Information sheet 6

Disclosure for child protection proceedings

An information sheet for child protection partners

The new Childrens Court Rules 2016 and the *Director of Child Protection Litigation Act 2016* introduce a duty of disclosure in child protection proceedings in Queensland. This duty is applicable to the Department of Communities, Child Safety and Disability Services and the Director of Child Protection Litigation (DCPL).

Initial documents that need to be disclosed

The Rules say that when the DCPL files a child protection application, it must also at the same time, file an affidavit exhibiting the following (if relevant):

- An assessment from the Department of Communities, Child Safety and Disability Services (Child Safety) of whether the child is in need of protection (the assessment and outcome form).
- An assessment of the most recent strengths and needs of the child and their parent/s.
- Documents from the most recent family group meeting including a case plan (if it was developed).
- Any previous applications or orders for the child (including court assessment orders, temporary assessment orders and temporary custody orders).
- Referrals to an external agency supporting the child or their family members (for example, Evolve or a domestic violence refuge).
- Any independent assessment or report about the child or their parent/s (such as a psychiatric assessment).
- The child's birth certificate.
- Any child protection history report; criminal history, domestic violence history or traffic history of someone relevant to the proceedings[i].

The Office of the Child and Family Official Solicitor (OCFOS) within Child Safety will prepare this affidavit on behalf of the child safety officer and will ensure the above documents do not reveal any notifier or sensitive information.

Disclosure after proceedings commence

Within 20 days of the first mention, the DCPL must file and serve a 'disclosure form'[ii]. The disclosure form includes a list of the types of documents that are normally held by Child Safety that can be made available to the parties, if requested. The form may also give a list of any specific documents that the parties may wish to see a copy of, such as a particular report or a medical report on a child.

The DCPL may also file and serve an updated disclosure form at other times in the child protection proceedings.

The Rules say that a party in a child protection proceeding may make a written request to the DCPL for disclosure of a particular document that is relevant to the proceeding. The DCPL must respond.

The DCPL can disclose documents at any time or upon request. The DCPL is likely to provide a copy of relevant documents to the parties from time to time.

In addition, the court can order that disclosure occur on or by a particular date. For instance, the

court may order that it occur a reasonable time before a hearing. The Rules also provide that a court might order that the DCPL is to file and serve a disclosure form prior to a court ordered conference.

A court can make an order about how the document is disclosed. For instance, it can order that the document be redacted or be disclosed only to the party's legal representative. The DCPL can serve a copy of the document on the party, or make it available for inspection — in person or by sending a physical or electronic copy.

When producing documents, the DCPL should tell the party that it is an offence to further disclose that document. Once the DCPL has disclosed a document to one party, they may notify and invite the other parties to request disclosure.

The DCPL has to file a written notice before a child protection proceeding is finally decided, stating that the director understands their duty of disclosure and has complied with it.

What if a document shouldn't be disclosed?

Sometimes it will not be in a child's best interest to disclose a document in the proceedings. For example, the document may contain a record of a therapeutic relationship or may jeopardise an ongoing police investigation.

The *Child Protection Act 1999* allows Child Safety to refuse to disclose a document or information if it:

- may or does endanger a person's safety or psychological health
- may or does identify a notifier
- may hamper a criminal investigation
- is a record of therapeutic counselling with a child or their family member and disclosure would prejudice that relationship
- contains personal information not relevant to the proceedings.

If a party disagrees that it should be withheld, and wants to see the document, then a court will hear from them and the DCPL, and will make a decision about whether the document should be disclosed.

If a request is made for disclosure, the DCPL will discuss this with the OCFOS officer and a joint decision will be made about whether the DCPL should refuse to disclose any material of this type.

What does this mean for child protection partners?

If a request for disclosure is made of certain documents, these will need to be produced.

If a government or non-government partner agency has provided Child Safety with information due to a s159M or s159N request, or via a report that was requested by Child Safety, this could be provided to the parties — the parents, the separate representative or a direct representative for the child, the child guardian or an interested party joined by the court such as a carer or relative. It is possible to withhold information from disclosure if it satisfies the requirements of the *Child Protection Act 1999*.

Our government and non-government partners should identify any 'non-disclosable documents' or documents that should be withheld to Child Safety.

Further information

For more information about the changes to court processes for child protection matters, call the Office of the Child and Family Official Solicitor on **3405 4970**.

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[i] Rule 13
[ii] Rule 52