



Hon Phil Reeves MP
Member for Mansfield

Our reference: COM 04844-2011

5 MAY 2011

Senator Trish Crossin
Chair
Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
CANBERRA ACT 2600

TRISH
Dear Senator Crossin

I refer to your email of 28 March 2011 to the Honourable Anna Bligh MP, Premier of Queensland and Minister for Reconstruction, inviting comment on the Australian Government's Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011. As some of the matters contained in that Bill relate to the operation of state and territory child protection services, the following comments are provided for the Committees' consideration.

The Queensland Government is committed to the protection of children from all forms of harm and abuse, including protection from domestic and family violence. The Australian Government's proposal to assist courts exercising family law jurisdiction to prioritise the protection of children from harm and remove barriers to the disclosure of family and domestic violence is welcomed by the Queensland Government. The proposed reforms are consistent with the agenda of the *National Framework for Protecting Australia's Children 2009–2020* and the *National Plan to Reduce Violence against Women and their Children 2010–2022*.

At this time, the Queensland Government is also reviewing the *Domestic and Family Violence Prevention Act 1989* (Qld). This review will take into account the Bill and, more broadly, the recent recommendations of the Australian Law Reform Commission Report, *Family Violence – A National Legal Response*.

The Queensland Government supports the proposed amendments contained in the Bill. It is acknowledged the definition of 'family violence' has been expanded as a result of the Australian Government's consultation on the exposure draft of this Bill, and the Queensland Government is supportive of this wider and more robust approach that acknowledges the many forms domestic family violence may take. Overall, the amendments will strengthen the capacity of the Family Court to make decisions in the interests of children.



**Queensland
Government**

**Minister for Child Safety
and Minister for Sport**

Level 7
111 George Street Brisbane
GPO Box 806 Brisbane
Queensland 4001 Australia

Email childsafety@ministerial.qld.gov.au
Website www.childsafety.qld.gov.au
ABN 65 959 415 158

The implementation of the provisions may increase referrals, requests and frequency of contact between the Family Court and child protection authorities, generally. In this regard, it is acknowledged that it is important the implementation of the provisions be monitored to ensure ongoing effectiveness and to review resource implications. Specifically, the Queensland Government draws the Committee's attention to Schedule 1, Clause 42 of the Bill that provides immunity from cost orders for state and territory child welfare authorities.

The Queensland Government notes child welfare authorities can become party to proceedings in two additional circumstances not covered by the current amendments which only relate to section 91B of the *Family Law Act 1975*:

1. When family law proceedings are instigated and the child is the subject of a state child welfare order, it is necessary for the department to be served as a party to proceedings.
2. Child welfare authorities may also become party to proceedings through section 92A.

In practice, the child welfare authorities are not always served as a party to proceedings and therefore they must independently seek to intervene under section 92A and, in such instances, cost orders can be made against the department, whether the application for costs is instigated by the other parties or by the court. An unintended consequence of the current limited amendment is that it may encourage child welfare authorities to wait or seek to be explicitly invited by the court under section 91B before becoming a party to any proceedings, to ensure immunity provisions apply. A wide scope of immunity provisions for child welfare authorities acting in good faith would strengthen the Bill's reform in this important area and be consistent with the cooperative approaches endorsed by the *National Framework for Protecting Australia's Children 2009–2020* and the *National Plan to Reduce Violence against Women and their Children 2010–2022*.

I trust this information is of assistance to the Committee's consideration of the Bill.

Yours sincerely

Phil Reeves MP
Minister for Child Safety
and Minister for Sport
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