



Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014

Report No. 42
Health and Community Services
Committee
March 2014

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(Funding Red Tape Reduction)
Amendment Bill 2014**

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Abbreviations and glossary

Note: terms below in italics are defined terms in legislation

the Bill	Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014
<i>chief executive</i>	Director-General of a department providing funding ¹
the committee	Health and Community Services Committee
Community Services Act	<i>Community Services Act 2007</i>
Child Protection Act	<i>Child Protection Act 1999</i>
the department	Department of Communities, Child Safety and Disability Services
Disability Services Act	<i>Disability Services Act 2006</i>
Family Services Act	<i>Family Services Act 1987</i>
the former committee	Health and Disabilities Committee
<i>funding</i>	see section 3.1 of this report
the Minister	Minister for Communities, Child Safety and Disability Services
NGO	non-government organisation
QCAT	Queensland Civil and Administrative Tribunal
QCOSS	Queensland Council of Social Service
QLS	Queensland Law Society
<i>serious concern</i>	see section 4.2 of this report
the tribunal	Queensland Civil and Administrative Tribunal (QCAT)

¹ Proposed meaning, see clause 7 of Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014

Chair's foreword

On behalf of the Health and Community Services Committee of the 54th Parliament of Queensland, I present this report on the Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014 (the Bill).

The Bill was introduced into the Legislative Assembly by the Minister for Communities, Child Safety and Disability Services on 11 February 2014. The committee was required to report to the Legislative Assembly by 12 March 2014.

The Bill is intended to safeguard government funding for services and products which contribute to Queensland's economic, social and environmental wellbeing by amending funding laws administered by the Department of Communities, Child Safety and Disability Services. The amendments aim to remove unnecessary red tape.

In considering the Bill, the committee's task was to consider the policy to be given effect by the Bill, and whether the Bill has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

On behalf of the committee, I thank those who made written submissions on this Bill. Thanks also to officials from the Department of Communities, Child Safety and Disability Services who briefed the committee, the committee's staff and the Technical Scrutiny secretariat.

I commend the report to the House.



Trevor Ruthenberg MP
Chair

Recommendations

Recommendation 1 **2**

The committee recommends that the Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014 be passed.

Recommendation 2 **6**

The committee recommends that the Minister inform the Legislative Assembly what arrangements will be implemented, once section 134 of the *Disability Services Act 2006* is repealed, to ensure that there are adequate mechanisms to prevent an immediate risk of harm to a person with a disability because of abuse, neglect or exploitation.

Recommendation 3 **9**

The committee recommends that the Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014 be amended to provide that a minister who makes a funding declaration must table a statement in the Legislative Assembly about the declaration.

Committee comment **16**

The committee considers the removal of a funded entity's right to seek an external merits-based review is justified when balanced against the objectives of the legislation and the retention of internal review of decisions.

1 Introduction and overview of the Bill

1.1 Role of the committee

The Health and Community Services Committee (the committee) was established by resolution of the Legislative Assembly on 18 May 2012, and consists of government and non-government members.

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of the fundamental legislative principles to the Bill.

1.2 Committee process

The Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014 (the Bill) was introduced into the Legislative Assembly on 11 February 2014 by the Hon. Tracy Davis MP, Minister for Communities, Child Safety and Disability Services (the Minister). The Bill was referred to the committee for examination. The committee was required to report to the Legislative Assembly by 12 March 2014.

Officers from the Department of Communities, Child Safety and Disability Services (the department) briefed the committee on 17 February 2014.

The committee called for submissions by notice on its website, and wrote to 28 stakeholder organisations to invite submissions. Those stakeholders were invited to express interest in providing oral evidence at a public hearing; no expressions of interest were received. Five submissions were received (see list at Appendix A).

A transcript of the briefing provided by the department on 17 February 2014 is published on the committee's webpage, along with documents provided by the department. Submissions received and accepted by the committee are also published on the webpage at www.parliament.qld.gov.au/hcsc.

1.3 Policy objectives of the Bill

The Explanatory Notes state that the objective of the Bill is “to safeguard funding for the provision of services and products that contribute to Queensland’s economic, social and environmental wellbeing and enhance the quality of life of individuals, groups and communities”.² In addition, the Explanatory Notes state that “government is seeking to make its investment more effective and efficient by reducing red tape costs, simplifying regulation and having more consistent funding arrangements across social services agencies”.³

The Explanatory Notes describe the Queensland Government’s significant financial investment in non-government organisations (NGOs) to deliver community services (\$1.5 billion in 2012-13). The funding arrangements involve the department administering funding under three separate Acts – the *Community Services Act 2007* (Community Services Act), the *Disability Services Act 2006* (Disability Services Act) and the *Family Services Act 1987* (Family Services Act). The Explanatory Notes state that there is duplication and “unnecessary legislative requirements, which increase red tape costs for funded NGOs and local governments”.⁴

The Bill amends and simplifies the Community Services Act so that it may be used for all of the department’s funding to NGOs, local governments and other external entities; repeals parts of the

2 Explanatory Notes, Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, p.1

3 Explanatory Notes, Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, p.1

4 Explanatory Notes, Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, p.1

Disability Services Act that duplicate provisions of the Community Services Act; and repeals the Family Services Act, which is no longer required.⁵

The application of the fundamental legislative principles to the Bill is discussed in section 3.2 and 4.9 below.

1.4 Should the Bill be passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed. The committee considered the Bill, information provided by the department in a briefing on 17 February 2014, and the information and views expressed in the submissions received and accepted.

Submitters generally supported the direction of reforms in the Bill, particularly those which should reduce duplication of requirements on funded organisations. Some specific concerns were raised by submitters, and they are discussed in later sections of this report.

The committee notes that the Bill contains a number of reforms to human services funding legislation which were introduced into the previous parliament in 2011 and examined by the former Health and Disabilities Committee.⁶ That Bill lapsed when the parliament was suspended in February 2012. The current Bill is narrower in scope, and the mechanism by which the amended Act would be applied (by ministerial declaration, discussed in section 3.2) differs.

After considering the policy issues discussed in the following chapters of this report, and considering whether the Bill has sufficient regard to the fundamental legislative principles, the committee decided to recommend that the Bill be passed.

Recommendation 1

The committee recommends that the Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014 be passed.

5 Explanatory Notes, Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, pp.1-2

6 Health and Disabilities Committee, *One Funding System for Better Services Bill 2011*, Report No. 6, 2011, Legislative Assembly of Queensland, available from <http://www.parliament.qld.gov.au/documents/committees/HDC/2011/onefunding/RPT-OneFunding-111219.pdf>

2 Duplicated and unnecessary provisions omitted

2.1 Introduction

Both the Community Services Act and the Disability Services Act contain provisions which are either duplicated or which the Explanatory Notes state are considered unnecessary as they provide for matters which can be dealt with administratively or through the department's service agreements with funded entities. Those provisions which the Bill would, if passed, remove from the Acts are described below.

2.2 Pre-approval as service provider before funding application

2.2.1 Summary of amendments

The Bill omits Part 3 of the Community Services Act which requires an entity to apply for approval as an approved service provider, before being eligible to apply for funding. The Bill also omits similar provisions from Part 6 of the Disability Services Act. The Minister described the policy change as follows:

The bill removes the need for organisations to become 'approved service providers' before they can apply for funding. Instead, organisations will only need to make one application for the funding itself. During this process, departments will confirm the organisation's bona fides, governance arrangements and capability to manage the funds and deliver the required services.⁷

2.2.2 Submissions

In its submission, the Queensland Council of Social Service (QCOSS) supported the removal of the 'pre-approval' process as it would reduce red tape for community service organisations.⁸ The Queensland Law Society (QLS) also supported removal of the requirement to become an "approved service provider". The QLS suggested "this may improve access to funding opportunities for small organisations and potentially reduce paperwork for larger providers".⁹

PeakCare supported removal of the requirement to apply to be an approved provider before applying for government funding as a red tape reduction measure. PeakCare argued that a focus on reducing administrative burdens on funding agencies and funded entities "should be considered independently of deliberation about the best way for government to regulate the child protection system".¹⁰

The Public Advocate raised concerns about removal of the pre-approval process as a potential loss of safeguards when it is considered along with removal of other safeguards for people with a disability in funded disability services.¹¹ Those concerns are discussed in section 2.6 below.

7 Legislative Assembly of Queensland, *Hansard*, 11 February 2014, p.49 (Tracy Davis, Minister for Communities, Child Safety and Disability Services)

8 Queensland Council of Social Service (QCOSS), Submission 4, p.1

9 Queensland Law Society (QLS), Submission 2, p.1

10 PeakCare Queensland Inc., Submission 5, p.2

11 Public Advocate, Submission 3, pp.3-5

2.3 Investigation and compliance provisions

2.3.1 Summary of amendments

Currently, both the Community Services Act and the Disability Services Act contain similar provisions about investigation powers, compliance notices and appointment of an interim manager. Those powers may be used in the rare circumstances where the chief executive considers it necessary. The Bill omits those provisions from the Disability Services Act and the Community Services Act, and inserts new investigation and compliance provisions in the Community Services Act. The new investigation and compliance provisions are discussed in chapter 4.

The investigation and compliance provisions are intended for use across all the funding programs administered by the Department of Community Services, Child Safety and Disability Services and may be used by other departments. The legislative mechanism to apply the amended Community Services Act is a ministerial declaration, which is discussed in section 3.2.

The Public Advocate's submission raises a concern about omission of a power to enter a funded disability service without a warrant in specified circumstances. Those concerns are discussed in section 2.6 below.

2.4 Disability service standards and community service standards

The Bill omits Part 2 of the Community Services Act (sections 10 to 12), which provide for the making and publication of standards for the provision of community services. The Explanatory Notes state that "funded entities are contractually required to meet quality standards, so it is not necessary to provide for these in generic legislation".¹²

2.5 Prescribed requirements – Community Services Regulation

Section 29 of the current Community Services Act provides for a regulation to prescribe requirements for how a funded service provider conducts its operations and provides services. A breach of the requirements in the Community Services Regulation 2008 triggers the investigation powers in the Community Services Act.

The Bill omits the regulation-making power. The committee was advised that the Community Services Regulation 2008 will be repealed.¹³ The Explanatory Notes state that the trigger for investigation and remedial powers will be clarified in the amended Community Services Act, and will also relieve the compliance burden.¹⁴ The Minister described an example of current requirements on funded organisations, which will be removed by the Bill:

*... the Community Services Act requires funded organisations to have procedures in place to ensure their directors and officers know what is in the organisation's constitution and governing documents. This imposes 'upfront' obligations that all funded organisations must comply with, even those that are performing well, and adds red tape costs.*¹⁵

12 Explanatory Notes, Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, p.2

13 Department of Communities, Child Safety and Disability Services, *Overview of the provisions to be retained in/repealed from existing Acts*, Briefing paper, p.2, available from <http://www.parliament.qld.gov.au/documents/committees/H CSC/2014/CommLegFRedTapeRAB14/bp-17Feb2014-1.pdf>

14 Explanatory Notes, Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, p.2

15 Legislative Assembly of Queensland, *Hansard*, 11 February 2014, p.50 (Tracy Davis, Minister for Communities, Child Safety and Disability Services)

2.6 Omission of safeguards for people with disability

2.6.1 Background – abuse of people with disability

The Public Advocate's submission summarises allegations of abuse in a funded disability service that received public and media attention and led to some of the safeguards for people with a disability in the current Disability Services Act. The Public Advocate's submission cites evidence from criminal proceedings arising from a report of serious abuse of people with a disability living in a Bribie Island facility run by a funded organisation.¹⁶ The submission also summarises reforms, currently in the Disability Services Act, which arose from events in the Bribie Island facility and recognition that more powers were needed to prevent such a situation occurring again.¹⁷ The submission argues that this background is important to consideration of the Bill and whether those safeguards are no longer required.¹⁸

2.6.2 Matters removed from Disability Services Act

Some of the legislative provisions noted by the Public Advocate as safeguards for people with disability have been retained in either the Disability Services Act or will be in the Community Services Act if the Bill is passed. The submission describes the following safeguards for people with a disability that would be removed by the Bill if it is passed:

- the disability sector quality system, which has been replaced by the Human Services Quality Framework and will be implemented administratively rather than legislatively
- pre-approval as a service provider, before eligibility to apply for funding
- a regulation which may prescribe how a funded service provider provides services. The regulation includes the requirement for a funded service provider to keep and implement a policy about preventing abuse, neglect and exploitation
- the power of an authorised officer to enter a disability service without a warrant (section 134, Disability Services Act) under certain circumstances.

The committee is satisfied that it is appropriate to reduce the administrative burden on service providers by removing from legislation the service quality framework, pre-approval as a service provider and 'prescribed requirements' about how services are delivered. The committee considers that those matters are more appropriately dealt with in service agreements or contracts, and through other administrative arrangements.

2.6.3 Powers of entry – funded disability services

Section 134 of the Disability Services Act, which would be omitted by the Bill, provides that an authorised officer may enter a place where a funded provider provides disability services. If the place is not a home, the authorised officer may enter when it is open for business, and may enter a home without a warrant, and with reasonable help and force, if they reasonably suspect that –

- (i) *there is an immediate risk of harm to a person with a disability at the place because of abuse, neglect or exploitation; or*
- (ii) *there is an imminent risk that evidence at the place, of a misuse of funds provided to the service provider under part 7, will be destroyed or removed ...*

Section 134 also enables entry without a warrant to check whether a service provider has taken the steps required under a compliance notice.

16 Public Advocate, Submission 3, pp.1-2

17 Public Advocate, Submission 3, p.4, citing the second reading debate of the Disability Services Bill 2005

18 Public Advocate, Submission 3, p.6

The Public Advocate's submission acknowledges that entry without a warrant may be considered to be a breach of the fundamental legislative principles:

*It is well known and understood that the abuse of vulnerable people, including many people with disability, is difficult to uncover. People with disability themselves may find it difficult to complain, or not know that they have a right to. It may be difficult to gather the evidence needed to support the application for a warrant or an immediate police response.*¹⁹

The committee notes the concerns raised about the capacity to protect vulnerable people with a disability, particularly those who receive residential services from a funded entity. The committee seeks the Minister's assurance about protection of people with a disability who may be at immediate risk of harm from abuse, neglect or exploitation.

Recommendation 2

The committee recommends that the Minister inform the Legislative Assembly what arrangements will be implemented, once section 134 of the *Disability Services Act 2006* is repealed, to ensure that there are adequate mechanisms to prevent an immediate risk of harm to a person with a disability because of abuse, neglect or exploitation.

19 Public Advocate, Submission 3, p. 6

3 Application of the amended Community Services Act

3.1 Proposed amendments – definition of ‘funding’ and related terms

Clause 7 of the Bill inserts proposed sections 7 and 8 to define *funded entity*, *funded product or service*, *funding* and *funding agreement*. The definitions specify the types of assistance provided by government which may (subject to a ministerial declaration, discussed below) come under the provisions of the amended Community Services Act.

As the Explanatory Notes state, the definition of *funding* is critical for understanding the application of the Act.²⁰ The definition of *funding* in proposed section 8(1) is:

8 (1) A department provides **funding** if the department provides aid or support in the form of money or other assistance to an entity—

- (a) to enable the entity to deliver a product or service to the community where the product or service has a social, environmental or economic benefit for Queensland; and
- (b) on conditions that—
 - (i) require specified products or services to be delivered; and
 - (ii) require the entity to be accountable to the department for delivering the products or services and the use of the money or other assistance.

Examples of assistance other than money the department may provide—

- lease of a building
- transfer of land
- goods or services
- in-kind support

3.2 Minister may declare that Community Services Act applies

3.2.1 Proposed amendments

Proposed section 9 of the Act, inserted by clause 7 of the Bill, enables the Community Services Act to be applied to any minister who administers a department which provides *funding*.

Clause 8 inserts proposed sections 10 and 12 which provide that the Act applies in relation to funding that is the subject of a funding declaration, and that a funding declaration may be made by a minister. A minister may declare by notice that funding is *funding* to which the Community Services Act applies. A funding declaration may relate to funding that has already been provided or is available to be provided. It may be under a program of funding, or be one-off funding.²¹

Proposed sections 10 and 12 enable a minister to determine whether or not the Act applies to particular *funding*, as defined. Legislative provisions such as this, which allow the executive government to decide when legislation applies, are generally considered to be ‘Henry VIII clauses’, and are potentially inconsistent with the fundamental legislative principles in the *Legislative Standards Act 1992*.

Proposed subsection 12(3) (inserted by clause 8) sets out the following matters which a minister may consider in deciding whether to make a funding declaration:

- (a) the nature of—
 - (i) the product or service to be delivered with the funding; and

20 Explanatory Notes, Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, p.6

21 Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, clause 8, proposed section 12

- (ii) *the service provider market; and*
- (iii) *the entity or entities to be provided with the funding;*
- (b) *the importance of the product or service to meeting the needs of individuals, groups and the community;*
- (c) *the characteristics and vulnerability of the users, or intended users, of the product or service;*

Examples—

- *people with disability*
- *children and young people*
- (d) *the amount of funding to be provided;*
- (e) *whether the funding is regulated under another law or an administrative scheme;*
- (f) *any other matter the Minister considers is relevant.*²²

3.2.2 Ministerial declaration of when the legislation will apply

The amendments described in section 3.2.1 above have the potential to be inconsistent with the fundamental legislative principles in section 4 of the *Legislative Standards Act 1992*, in particular

- potential retrospective application of the legislation, and
- authorising changes to the application of the Act by executive action (a Henry VIII clause), i.e. a ministerial declaration.

Potential retrospective application

The Explanatory Notes acknowledge that allowing the Minister to make funding declarations retrospectively may adversely affect the rights and liberties of funded entities that have already received funding that was not subject to a declaration when the funding was provided. The Explanatory Notes state:

Applying the amended Act will not impose additional obligations on funded organisations; rather it will provide funding departments with additional powers to safeguard service users and public funds where a funded organisation seriously fails to meet its obligations.

*... The Bill includes important limitations on declarations made after funding has already been provided. For example, the powers in the amended (Act) can only be exercised prospectively in relation to serious concerns that exist after a declaration is made and when departments have provided written notice to each funded entity within one month of the declaration being made.*²³

The committee notes that a ministerial declaration will not impose additional obligations on funded entities, but will enable the use of powers to protect clients of funded entities if there is a *serious concern* after the declaration has been made. The committee also notes that a declaration must be published on a Queensland Government website.

Sufficient regard to the institution of Parliament

A fundamental legislative principle in the *Legislative Standards Act 1992* is that a Bill should only authorise the amendment of an Act by another Act. A clause which enables an Act to be expressly or impliedly amended by subordinate legislation or executive action is referred to as a Henry VIII clause.

22 Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, clause 8, proposed subsection 12(3)

23 Explanatory Notes, Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, pp.3-4

The use of Henry VIII clauses is considered to be acceptable in some very limited circumstances, such as to facilitate immediate executive action, or to facilitate transitional arrangements. The Explanatory Notes describe a policy rationale for the provision which allows a ministerial declaration to apply the amended Act:

Importantly, the provisions will allow other departments that choose to use the (Act) in the future to apply the Act to their existing investments. The amendments in the Bill have been designed to ensure that the (Act) is capable of being used by other departments and declaration will allow departments to safeguard their existing investments.

In considering whether proposed sections 10 and 12 (inserted by clause 8) have sufficient regard to the institution of Parliament, the committee noted that the policy intent of the Bill is to provide mechanisms to protect public funding and to protect individuals who may be harmed by a service or product from a funded entity. The committee also noted that the Bill would require a minister to publish a notice on a Queensland Government website, to keep a list of funding that is subject to a declaration, and to notify affected funded entities.²⁴

While it is concerned about the proposed sections which enable a decision of the executive arm of government to determine when legislation is to apply, the committee considered that proposed sections 10 and 12 may be justifiable.

To ensure public confidence and enable parliamentary scrutiny of the exercise of power by a minister to determine when the legislation will apply, the committee recommends, unanimously, that the Bill be amended to require a minister to table a statement in the Legislative Assembly when a declaration is made under proposed section 12 of the Community Services Act.

Recommendation 3

The committee recommends that the Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014 be amended to provide that a minister who makes a funding declaration must table a statement in the Legislative Assembly about the declaration.

24 Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, clause 8, proposed sections 12 - 14

4 Safeguards for funding – managing serious concerns

4.1 Introduction

The Community Services Act contains monitoring and enforcement powers, some of which are amended by the Bill. The powers may be used in circumstances such as a suspected breach of the Act, a service agreement or the prescribed requirements about how a funded service provider conducts its operations or provides services. The Bill provides for the use of investigation, enforcement and remedial powers, if triggered by a *serious concern*.

4.2 ‘Serious concern’ defined

4.2.1 Proposed amendment

Clause 8 of the Bill inserts a new Part 3 in the Community Services Act, which sets out provisions for managing serious concerns. This includes inserting the following meaning for *serious concern*:

*A **serious concern** for funding received by a funded entity exists if any of the following happen or there is a serious risk that any of the following will happen—*

- (a) *the funding received by the funded entity is improperly used;*

Examples of improper use of funding—

- *funding is used for a dishonest or fraudulent purpose*
- *funding is used for a purpose other than providing a funded product or service*

- (b) *the funded entity significantly fails to deliver a funded product or service;*

Example of significantly failing to deliver a product or service—

closing an emergency accommodation service delivered with funding where the service is required, under the funding agreement, to be continually open

- (c) *an act done or omission made by the funded entity in providing a funded product or service results in harm to an individual;*

Example—

an individual uses a funded service delivered by a funded entity and the individual suffers physical, psychological, emotional or financial harm as a result of neglect, abuse or exploitation by the funded entity

- (d) *if the funded entity received the funding to deliver disability services to which the Disability Services Act 2006 applies—the funded entity contravenes a provision of the Disability Services Act 2006.²⁵*

The term is described as “a prerequisite for the exercise of particular statutory remedial powers and investigation and enforcement powers”.²⁶ The Explanatory Notes state that this amendment will “provide clarity about use of the safeguarding powers while relieving the compliance burden by specifying four serious concerns (harm to a person; significant failure in service delivery; misuse of funds; or a breach of the DSA [Disability Services Act]) that trigger the use of the powers”.²⁷

The Minister described this approach in her explanatory speech as “a much more efficient and effective way of ensuring that government has powers to take quick and decisive action when

25 Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, clause 8, proposed section 16

26 Explanatory Notes, Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, p.7

27 Explanatory Notes, Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, p.2

necessary". She also emphasised that it will "significantly reduce the compliance burden on funded organisations that are doing the right thing".²⁸

4.2.2 Submissions

Three submissions commented on the definition of *serious concern*. As noted above, a *serious concern* is the trigger for the use of powers under the proposed amendments to the Community Services Act.

The QLS noted that the concepts, e.g. 'harm to an individual', have the potential to be wide and appear to be subjective. Its submission suggested that the language in proposed section 16 could cause confusion and noted that it may not be consistent with the fundamental legislative principle that legislation should be unambiguous and drafted in a clear and precise way.²⁹ In its submission, QCOSS acknowledged that the legislation should have some flexibility, but suggested the definition is subjective and risks being applied inconsistently.³⁰

PeakCare highlighted the need for careful consideration of what threshold of harm to an individual will trigger a *serious concern* for the department. PeakCare's member agencies provide services for children and young people who are subject to statutory child protection intervention (or at risk of intervention). Staff in those agencies are required under child protection legislation to report significant harm to a child in their care. PeakCare suggests that exploration will be needed of the extent to which an individual carer's act or omission may affect a funded agency's funding.³¹

The committee notes the concerns raised about 'harm to an individual' in the context of child protection services, and asks the Minister to ensure that her department engages with funded entities in child protection to clarify the intent of the proposed amendments and interaction with reporting of suspected harm to a child.

4.3 Co-operative approach

The Community Services Act states that nothing limits the way in which the department may cooperate with a funded service provider when dealing with a matter which could be subject to a compliance notice.³² Proposed subsection 15(1) (clause 8) emphasises this by requiring a chief executive or authorised officer to consider whether it would be more appropriate to seek the cooperation of the funded entity, or use a remedy available under a funding agreement, before exercising a power under the Act. Proposed subsection 15(3) states that exercising a power under the Act cannot be challenged because the chief executive or authorised officer did not comply with 15(1).³³

4.4 Investigation, enforcement and remedial powers

Clause 8 of the Bill proposes amendments to allow a chief executive to exercise monitoring, enforcement and remedial powers where there is reasonable belief that a *serious concern* exists. Those powers include:

- giving a funded entity a compliance notice (proposed section 19)
- suspending or stopping funding or terminating the funding agreement if the funded entity does not comply with a compliance notice (proposed subsection 19(5))

28 Legislative Assembly of Queensland, *Hansard*, 11 February 2014, p.49 (Tracy Davis, Minister for Communities, Child Safety and Disability Services), p.50

29 QLS, Submission 2, p.3

30 QCOSS, Submission 4, p.1

31 PeakCare Queensland Inc., Submission 5, p.3

32 *Community Services Act 2007*, section 31

33 Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, clause 8, proposed section 15

- appointing an interim manager for a funded entity (proposed section 20), and
- recovering funds from a funded entity (proposed section 22).

The powers may also be applied when a funded entity fails to comply with a requirement notice, which is discussed in more detail in section 4.8.

4.5 Compliance notice

Proposed section 19 (clause 8) states that the chief executive may give a funded entity a compliance notice to require the entity to remedy a *serious concern* or comply with a requirement notice. The compliance notice must state:

- whether the notice relates to a *serious concern* or failure to comply with a requirement notice
- the facts and circumstances which form the basis of the chief executive's belief that a *serious concern* or failure to comply with a requirement notice exists
- that the funded entity must remedy the matter within the identified timeframe, and
- that it is an offence not to comply, unless the funded entity has a reasonable excuse.

The compliance notice may also include the steps the chief executive considers necessary to remedy the matter and require the funded entity to report in writing to the chief executive after taking a step or steps.³⁴

4.6 Interim manager

Proposed section 20 (clause 8) states that the chief executive may appoint a person as an interim manager for the funding received by a funded entity,³⁵ and proposed section 21 specifies the matters which a chief executive must consider when making such an appointment. Those considerations include that the appointment is reasonably necessary to remedy a *serious concern*, that it is essential for the funded product or service to continue and that an administrator, liquidator or receiver has not already been appointed.³⁶

Clause 25 of the Bill amends the functions and powers of an interim manager currently contained in the Community Services Act. An interim manager's functions are proposed to be to remedy a *serious concern* for the funding received by the funded entity and to ensure the funded product or service continues to be delivered.³⁷ In carrying out those functions, an interim manager may:

- enter any part of the funded entity's premises
- use the facilities or things in the premises that it appears are intended for use, or are ordinarily used, to deliver a funded product or service
- ask for and accept payments owing to the funded entity, and
- do anything in relation to the funded product or service on behalf of the funded entity, that the funded entity is permitted or required to do.³⁸

4.7 Suspending and recovering funding

Proposed subsection 19(5) (clause 8) allows the chief executive to stop or suspend funding or terminate a funding agreement if a funded entity does not comply with a compliance notice.³⁹

34 Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, clause 8, proposed subsection 19(1) to 19(4)

35 Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, clause 8, proposed section 20

36 Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, clause 8, proposed section 21

37 Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, clause 25

38 Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, clause 25

39 Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, clause 9, proposed subsection 19(5)

Proposed section 22 allows the chief executive to recover unspent or improperly used funds, which are considered a debt owing to the State, where a funded entity has received and not spent funds and the funding has been suspended or stopped, or the funding agreement ended.⁴⁰

4.8 Investigation powers and authorised officers

4.8.1 Proposed amendments – authorised officers

Clauses 9 to 15 of the Bill amend the powers of authorised officers in the current in the Community Services Act. Clause 9 sets out the functions of an authorised officer, which include investigating, monitoring and ensuring compliance with the Act.⁴¹ Clause 10 provides for appointment of authorised officers. It enables a chief executive to appoint a public service employee, other employee of the department or, for the purpose of investigating a particular matter, another person as an authorised officer. When making an appointment, the chief executive must be satisfied that the person is appropriately qualified and has any competencies prescribed under a regulation relevant to their appointment.⁴²

4.8.2 Proposed amendments – warrants and requirement to provide information

Clause 12 makes amendments to enable a warrant to be issued in relation to an entity which receives funding to deliver disability services to determine whether it has complied with provisions of the Disability Services Act.⁴³

Clause 14 replaces section 60 and 61 of the Community Services Act, regarding requirements for a funded entity to provide information. The new proposed section 60 states that where there is reasonable belief that an offence has been committed or a *serious concern* exists, a chief executive or authorised officer may:

- require the entity to provide information within a stated reasonable time, and
- copy information that is provided as a document, and require the entity to certify the copy as a true copy of the document.

It is an offence not to comply with either requirement, unless the entity has a reasonable excuse. Self-incrimination is a reasonable excuse for an individual not to give information.⁴⁴

The Bill also provides for the disclosure of confidential information and the sharing of information between agencies.

Clauses 28 and 36 of the Bill amend section 87 and 128 of the Community Services Act to allow a person responsible for administering the Act (including an interim manager, chief executive, public service employee or authorised officer) to disclose confidential information about a funded entity or individual only where they:

- have the consent of the funded entity or person to whom the information relates
- are complying with a lawful process which requires the production of documents or giving of evidence before a court or tribunal
- believe a *serious concern* exists (in this circumstance the information is provided to “an entity that can take appropriate action”), or
- are expressly permitted or required by another Act.⁴⁵

40 Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, clause 8, proposed section 22

41 Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, clause 9

42 Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, clause 10

43 Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, clause 12

44 Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, clause 14, proposed sections 60 and 61

Clause 39 inserts a new section 131 in the Community Services Act, which allows the chief executive to give information about a funded entity to:

- a department, if the funded entity receives funding from the department, or
- another entity, if the chief executive considers the entity has an interest in the proper and efficient delivery of a funded product or service of the funded entity.

Proposed subsection 131(2) states the chief executive may provide this information without the consent of the funded entity.⁴⁶

4.8.3 Stakeholder concerns about confidential information

Several submissions raised concern about the potential for an authorised officer to access confidential client information, including information that is subject to legal professional privilege. The QLS suggested that client legal information or information subject to legal professional privilege that is obtained should be specifically excluded from the information sharing provisions in the Act. It suggested specific provision be made for this, such as in section 78 of the *Crime and Misconduct Act 2001*.⁴⁷

To protect client and staff confidentiality, QCOSS suggests that amendments should be made to protect confidential information. The submission notes that the wide range of confidential information held by funded organisations may be subject to various other laws, such as information privacy laws and legal professional privilege.⁴⁸

The committee notes the concerns raised in submissions about protection of confidential client and staff information and legal professional privilege. The committee considered the approach of the former Health and Disabilities Committee (the former committee) when it considered similar issues in an earlier Bill – the One Funding System for Better Services Bill 2011 - which lapsed when the last parliament was suspended prior to an election in early 2012.⁴⁹ During consideration of the earlier Bill the department advised that it was not intended to alter the operation of legal professional privilege. Legislation can override legal professional privilege only through express words or a clear intention to do so, which neither the earlier Bill nor this Bill does.

The committee also notes that information that may be required under proposed section 60 is “information related to the offence or serious concern”. Proposed section 60 does not appear to authorise a requirement for confidential client or staff information unless the information is related to the offence or serious concern. In such circumstances, the information may demonstrate that a *serious concern* exists.

4.9 Review of decisions

4.9.1 Summary of amendments

Clauses 30 to 34 of the Bill amend provisions about reviewable decisions in the Community Services Act. Reviewable decisions include the appointment of an interim manager and ceasing or suspending funding following failure to comply with a compliance notice.⁵⁰

45 Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, clause 28 and clause 36

46 Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, clause 28 and clause 39

47 QLS, Submission 2, p.5

48 QCOSS, Submission 4, p.1

49 One Funding System for Better Services Bill 2011

50 *Community Services Act 2007*, Schedule 1

Clause 34 removes the provision for an interested party to apply to the Queensland Civil and Administrative Tribunal (QCAT) for a review of a chief executive's review decision.⁵¹ Related amendments include:

- clause 30, which amends subsection 93(1) to remove the requirement for a chief executive to include, in a reviewable decision notice, that the interested person may apply to QCAT for a further review of the decision
- clause 32, which amends subsections 95(3) to (6) to provide that only a chief executive may stay the operation of a decision, and
- clause 33, which amends subsection 96(4) to provide that only a chief executive may give an interested person a reviewable decision notice.⁵²

Clause 60 of the Bill omits Part 14 of the Disability Services Act, which provides for review of decisions, as the amended Community Services Act will apply instead.

4.9.2 Submissions

Several stakeholders raised concerns about omission of the existing external merits-based review of decisions by QCAT. In its submission, QCOS acknowledged that government needs the ability to take swift and decisive action to protect resources and safety of services users, it stated that –

*... it must be balanced with fair and transparent mechanisms for funded organisations to appeal decisions which affect their funding arrangements and other related contractual obligations. An external appeal process is an important avenue for organisations to seek impartial reviews of such decisions and without one there is a risk of perceived bias and inconsistent application by government agencies, impacting on the outcomes of reviews.*⁵³

PeakCare stated that external review is “integral to transparency and fairness for the simple reason that the aggrieved party views the mechanism as independent of the original decision-maker”.⁵⁴

The QLS noted that, while internal review and judicial review would still be available to funded organisations, “... having a review avenue to QCAT can be accessible for small organisations, given its cost effectiveness”.⁵⁵

4.9.3 Impact on rights and liberties

Section 4 of the *Legislative Standards Act 1992* states that fundamental legislative principles are the “principles relating to legislation that underlie a parliamentary democracy based on the rule of law”. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The committee considered whether clauses 34 and 60 of the Bill have sufficient regard to the rights and liberties of funded entities, as they remove the right of a funded entity to apply to QCAT for an external merits-based review of a reviewable decision.

In considering this issue, the committee notes that the rights and liberties of funded entities are not absolute and must be balanced against the objectives of the legislation. The Explanatory Notes state:

51 Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, clause 34

52 Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, clauses 30, 32 and 33

53 QCOS, Submission 4, p.1

54 PeakCare Queensland Inc., Submission 5, p.3

55 QLS, Submission 2, p.5

*... an important objective of the Acts is to enable government to take quick and effective remedial action to ensure publicly-funded services and products are delivered safely, and to safeguard the use of public funds. Providing an external appeal may impede government's ability to take swift and effective remedial action on these matters.*⁵⁶

The committee also notes that funded entities will still be able to apply for an internal, merits-based review of a reviewable decision and that there are limitations and safeguards on the use of remedial powers. For example, an interim manager can only be appointed where a *serious concern* exists and it is essential for the funded product or service to continue.⁵⁷ Similarly, funding can only be ceased, or a funding agreement be terminated, where a funded entity fails to comply with a compliance notice.⁵⁸

Further, the committee understands that external review is not a standard feature of other legislation about funding. For example, the *Housing Act 2003* provides only for internal review.⁵⁹

Committee comment

The committee considers the removal of a funded entity's right to seek an external merits-based review is justified when balanced against the objectives of the legislation and the retention of internal review of decisions.

56 Explanatory Notes, Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, p.4

57 Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, clause 8, proposed section 21

58 Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, clause 9, proposed subsection 19(5)

59 Explanatory Notes, Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, p.4

5 Repeal of the Family Services Act

5.1 Funding provisions

Clause 76 of the Bill repeals the Family Services Act, which has been extensively amended between 1988 and 2013. The Family Services Act currently provides for honorary officers (see below), delegation of powers by the chief executive, grants, powers in relation to suspected non-compliance with the conditions of a grant, and transitional provisions relating to other Acts.

The Explanatory Notes indicate that the Family Services Act is one the multiple funding Acts which result in duplicated and unnecessary legislative requirements.⁶⁰ A document tabled by the department at the public briefing on the Bill on 17 February 2014⁶¹ notes that the revised Community Services Act will be available instead.

5.2 Honorary officers – transfer to Child Protection Act

Clauses 47 to 51 of the Bill amend the *Child Protection Act 1999* (Child Protection Act) to insert a new Chapter 5, Part 1A – Honorary officers. Currently, section 4 of the Family Services Act provides for the appointment of honorary officers for periods of up to two years to assist officers of the department to give effect to the Family Services Act or another Act. As outlined above, the Family Services Act is to be repealed.

The proposed new provisions in the Child Protection Act replace the provisions providing for the chief executive to appoint appropriately qualified persons to be honorary officers for a period of up to two years. The role of an honorary officer is to assist the chief executive in the administration of the Child Protection Act. The Explanatory Notes do not state the roles of honorary officers. A document provided to the committee by the department explains the transfer of these provisions to the Child Protection Act, given the repeal of the Family Services Act:

- *Transferring these provisions will enable the department to continue to appoint non-departmental employees as honorary officers to carry out activities linked to the child protection system – such as conducting research.*
- *The provisions allow the department to check the criminal histories of applicants and impose terms and conditions on their appointment, including that they maintain the confidentiality of client files.*⁶²

Stakeholders did not raise any issues about the proposed repeal of the Family Services Act and the transfer of provisions about honorary officers into the Child Protection Act.

60 Explanatory Notes, Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, p.1

61 Department of Communities, Child Safety and Disability Services, *Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014 – at a glance*, Briefing paper, available from <http://www.parliament.qld.gov.au/documents/committees/HCSC/2014/CommLegFRedTapeRAB14/tp-17Feb2014.pdf>

62 Department of Communities, Child Safety and Disability Services, *Overview of the provisions to be retained in/repealed from existing Acts*, Briefing paper, p.2, available from <http://www.parliament.qld.gov.au/documents/committees/HCSC/2014/CommLegFRedTapeRAB14/bp-17Feb2014-1.pdf>

Appendices

Appendix A – List of submissions

Sub #	Submitter
001	Queensland Meals on Wheels Services Association Inc.
002	Queensland Law Society
003	Public Advocate
004	Queensland Council of Social Service
005	PeakCare Queensland Inc.

Appendix B – Officials at public briefing

Public briefing – 17 February 2014, Brisbane
<p>Department of Communities, Child Safety and Disability Services</p> <ul style="list-style-type: none">• Ms Cathy Taylor, Acting Deputy Director-General, Strategic Policy and Programs• Mr Matt Simpson, Principal Policy Officer, Strategic Policy & Programs

Statement of Reservation – Mrs Jo-Ann Miller MP

JO-ANN MILLER MP

SHADOW MINISTER FOR HEALTH, NATURAL RESOURCES AND MINES, AND HOUSING

MEMBER FOR BUNDAMBA

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11 March 2014

Mr Trevor Ruthenberg MP
Member for Kallangur
Chairperson
Health and Community Services Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Ruthenberg

Statement of Reservation – *Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014*

I wish to notify the Health and Community Services committee that the Queensland Opposition has reservations about aspects of Report No. 42 of the Health and Community Services Committee into the *Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014*.

The Queensland Opposition will detail the reasons for its concern during the parliamentary debate on the Bill.

Yours sincerely

A handwritten signature in cursive script that reads "Jo-Ann Miller".

Jo-Ann Miller MP

**Deputy Chairperson – Health and Community Services Committee
Member for Bundamba**