



Domestic Violence & Family Law Support Network



CALL FOR SUBMISSIONS ON **CHILDREN'S RIGHTS in AUSTRALIA**

MEGAN MITCHELL, NATIONAL CHILDREN'S COMMISSIONER

Written by
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About the Domestic Violence & Family Law Support Network

The Domestic Violence & Family Law Support Network (hereafter known as the DVFL) puts forward this submission report in response to the call for submissions – Children’s Rights as issued by Megan Mitchell, National Children’s Commissioner.

The DVFLSN is a Not For Profit (NFP), Community group that commenced operation in 2014 in Brisbane. The primary function of the DVFLSN is to support people who are self-litigating in, Family Law, Domestic Violence and Child Protection matters that are on foot in the Australian judicial system, providing the services mainly of an administrative nature, ensuring people have completed forms correctly, helping with the proofing & formatting of affidavits, and where necessary networking with firms to attain legal advice and/or counsel.

In 2017 the DVFLSN identified a need for there to be a broader service to the Australian public to be able to access legal counsel by means alternative to Legal Aid. Whilst we recognize Legal Aid provides a great service to the community it has been identified that there are many people who do not reach the criteria for accessing this service, with the vast majority of these being children who are NOT directly represented on a civil platform.

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The Family Law Act 1975 and the role of the Independent Children's Lawyer

COMMONWEALTH CONSOLIDATED ACTS – THE FAMILY LAW ACT 1975 – SECT 68L – Court order for independent representation of child's interest;

(2) If it appears to the court that the child's [interests](#) in the [proceedings](#) ought to be independently represented by a lawyer, the court:

The Independent Children's Lawyer (hereafter known as the ICL) is then appointed by Legal Aid and becomes an independent party to the proceedings on foot.

The Family Law Act 1975 s68LA – Role of independent children's lawyer ;

(4) The independent children's lawyer:

(a) is not the child's legal representative; and

(b) is not obligated to act on the child's instructions in relation to the proceedings.

Queensland Consolidated Acts - Child Protection Act 1999 Separate Representative & Office of the Public Guardian

SECT 110 - APPOINTMENT OF A SEPARATE REPRESENTATIVE

(1) If, in a child protection proceeding, the Childrens Court considers it is necessary in the child's best interests for the child to be separately represented by a lawyer, the court may—

*(a) order that the child be separately represented by a lawyer (the child's "**separate representative**"); and*

(b) make any other orders it considers necessary to secure the child's separate legal representation.

(2) Without limiting subsection (1) , the court must consider making an order for the child to have a [separate representative](#) if the proceeding concerns an application that is contested by the child's [parents](#) or opposed by the child.

(3) The rules of court may prescribe matters that the court must consider when deciding whether to make an order for the child to have a [separate representative](#).

(4) If a separate representative is appointed, he or she must—

(a) to the extent that is appropriate, taking into account the child's age and ability to understand—

(i) meet with the child; and

(ii) explain the separate representative's role; and

(iii) help the child take part in the proceedings; and

(b) as far as possible, present the child's views and wishes to the court

SECT 108C - PUBLIC GUARDIAN'S ROLE AT HEARING

(1) *The public guardian's role in a proceeding on an application for an order for a child is—*

(a) *to support the child by presenting the child's views and wishes to the Childrens Court; and*

(b) *to make submissions, call witnesses and test evidence, including by cross-examining witnesses.*

(2) *The public guardian's role in the proceeding is not diminished even if there is a direct representative or separate representative for the child.*

(3) *The **public guardian** is not a party to the proceeding.*

(4) *The public guardian's role in the proceeding ends when the application is decided or withdrawn.*

In Queensland we find sections of the Child Protection Act 1999 – s108C and s110 are in place to provide for the children to have access to legal counsel and a voice in the application and appeal proceedings in the Childrens Court of Queensland – but in reality the Court and the System do NOT implement and/or uphold these sections of the Act. Children's proceedings are dealt with ex-parte of the children and often where there is a "Separate Representative" assigned there is NO communication made with the children in the matter as it is presumed that they *do not* – legally represent the children – as that is identified as being the role of the Office of the Public Guardian, but the Office of the Public Guardian does not represent if they are not informed of the application in the first instance by the Department of Child Protection Services Initiating Application.

Childrens Court of Queensland – A Separate, Independent Court

The Childrens Court of Queensland is unique in its function as it does not sit within the Hierarchy of Courts – Queensland Supreme Courts, being identified as a Separate and Independent Court of Record in its making identifying the Childrens Court of Queensland and the Childrens Court of Queensland (Appellate).

The Childrens Court of Queensland (CCoQ) accepts Initiating Applications (Criminal) by the Director of Public Prosecutions and Initiating Applications (Civil) by the Director of Child Protection Litigation. The Childrens Court of Queensland (Appellate) accepts Initiating Applications (Criminal) by the Director of Public Prosecutions (Criminal) and Applications on Appeal from the CCoQ in both Criminal and Civil matters within 28 days only.

Although s58 of the Constitution of Queensland – Supreme Court's superior jurisdiction identifies that the Supreme Court of Queensland has “*all jurisdiction necessary for the administration of justice in Queensland*”; and “*Subject to the Commonwealth Constitution, unlimited jurisdiction at law, in equity and otherwise*”. The Supreme Court and the Supreme Court of Appeal have consistently maintained they have NO JURISDICTION to hear Initiating Applications OR Applications on Appeal in relation to Child Protection matters in the State of Queensland.

PAV-v-Director of Child Protection Litigation & Ors [2016] QCA 271 identifies the following:

“see *PAV v Director of Child Protection Litigation & Ors [2016] QCA 234*. His Honour (Justice McMURDO) refused the stay for absence of jurisdiction as the appellant had no right to appeal to this Court. In light of his Honour’s reasons, the Registry invited the appellant to file a Form 68 ‘Memorandum of Agreement to Dismissal of Appeal’. The appellant refused to do so, claiming that there was a right of appeal to this Court. The matter was then listed for mention for her to show why the appeal should not be dismissed for absence of jurisdiction.

Under the *Child Protection Act* s 117, the first respondent, the Director of Child Protection Litigation, had a right of appeal from Magistrate Quinn’s order of 30 August 2016 refusing its application to a District Court judge: see *Child Protection Act* sch 3 (definition of ‘appellate court’ para (a)(i)). This Court has consistently held that the *Child Protection Act* contemplates but one level of appeal from a decision of the kind made by Magistrate Quinn: see *SBD v Chief Executive, Department of Child Safety [2008] 1 Qd R 474 [19]*. No appeal lies under *District Court of Queensland Act 1967 (Qld) s 118(3)* as a Childrens Court constituted by a District Court judge is not a District Court; it is the Childrens Court: see *Cousins v HAL & Anor [2008]QCA 49*.

United Nations Convention on the Rights of the Child

The inability for the right to a Judicial Process under the Australian Constitution in relation to an *error of law* with regards to matters heard on Appeal in the CCoQ(Appellate) identifies contravene of the United Nations Convention - Rights of the Child under the following Articles:

ARTICLE 2 – NO CHILD SHOULD BE TREATED UNFAIRLY ON ANY BASIS

CCoQ and CCoQ(Appellate) being identified as a Separate, Independent Court in it's making prejudices the children of Queensland from the other States of Australia whereby the Children and their families are afforded the right to a natural course of judicial process through the Hierarchy of Courts relevant to those States.

ARTICLE 3 – ALL ADULTS SHOULD DO WHAT'S BEST FOR YOU

The Queensland Government, The Minister for Child Safety, Youth and Women, The Chief Executive of the Queensland Department of Child Protective Services (DCPS), and the CCoQ are repeatedly in contravene of ARTICLE 3 by not ensuring that the correct course of notification is implemented to ensure that the children of Queensland are afforded a fair and just voice in a Court of Law as identified under the Child Protection Act 1999; Childrens Court Rules Act 1992; and the Public Guardian Act 2014. All of these Acts identify and/or refer to the United Nations Convention on the Rights of the Child.

ARTICLE 4 – THE GOVERNMENT HAS A RESPONSIBILITY TO MAKE SURE YOUR RIGHTS ARE PROTECTED

The CCoQ identifies as a Separate, Independent Court of Queensland. This Court's only function is to process Initiating Applications made in Criminal Matters by the Director of Public Prosecutions – being originated by the Queensland Police Service – being a Department of Public Servants employed by the State of Queensland. Initiating Applications made in Civil Matters by the Director of Child Protection Litigation – being originated by the Queensland Department of Child Protection – being a Department of Public Servants employed by the State of Queensland. SECT 58 of the Constitution of Queensland identifies contravention of ARTICLE 4.

ARTICLE 5 – YOUR FAMILY HAS A RESPONSIBILITY TO HELP YOU LEARN TO EXERCISE YOUR RIGHTS, AND ENSURE THAT YOUR RIGHTS ARE PROTECTED

SECT 58 of the Constitution of Queensland identifies contravention of ARTICLE 5.

ARTICLE 9 – YOU HAVE THE RIGHT TO LIVE WITH YOUR PARENTS

Initiating Applications made by the DCPL in the CCoQ for children to be removed from their familiar home and placed in the Custody of the Chief Executive with interim orders made under

United Nations Convention on the Rights of the Child cont.

SECT 67 of the Child Protection Act 1999 – In particularly s67(b) whereby it identifies NO CONTACT DIRECT OR INDIRECT identifies direct contravention of ARTICLE 9.

ARTICLE 11 – YOU HAVE THE RIGHT TO BE PROTECTED FROM KIDNAPPING

SECT 354(2) of the Queensland Consolidated Acts Criminal Code 1899 Kidnapping

“A person kidnaps another person if the person unlawfully and forcibly takes or detains the other person with intent to gain anything from any person or to procure anything to be done or omitted to be done by any person”

SECT 67(4) whereby it identifies AN AUTHORISED OFFICER OR POLICE OFFICER MAY EXERCISE FORCE, THAT IS REASONABLE IN THE CIRCUMSTANCES identifies direct contravention of ARTICLE 11.

ARTICLE 12 – YOU HAVE THE RIGHT TO GIVE YOUR OPINION, AND FOR ADULTS TO LISTEN AND TAKE IT SERIOUSLY

Where children disclose the acts of domestic violence perpetrated upon them to Child Protection Workers, to Court Report Writers, to Police and Courts of Law and the protective parent is laid with an allegation of Parental Alienation – the child is forcibly removed from the protective parent with NIL CONTACT orders placed by the Courts and placed in the primary care of their perpetrator. The allegations of Parental Alimentation – by definition is DV by PROXY as the allegation alone and any suggestion that a Court of Law should remove a child from the protective parent after the child has disclosed domestic violence is a direct violation of the Rights of the Child. These reasons along with the reasons given in ARTICLE 2; ARTICLE 3; ARTICLE 4; ARTICLE 5; ARTICLE 9, identify direct contravention of ARTICLE 12.

ARTICLE 13 – YOU HAVE THE RIGHT TO FIND OUT THINGS AND SHARE WHAT YOU THINK WITH OTHERS

Children who have been subject to investigations by Department of Child Protection and subsequently removed from their familiar homes and placed with their perpetrator of domestic violence, are children who are identified as suffering from PTSD (DSM-5) and Trauma Attachment/Detachment (DSM-5). The children that suffer from these damaging and severe anxiety associated psychological syndromes are children who are identified as being withdrawn and reclusive without the ability to further communicate. These heinous acts of domestic violence committed against the children by Government Officials identifies direct contravention of ARTICLE 13.

United Nations Convention on the Rights of the Child cont.

ARTICLE 15 – YOU HAVE THE RIGHT TO CHOOSE YOUR OWN FRINDS

Children who are removed from their familiar homes are often place in Community Housing arrangements or Foster Care Placements with people they are unfamiliar with and enrolled in schools, severed from their family and friends with NO means for communicating with their existing family and peer groups unless it is directed by the Government Officials who have placed the Children in these circumstances, in order to justify their own positions. Identifies direct contravention of ARTICLE 15.

ARTICLE 17 – YOU HAVE THE RIGHT TO GET INFORMATION THAT IS IMPORTANT TO YOUR WELL-BEING

Reasons given in ARTICLE 2; ARTICLE 3; ARTICLE 4; ARTICLE 5; ARTICLE 9 are all applicable to ARTICLE 12 and identify direct contravention of ARTICLE 12.

ARTICLE 18 – YOU HAVE THE RIGHT TO BE RAISED BY YOUR PARENTS

Statistics taken from the ABS show in the period 2016-2017 there were 57,000 children placed under the care of the Australian Government. Of those 57,000 children NOT ONE of them was born without a mother. Of those 57,000 children NOT ONE of them was the child of a Department of Child Protection Worker and/or the child of a Magistrate / Judge of any of the Children's Courts located in Australia. The actions of the Australian Constitution that provides for State Government Departments to remove children from their familiar homes identifies direct contravention of ARTICLE 18.

ARTICLE 19 – YOU HAVE THE RIGHT TO BE PROTECTED FROM BEING HURT OR MISTREATED, IN MIND AND BODY

The psychological damage suffered by the children identified in reasons given in ARTICLE 13 identifies direct contravention of ARTICLE 19.

ARTICLE 36 – YOU HAVE THE RIGHT TO PROTECTION FROM ANY KIND OF EXPLOITATION (BEING TAKEN ADVANTAGE OF)

The Government functions for Child Protection Matters provides a Network of people and services in the “business” under the guise of “Child Protection” using the children as the pivot of the function to support the functionality of the government. Identifies direct contravention of ARTICLE 36.

United Nations Convention on the Rights of the Child cont.

ARTICLE 39 – YOU HAVE THE RIGHT TO HELP IF YOU’VE BEEN HURT, NEGLECTED OR BADLY TREATED

Where children disclose the acts of domestic violence perpetrated upon them to Child Protection Workers, to Court Report Writers, to Police and Courts of Law and the protective parent is laid with an allegation of Parental Alienation – the child is forcibly removed from the protective parent with NIL CONTACT orders placed by the Courts and placed in the primary care of their perpetrator. The allegations of Parental Alimentation – by definition is DV by PROXY as the allegation alone and any suggestion that a Court of Law should remove a child from the protective parent after the child has disclosed domestic violence is a direct violation of the Rights of the Child. Identifies direct contravention of ARTICLE 39.

ARTICLE 40 – YOU HAVE THE RIGHT TO LEGAL HELP AND FAIR TREATMENT IN THE JUSTICE SYSTEM THAT RESPECTS YOUR RIGHTS; AND

ARTICLE 42 – YOU HAVE THE RIGHT TO KNOW YOUR RIGHTS

Reasons given in ARTICLE 2; ARTICLE 3; ARTICLE 4; ARTICLE 5; ARTICLE 9 are all applicable to ARTICLE 12 and identify direct contravention of ARTICLE 12.