of birth	
Gender	*Click on the appropriate box* ☐ Male ☐ Female ☐ Not stated
Cultural identity	*Click on the appropriate box* ☐ Aboriginal ☐ Torres Strait Islander ☐ Aboriginal and Torres Strait Islander ☐ Neither Aboriginal nor Torres Strait Islander ☐ Not stated/prefer not to say

The Director of Child Protection Litigation provides notice under rule 61 of the Childrens Court Rules 2016 that the Director:

1) understands the duty of disclosure under section 189C of the *Child Protection Act 1999* and the consequences for failing to disclose a document under section 189D of the *Child Protection Act 1999;*

2) has considered the matters mentioned in rule 60 of the Childrens Court Rules 2016; and

3) has complied and will continue to comply with the duty of disclosure to the best of the Director's knowledge and ability.

Signed by [print full name]	Signature	Date

Registry: Click here to enter text.
Number: Click here to enter text.

Form G – Name and Contact Details of Independent Aboriginal or Torres Strait Islander Entities Form

(this form is only to be completed and filed by the Director of Child Protection Litigation)

Child's details

Add additional boxes if there are more than one child.

Given name	
Family name	
Date of birth	
Gender	*Click on the appropriate box* ☐ Male ☐ Female ☐ Not stated/prefer not to say
Cultural identity	*Click on the appropriate box* ☐ Aboriginal ☐ Torres Strait Islander ☐ Aboriginal and Torres Strait Islander

Applicant

Applicant's name	
Relationship to child	

First respondent

Given name	
Family name	
Relationship to child	

Second respondent (if applicable)

Delete the below box if there is only one respondent. Add additional boxes if there are more than two respondents.

Given name	
Family name	
Relationship to child	

Additional participants (if applicable)

Add additional boxes if there is more than one additional participant in this proceeding. Delete this box if there are no additional participants in this proceeding.

Given name	
Family name	
Role in proceeding	(e.g.: separate representative, guardian for Ms Jones.)

Independent Aboriginal or Torres Strait Islander entity's name and contact details

Name of entity	
Contact person *(if applicable)*	
Address	Address known to the Director
Phone	
Mobile *(if applicable)*	
Fax *(if applicable)*	
Email *(if applicable)*	

Director of Child Protection Litigation (lawyer details)

Signed	
Full name	
Date	

Filed in the *insert court location* registry on *insert date of filing*:

Registrar
Signature and seal of registrar

Form H – Child Safety Appeal Request Form

This form is to be completed by an Office of the Child and Family Official Solicitor (OCFOS) officer or Child Safety Officer when the chief executive (Child Safety) has assessed that a court decision on an application/s for a child protection order is not appropriate and desirable for the protection of the child/ren,[147] and requests the Director of Child Protection Litigation (DCPL) institute an appeal against the decision.[148]

If the request is for an urgent appeal to be instituted, the form should be made as soon as practicable and where possible on the day of the decision.[149]

Part 1 Form completion information			
Date form completed:		Officer completing request:	

Part 2 Child Safety information			
OCFOS Officer:		Phone:	
		Email:	
Child Safety Service Centre:		Phone:	
Child Safety Officer:		Email:	
Team Leader:		Email:	
After Hours Contact:		Phone:	
		Email:	

Part 3 Details of the decision Child Safety requests an appeal against					
Is Child Safety requesting an urgent appeal against a decision: *(an urgent appeal against a decision is when Child Safety assess it places the child(ren) at immediate and unacceptable risk of suffering significant harm)*	☐ Yes ☐ No				
Date of decision:		Location of Court:		Magistrate	

Part 4 Director of Child Protection Litigation information	
DCPL file lawyer:	

Part 5(a) Child's information *(if the appeal request related to more one child, complete a part per child in order of oldest child to youngest child)*			
Child's given name/s:		Child's family name:	
Date of birth:		Child's ICMS no:	

Part 5(b) Child's information *(delete this part if there is only one child. Duplicate the part if there are more than two children)*			
Child's given name/s:		Child's family name:	

[147] Guideline 359 of the Director's Guidelines.
[148] Section 9(1)(c)(i) of the *Director of Child Protection Litigation Act 2016*.
[149] Guideline 354 of the Director's Guidelines.

Date of birth:		Child's ICMS no:	

Part 6 Details of the decision that Child Safety is requesting the DCPL to institute an appeal against and the reasons for an appeal[150]

If the decision Child Safety is requesting DCPL institute an appeal against, is a final decision on an application/s for a child protection order, what is the type of order/s the court has made: *(if the court has made more than one type of order for a child, or heard 2 or more applications for orders together, indicate which type of order relates to each child)*	☐ No order	
	☐ Directive order – other *(if selected, provide name of parent/s subject to order and what directed to do or refrain from doing, and duration of order)*:	
	☐ Directive order – contact:	☐ directing no contact with child/ren *(if selected, provide name of parent/s subject to the order, and duration of order)*:
		☐ directing supervised contact with child/ren *(if selected, provide name of parent/s subject to the order, and duration of order)*:
	☐ Supervision order *(if selected, provide details of the matters Child Safety is to supervise, and duration of order)*:	
	☐ Custody order	☐ to suitable person who is member of child's family (STC-SPF) *(if selected, name of suitable person, and duration of order)*:
		☐ to chief executive (STC-CE) *(if selected, provide duration of order)*:
	☐ Short-term guardianship – to chief executive (STG-CE) *(if selected, provide duration of order)*:	
	☐ Long-term guardianship	☐ to suitable person who is member of child's family (LTG-SPF) *(if selected, name of suitable person and details)*:
		☐ to another suitable person nominated by chief executive (LTG-SPO) *(if selected, name of suitable person and details)*:
		☐ to chief executive (LTG-CE)
	☐ Permanent care order - long-term guardianship to a suitable person nominated by chief executive (LTG-PCO) *(if selected, name of suitable person)*:	
If Child Safety is requesting DCPL institute an appeal against an interim decision on an application/s for a child protection order, provide details of the decision:		

[150] Guideline 358 of the Director's Guidelines.

Does the appeal request relate to all or part of the decision on an application/s for a child protection order:	☐ All of the decision ☐ Part of the decision *If part, provide details:*
Outline the impact of the court's decision on the safety, wellbeing and best interests of the child:	
What are the proposed grounds of appeal including a statement of how the court erred:	

Part 7 For a request for the DCPL to institute an appeal, what has Child Safety assessed to be appropriate and desirable for the protection of the child/ren

What type of final order/s has Child Safety considered appropriate and desirable for the child/ren's protection: *(if Child Safety considers more than one type of order appropriate and desirable for a child, or if it is proposed that 2 or more applications for orders will be heard together, indicate which type of order relates to each child)*	☐ No order	
	☐ Directive order – other *(if selected, provide name of parent/s subject to order and what directed to do or refrain from doing, and duration of order)*:	
	☐ Directive order – contact:	☐ Directing no contact with child/ren *(if selected, provide name of parent/s subject to the order, and duration of order)*:
		☐ Directing supervised contact with child/ren *(if selected, provide name of parent/s subject to the order, and duration of order)*:
	☐ Supervision order *(if selected, provide details of the matters Child Safety is to supervise, and duration of order)*:	
	☐ Custody order	☐ to suitable person who is member of child's family (STC-SPF) *(if selected, name of suitable person, and duration of order)*:
		☐ to chief executive (STC-CE) – *if selected, provide duration of order*:
	☐ Short-term guardianship – to chief executive (STG-CE) *(if selected, provide duration of order)*:	
	☐ Long-term guardianship	☐ to suitable person who is member of child's family (LTG-SPF) *(if selected, name of suitable person and details)*:
		☐ to another suitable person nominated by chief executive (LTG-SPO) *(if selected, name of suitable person and details)*:
		☐ to chief executive (LTG-CE)

	☐ Permanent care order - long-term guardianship to a suitable person nominated by chief executive (LTG-PCO) *(if selected, name of suitable person)*:
If Child Safety is requesting DCPL institute an appeal against an interim decision on an application/s for a child protection order, provide details of what Child Safety has assessed to be appropriate and desirable for the protection of the child/ren:	

Form I – Child Safety Internal Review Request Form

This form is to be completed by an Office of the Child and Family Official Solicitor (OCFOS) officer or Child Safety Officer when the chief executive (Child Safety) requests the Director of Child Protection Litigation (DCPL) conduct an internal review of a decision.[151]

If the request is for an urgent internal review, the form should be made as soon as practicable after the receipt of the DCPL's written reasons for decision.[152] Otherwise, an internal review request that relates to a decision about an appeal should be made within 5 business days, with other requests to be made within 10 business days, or before the expiry of any current order or appeal period.[153]

Part 1 Form completion information			
Date form completed:		Officer completing request:	

Part 2 Child Safety information			
OCFOS Officer:		Phone:	
		Email:	
Child Safety Service Centre:		Phone:	
Child Safety Officer:		Email:	
Team Leader:		Email:	
After Hours Contact: *(if required)*		Phone:	
		Email:	

Part 3 Director of Child Protection Litigation information	
DCPL file lawyer:	

Part 4 Is the DCPL decision that Child Safety is requesting be reviewed urgent? *(has the decision resulted in an assessment by Child Safety that the child/ren are at immediate and unacceptable risk of suffering significant harm (e.g. child subject to an emergency order that is about to end))*			
Is Child Safety requesting an urgent review of a decision?	☐ Yes ☐ No	Date of decision	

Part 5(a) Child's information *(if the request relates to more than one child, complete a part per child in order of oldest child to youngest child)*			
Child's given name/s:		Child's family name:	
Date of birth:		Child's ICMS no:	

Part 5(b) Child's information *(delete this part if there is only one child. Duplicate the part if there are more than two children)*			
Child's given name/s:		Child's family name:	
Date of birth:		Child's ICMS no:	

[151] Guideline 381 of the Director's Guidelines.
[152] Guideline 388 of the Director's Guidelines.
[153] Guideline 384 of the Director's Guidelines.

Part 6 Details of the DCPL decision that Child Safety is requesting be reviewed	
Decision referring a *child protection matter* back to Child Safety[154]	☐ Yes ☐ No
Applying for a child protection order of a different type, or an order that is otherwise different from the order Child Safety considered appropriate and desirable[155]	☐ Yes ☐ No
Decision to withdraw an application[156]	☐ Yes ☐ No
Decision not to transfer a child protection order to another State[157]	☐ Yes ☐ No
Decision not to transfer a child protection proceeding to another State[158]	☐ Yes ☐ No
Decision not to bring an appeal[159]	☐ Yes ☐ No

Part 7 Child Safety's reasons why the internal review is sought including any matters Child Safety want the DCPL to take into account in the review *(if there is new information, the child protection matter should be the subject of a new referral to the DCPL including the new information)*

[154] Guidelines 68 & 381 of the Director's Guidelines.
[155] Guidelines 78, 321 & 381 of the Director's Guidelines.
[156] Guidelines 287 & 381 of the Director's Guidelines.
[157] Guidelines 340 & 381 of the Director's Guidelines.
[158] Guidelines 345 & 381 of the Director's Guidelines.
[159] Guidelines 371 & 381 of the Director's Guidelines.

Form J – Director's Review Decision Notification Form

This form is to be completed by a Director of Child Protection Litigation (DCPL) lawyer[160] when providing written notice to Child Safety about the outcome of a requested internal review.

Part 1 Form completion information					
Lawyer completing form:		Date form completed:		Date of decision:	

Part 2 Form I – Child Safety Internal Review Request Form			
Officer completed request form:		Date request completed:	

Part 3 Director of Child Protection Litigation information					
DCPL file lawyer:		Phone:		Email:	

Part 4 Child Safety information			
OCFOS Officer:		Phone:	
		Email:	
Child Safety Service Centre:		Phone:	
Child Safety Officer:		Email:	
Team Leader:		Email:	
After Hours Contact: *(if required)*		Phone:	
		Email:	

Part 5(a) Child's information *(if there is more one child, complete a part per child in order of oldest child to youngest child).*			
Child's given name/s:		Child's family name:	
Date of birth:		Child's ICMS no:	

Part 5(b) Child's information *(delete this part if there is only one child. Duplicate the part if there are more than two children)*			
Child's given name/s:		Child's family name:	
Date of birth:		Child's ICMS no:	

Part 6 Details of the DCPL decision that Child Safety requested be reviewed	
Decision referring a *child protection matter* back to Child Safety[161]	☐ Yes ☐ No
Applying for a child protection order of a different type, or an order that is otherwise different from the order Child Safety considered appropriate and desirable[162]	☐ Yes ☐ No

[160] Guideline 388 of the Director's Guidelines.
[161] Guidelines 68 & 381 of the Director's Guidelines.
[162] Guidelines 78, 321 & 381 of the Director's Guidelines.

Decision to withdraw an application[163]	☐ Yes ☐ No
Decision not to transfer a child protection order to another State[164]	☐ Yes ☐ No
Decision not to transfer a child protection proceeding to another State[165]	☐ Yes ☐ No
Decision not to bring an appeal[166]	☐ Yes ☐ No

Part 7 How has the DCPL dealt with the internal review request	
Did the DCPL on review make a different decision:[167]	☐ Yes ☐ No – *If yes, complete the below section*
Provide the reasons for the decision and list any actions arising from the decision: *(e.g. filing an application for a child protection order)*	

[163] Guidelines 287 & 381 of the Director's Guidelines.
[164] Guidelines 340 & 381 of the Director's Guidelines.
[165] Guidelines 345 & 381 of the Director's Guidelines.
[166] Guidelines 371 & 381 of the Director's Guidelines.
[167] Guidelines 388 & 389 of the Director's Guidelines.