



# **Public Guardian Bill 2014**

**Report No. 46**

**Health and Community Services Committee**

**May 2014**



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## Health and Community Services Committee

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## Contents

<b>Abbreviations and glossary</b>	<b>v</b>
<b>Chair's foreword</b>	<b>vii</b>
<b>Recommendations</b>	<b>viii</b>
<b>1 Introduction and overview of the Bill</b>	<b>1</b>
1.1 Role of the committee	1
1.2 Committee process	1
1.3 Policy objectives of the Bill	1
1.4 Summary of the Bill	2
1.5 Should the Bill be passed?	2
<b>2 Queensland Child Protection Commission of Inquiry – the policy context for the Bill</b>	<b>3</b>
2.1 The Commission of Inquiry	3
2.2 Commission of Inquiry recommendations implemented by this Bill	4
2.3 Implementation of remaining Commission of Inquiry recommendations	4
<b>3 Public Guardian</b>	<b>6</b>
3.1 Commission of Inquiry recommendations	6
3.2 Establishment and appointment of the Public Guardian	6
3.2.1 <i>Establishment</i>	6
3.2.2 <i>Not under direction of Minister</i>	6
3.2.3 <i>Appointment</i>	7
3.2.4 <i>Abolition of the Adult Guardian</i>	7
3.3 Principles for functions and powers	7
3.3.1 <i>Children</i>	7
3.3.2 <i>Adults with impaired capacity</i>	8
3.4 Public Guardian functions	8
3.4.1 <i>Adult guardian functions</i>	8
3.4.2 <i>Child advocate functions</i>	8
3.4.3 <i>Potential overlap of Public Guardian and other roles</i>	9
<b>4 Child advocacy and community visiting</b>	<b>11</b>
4.1 Commission of Inquiry recommendations	11
4.2 Children and places to whom the Public Guardian functions apply	11
4.2.1 <i>Relevant child</i>	11
4.2.2 <i>Visitable site</i>	11
4.3 Community visitor program (child)	12
4.3.1 <i>Purpose and functions of community visitor program</i>	12
4.3.2 <i>When a visit must occur</i>	12
4.3.3 <i>Powers of community visitors</i>	13
4.3.4 <i>Community visitors, visitable homes and visitable sites</i>	14
4.4 Child advocacy officer	14
4.4.1 <i>Functions and powers</i>	14
4.5 Advocacy hubs	14
4.6 Information exchange	14
4.7 Separate representative and information exchange	15

4.8	Public Guardian intervention in child protection proceedings	15
4.8.1	<i>The Bill</i>	15
4.8.2	<i>Submissions and hearing evidence</i>	15
4.9	Appointment of community visitors and child advocacy officers	16
4.9.1	<i>Aborigines and Torres Strait Islanders</i>	17
4.9.2	<i>Appointment in both community visitor roles</i>	17
4.9.3	<i>Appointment as child advocacy officer</i>	17
<b>5</b>	<b>Adults with impaired capacity</b>	<b>18</b>
5.1	Functions transferred from the Guardianship and Administration Act	18
5.1.1	<i>Overview</i>	18
5.1.2	<i>Investigation powers</i>	18
5.1.3	<i>Protective powers</i>	18
5.2	Community visitor program (adult)	18
5.2.1	<i>Transfer of community visitor functions</i>	18
5.2.2	<i>Purpose, functions and powers</i>	19
<b>6</b>	<b>Fundamental legislative principles</b>	<b>20</b>
6.1	Suspension of Public Guardian – natural justice (clause 97)	20
6.2	Early termination of Adult Guardian – rights and liberties of individuals (clause 162)	20
6.3	Confidentiality and privacy	20
6.4	Powers to enter premises	21
6.5	Protection against self-incrimination	21
6.6	Amendment of an Act only by another Act (“Henry VIII” provision)	21
	<b>Appendices</b>	<b>23</b>
	Appendix A – List of Submissions	23
	Appendix B – Witnesses at public hearings and briefings	24
	Appendix C – Letter from the Department of Justice and Attorney-General, providing the Department’s report on issues in submissions received on the Bill	25
	<b>Statement of Reservation – Jo-Ann Miller MP</b>	<b>26</b>

## Abbreviations and glossary

**Note: terms below in italics are defined terms in legislation**

ATSILS	Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd
Attorney-General	Attorney-General and Minister for Justice
the Bill	Public Guardian Bill 2014
the Bills	Public Guardian Bill 2014, Family and Child Commission Bill 2014, and Child Protection Reform Amendment Bill 2014
Child Protection Act	<i>Child Protection Act 1999</i>
Child Protection Amendment Bill	Child Protection Reform Amendment Bill 2014
<i>child protection system</i>	the system of services provided by relevant agencies to children and young people in need of protection or at risk of harm, including preventative and support services to strengthen and support families – see Schedule 2, Family and Child Commission Bill for full definition
Commission for Children Act	<i>Commission for Children Young People and Child Guardian Act 2000</i>
Commission of Inquiry	Queensland Child Protection Commission of Inquiry
the committee	Health and Community Services Committee
DCCSDS	Department of Communities, Child Safety and Disability Services
the department	Department of Justice and Attorney-General
the departments	Department of Justice and Attorney-General, and Department of Communities, Child Safety and Disability Services
DJAG	Department of Justice and Attorney-General
Family and Child Commission	(proposed) Queensland Family and Child Commission
Family and Child Commission Bill	Family and Child Commission Bill 2014
Guardianship and Administration Act	<i>Guardianship and Administration Act 2000</i>
Minister	Attorney-General and Minister for Justice
Public Guardian Bill	Public Guardian Bill 2014
QLS	Queensland Law Society
the Reform Roadmap	the Child Protection Reform Roadmap
the three Bills	Public Guardian Bill 2014, Family and Child Commission Bill 2014, and Child Protection Reform Amendment Bill 2014
the tribunal	Queensland Civil and Administrative Tribunal





## Chair's foreword

On behalf of the Health and Community Services Committee of the 54th Parliament of Queensland, I present this report on the Public Guardian Bill 2014.

The Public Guardian Bill 2014 was introduced into the Legislative Assembly by the Attorney-General and Minister for Justice on 20 March 2014. The committee was required to report to the Legislative Assembly by 13 May 2014.

The Bill creates the position of Public Guardian, which will provide individual advocacy for children and young people in the child protection system, and continue the functions of the current Adult Guardian. The Public Guardian's advocacy role will replace the current Child Guardian within the Commission for Children and Young People and Child Guardian.

The committee considered 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 and who appeared as witnesses at the committee's public hearing. Thanks also to officials from the Department of Justice and Attorney-General 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 Public Guardian Bill 2014 be passed.

### **Recommendation 2** **5**

The committee recommends that the Minister:

- provide the Legislative Assembly, during the second reading debate, with an outline of the expected timing of the main components of reforms to implement the Queensland Child Protection Commission of Inquiry recommendations
- ensure that detailed information about the expected sequence and timing of child protection reforms is provided to child protection stakeholders to assist them in responding to proposals and planning for change.

## **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 Public Guardian Bill 2014 (the Bill) was introduced into the Legislative Assembly on 20 March 2014 by the Hon. Jarrod Bleijie MP, Attorney-General and Minister for Justice. The Attorney- and Minister for Justice (Attorney-General) also introduced the Family and Child Commission Bill 2014 and the Child Protection Reform Amendment Bill 2014 on the same date. All three Bills were referred to the committee for examination. The committee was required to report to the Legislative Assembly on the three Bills by 13 May 2014.

The committee considered the three Bills together, but has prepared a separate report on each Bill.

The three Bills form part of the Queensland Government's response to recommendations of the Queensland Child Protection Commission of Inquiry (Commission of Inquiry). The Commission of Inquiry and the Government's response to its recommendations are outlined in Chapter 2 of this report to provide some background to the three Bills and the policy objectives.

Officers from DJAG and the Department of Communities, Child Safety and Disability Services (DCCSDS) briefed the committee on the Bills on 26 March 2014.

The committee called for submissions by notice on its website, and wrote to stakeholder organisations to invite submissions. Twenty-four submissions were received; ten of which (see list at Appendix A) commented on the Public Guardian Bill.

At the committee's request, the DJAG provided a report commenting on the issues in submissions, some of which are reflected in this report. Appendix C contains a covering letter to the report and a link to where the report is published on the committee's website.

The committee held a public hearing to examine the Bill on 29 April 2014 at Parliament House, Brisbane; four submitters who gave evidence commented on the Public Guardian Bill (see list at Appendix B).

Transcripts of the briefing provided by the three departments on 26 March 2014 and the public hearing on 29 April 2014 are published on the committee's webpage. Submissions received and accepted by the committee, and which commented on this Bill are also published on the webpage at [www.parliament.qld.gov.au/hcsc](http://www.parliament.qld.gov.au/hcsc).

### **1.3 Policy objectives of the Bill**

The stated policy objectives of the Public Guardian Bill are to:

- establish the role of the Public Guardian as an independent statutory body reporting to the Attorney-General and Minister for Justice
- transfer refocussed child guardian functions including child advocacy and visit functions from the Commission for Children and Young People and Child Guardian to the Public Guardian
- transfer the functions and powers of the Adult Guardian, including for the community visitor program, to the Public Guardian and consequently abolish the position of Adult Guardian, and

- make consequential amendments to the *Child Protection Act 1999*, the *Commission for Children and Young People and Child Guardian Act 2000* (Commission for Children Act) and other legislation to support the other objectives of the Bill.<sup>1</sup>

The Bill is intended to give effect to recommendations 12.7 and 12.8 of the Commission of Inquiry (reproduced in section 2.2 of this report).

#### **1.4 Summary of the Bill**

The Bill creates the new statutory position of Public Guardian. The Public Guardian's functions would consist of adult guardian functions transferred from the Guardianship and Administration Act, and refocused child advocacy functions, transferred from the Commission for Children Act.

The child guardian functions currently in that Act would be refocused on individual advocacy for children in the child protection system.

The Adult Guardian's investigation and protective functions and powers, the community visitor program and powers to suspend an attorney's power for an adult with impaired capacity would remain unchanged.

#### **1.5 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 departments in a briefing on 26 March 2014, evidence given at a public hearing on 29 April 2014, and the information and views expressed in the ten submissions which commented on this Bill.

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 Public Guardian Bill 2014 be passed.

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1 Explanatory Notes, p.1

## 2 Queensland Child Protection Commission of Inquiry – the policy context for the Bill

### 2.1 The Commission of Inquiry

The Queensland Child Protection Commission of Inquiry Report, *Taking Responsibility: A Roadmap for Queensland Child Protection* was presented to the Premier in June 2013. The Commission of Inquiry was established a year earlier and led by the Hon. Tim Carmody QC. Its terms of reference were broad and included reviewing the implementation of recommendations of earlier inquiries, the Child Protection Act and relevant parts of the Commission for Children Act. The terms of reference included reviewing the effectiveness of the current child protection system, and the effectiveness of the monitoring, investigation, oversight and complaint mechanisms for the child protection system.<sup>2</sup> The Commission of Inquiry was asked to chart a roadmap for the child protection system for the next decade. Its report sets out a roadmap for reform,<sup>3</sup> and made 121 recommendations.

The Commission of Inquiry made recommendations:

*... to build a sustainable and effective child protection system over the next decade. They confirmed that the child protection system is under immense stress and that the current layers of oversight were at the expense of delivering services to the public.*<sup>4</sup>

The Queensland Government response to the Queensland Child Protection Commission of Inquiry final report<sup>5</sup> accepted 115 of the recommendations, and the remaining six recommendations were accepted in principle.

The Commission of Inquiry Report stated that:

*... the spiralling costs and demand on the child protection statutory system have largely been driven by a vacuum in the family support services sector and in other secondary services related to child protection. This vacuum has resulted in:*

- *inattention to early family distress, leading to serious family breakdown with no alternative but removal of children*
- *inability to improve family capacity, leading to longer times in care and more distress through instability and unmet needs.*<sup>6</sup>

The Commission of Inquiry set out a Child Protection Reform Roadmap (the Reform Roadmap) to reduce demand, in part by ensuring better support for families. There are three ‘tracks’ in the Reform Roadmap:

- reduce the number of children and young people in the child protection system
- revitalise child protection frontline services and family support, breaking the intergenerational cycle of abuse and neglect
- refocus oversight on learning, improving and taking responsibility.<sup>7</sup>

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2 Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, State of Queensland, June 2013, p.1

3 Queensland Child Protection Commission of Inquiry Report, see chapter 15

4 Ms Jenny Lang, Department of Justice and Attorney-General, *Public Briefing Transcript*, 26 March 2014, p.2

5 Queensland Government, *Queensland Government response to the Queensland Child Protection Commission of Inquiry final report, Taking Responsibility: A Roadmap for Queensland Child Protection*, December 2013, accessed 27 March 2014 from <http://www.parliament.qld.gov.au/apps/TabledPapers/RelatedDocs.asp?RefNo=5413T4181>

6 Queensland Child Protection Commission of Inquiry Report, p.517

7 Queensland Child Protection Commission of Inquiry Report, p.526

The Commission of Inquiry suggested implementation of the Reform Roadmap in three phases: the first phase of planning preparation and trials in 2013-14; a second phase of gradual roll-out of reform strategies from 2014-15 to 2017-18; and a consolidation phase from 2019-20 to 2023-24.

At a briefing on the Bills, Ms Lang told the committee that:

*Implementing the commission's reforms will require a fundamental shift in the way that government agencies deliver services as well as child safety professionals and community organisations. The reforms place greater emphasis on supporting vulnerable families to take appropriate care of their children and reforming the system in Queensland to better provide for the safety, wellbeing and best interests of our most at-risk children.*<sup>8</sup>

The three Bills introduced into the Legislative Assembly on 20 March 2014 are intended to implement 12 of the Commission of Inquiry recommendations. Ms Lang told the committee that work was underway on the next stages of reform, both legislative and non-legislative:

*to comprehensively change the way that Queensland protects, cares for and supports its most vulnerable children. The reforms will include building the capacity of government and non-government workforce and programs by establishing initiatives such as community based intake pathways, a new practice framework for child safety and non-government staff and expanding intensive family support services.*<sup>9</sup>

The committee notes that the planned reforms to Queensland's child protection system are extensive. The Bill which is considered in this report, along with the Family and Child Commission Bill 2014 and the Child Protection Reform Amendment Bill 2014, is part of the first phase of implementation of a ten year Reform Roadmap.

## **2.2 Commission of Inquiry recommendations implemented by this Bill**

The Explanatory Notes state that the Public Guardian Bill gives effect to recommendations 12.7 and 12.8 of the Commission of Inquiry. Those recommendations are reproduced below.

### **Recommendation 12.7<sup>10</sup>**

*That the role of the Child Guardian be refocused on providing individual advocacy for children and young people in the child protection system. The role could be combined with the existing Adult Guardian to form the Public Guardian of Queensland, an independent statutory body reporting to the Attorney-General and Minister for Justice.*

### **Recommendation 12.8**

*That the role of Child Guardian — operating primarily from statewide 'advocacy hubs' that are readily accessible to children and young people — assume the responsibilities of the child protection community visitors and re-focus on young people who are considered most vulnerable.*

## **2.3 Implementation of remaining Commission of Inquiry recommendations**

The committee recognises that implementing the recommendations of the Commission of Inquiry is a complex exercise that will take some time. The Child Protection Reform Amendment Bill, the Family and Child Commission Bill and the Public Guardian Bill "lay the foundations of the reforms recommended by the commission and implement 12 out of 115 of the commission's recommendations that government has accepted".<sup>11</sup>

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8 Ms Jenny Lang, *Public Briefing Transcript*, 26 March 2014, p.2

9 Ms Jenny Lang, *Public Briefing Transcript*, 26 March 2014, pp.3-4

10 See the Queensland Child Protection Commission of Inquiry Report

11 Ms Jenny Lang, *Public Briefing Transcript*, 26 March 2014, p.2

The committee notes that a number of stakeholders raised questions and issues that appear to result from a lack of understanding of the intended timing and sequence of implementation of the Commission of Inquiry recommendations, whether legislative or non-legislative. The committee considers that effective implementation of the reforms will be assisted if stakeholders have a reasonable understanding of what is intended and the anticipated timing of reforms. The committee notes that DCCSDS will “prepare detailed five-year and 10-year blueprints for implementation of the government's response”.<sup>12</sup>

The committee recommends that the Minister inform the Legislative Assembly about the proposed scope and timing of the implementation of the recommendations of the Commission of Inquiry, and ensure that detailed information is provided to child protection stakeholders about the expected sequence and timing the implementation of legislative and non-legislative reforms.

**Recommendation 2**

The committee recommends that the Minister:

- provide the Legislative Assembly, during the second reading debate, with an outline of the expected timing of the main components of reforms to implement the Queensland Child Protection Commission of Inquiry recommendations
- ensure that detailed information about the expected sequence and timing of child protection reforms is provided to child protection stakeholders to assist them in responding to proposals and planning for change.

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12 Department of Communities, Child Safety and Disability Services, *A new system to support families and protect children*, accessed 2 May 2014 from <http://www.communities.qld.gov.au/gateway/reform-and-renewal/child-and-family/a-new-system-to-support-families-and-protect-children>

### 3 Public Guardian

#### 3.1 Commission of Inquiry recommendations

The role of Child Guardian was added to the Commission for Children and Young People in 2004, following the Crime and Misconduct Commission's report *Protecting Children: An Inquiry into Abuse of Children in Foster Care*.<sup>13</sup> The Commission of Inquiry reported that the child guardian functions were carried out primarily through investigations, community visitors, complaints handling, auditing and investigating matters arising from complaints, and monitoring of departmental performance.<sup>14</sup>

The Commission of Inquiry proposed:

*revitalising the position of the Child Guardian by re-focusing its role on safeguarding the rights of child and young people and on providing appropriate support for young people to manage their rights in the child protection system. ...*

*... It would have a statutory right to appear (at the Public Guardian's discretion) in any child protection proceedings to present and test evidence on behalf of a subject child ...*<sup>15</sup>

#### 3.2 Establishment and appointment of the Public Guardian

##### 3.2.1 Establishment

Clauses 9 and 10 of the Public Guardian Bill establish the Public Guardian and specify that the Public Guardian's role is to protect the rights and interests of two groups of people:

- adults who have impaired capacity for a matter
- relevant children and children staying at a *visitable site*<sup>16</sup>.

##### 3.2.2 Not under direction of Minister

Clause 15 provides that, in exercising its functions and exercising its powers, the Public Guardian is not under the direction or control of the Minister.

The Public Guardian is required to prepare a report on performance of the adult guardian functions and the child advocate functions, and provide it to the Minister who must table the report in the Legislative Assembly within 14 sitting days. The Public Guardian is not a statutory body for the purpose of the *Statutory Bodies Financial Arrangements Act 1982* or the *Financial Accountability Act 2009*.<sup>17</sup>

The Australian Association of Social Workers was:

*... concerned about the extent to which the Public Guardian will be able to fully exercise his/her advocacy function in relation to youth detention centres which share the same reporting lines to the Attorney General as the Public Guardian.*

*We ask that the legislation be amended to clarify reporting lines for the Public Guardian when exercising child support and advocacy functions in relation to departments and agencies which share its reporting lines.*<sup>18</sup>

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13 Explanatory Notes, *Child Safety Legislation Amendment Bill 2004*, p.1

14 Queensland Child Protection Commission of Inquiry Report, p.413

15 Queensland Child Protection Commission of Inquiry Report, p.413

16 See sections 4.1.2 and 4.2.2 below for a summary of the definition of *visitable site*

17 Public Guardian Bill 2014, clauses 124-125

18 Australian Association of Social Workers, Submission 9, p.4



The DJAG advised the committee that the Public Guardian will be an independent statutory officer who controls the Office of the Public Guardian, and noted that clause 15 provides that the Public Guardian is not under the control or direction of the Minister.<sup>19</sup>

### 3.2.3 Appointment

Chapter 5 of the Public Guardian Bill provides that the Public Guardian is appointed by Governor in Council on the Minister's recommendation for a term of up to five years, and may be reappointed. Clause 101 provides that the Public Guardian has control of the Office of the Public Guardian, and this does not prevent the office being attached to the department. The Public Guardian may engage medical, legal, accounting or other professionals considered necessary,<sup>20</sup> and may engage external contractors.<sup>21</sup>

### 3.2.4 Abolition of the Adult Guardian

Clause 231 omits chapter 8 from the Guardianship and Administration Act, and in doing so, abolishes the position of Adult Guardian. The new role of Public Guardian will have both adult guardian and child guardian functions.

Clause 162 provides that the person holding the office of Adult Guardian immediately before commencement of the Public Guardian Act is to be offered appointment as Public Guardian. It also provides that, whether the person consents or not to the appointment, no compensation is payable. This is discussed in Chapter 6, in relation to fundamental legislative principles.

## 3.3 Principles for functions and powers

### 3.3.1 Children

Clause 7 of the Public Guardian Bill sets out principles to be applied by those performing functions or exercising powers under the Act in relation to a *relevant child*<sup>22</sup> or child staying at a *visitable site*<sup>23</sup>.

The main principle is that the best interests of the child are paramount. Other general principles set out in clause 7 are, in summary:

- the child's family has primary responsibility for a child's upbringing and development and the family should be supported
- the child is a valued member of society
- a child is to be treated with respect for their dignity and privacy and cared for in a way that protects, promotes wellbeing and allows the child to reach their full potential
- the child's emotional, moral, social and intellectual development is important
- the child is entitled to be heard
- the child should be able exercise rights and participate in decisions that affect their life
- the child should be able to access available services necessary to meet their needs
- an ongoing relationship between a child and their family is important for the child's welfare and wellbeing, and

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19 *Public Guardian Bill 2014: Response to Health and Community Services Committee Submissions*, p.6, available at <http://www.parliament.qld.gov.au/work-of-committees/committees/HCSC/inquiries/current-inquiries/PublicGuardianB14>

20 Public Guardian Bill, clause 103

21 Public Guardian Bill, clause 104-106

22 See section 4.1.1 below for a summary of the definition of *relevant child*

23 See sections 4.1.2 and 4.2.2 below for a summary of the definition of *visitable site*

- an ongoing connection with the child's culture, traditions, language and community is important for the child's welfare and wellbeing.

In its submission, the Queensland Law Society (QLS) suggested that the principles should refer to the Charter of Rights for a Child in Care, which is in Schedule 1 of the Child Protection Act. In addition, the QLS suggests that the principles should refer to sections 5 to 5E of the Child Protection Act,<sup>24</sup> which contain principles for the administration of that Act.

In its response to submissions the Department of Justice and Attorney-General advised:

*The Charter of Rights for a Child in Care ... relate to the State's responsibilities to care for children in a particular way while they are in the custody of or under the guardianship of the Chief Executive (Child Safety). The rights established in the Charter are the things that a child should expect from the child's guardian, not necessarily from an advocate for the child.*

*Clause 13(2)(b) of the Bill provides the Public Guardian with the function to help a child if the child considers the Charter is not being complied with. The Public Guardian also has the power to obtain information in relation to ensuring compliance with the Charter.*<sup>25</sup>

In relation to the QLS proposal that the principles should refer to sections 5 to 5E of the Child Protection Act, the response to submissions highlighted those principles in the Public Guardian Bill which are similar to those in the Child Protection Act, and stated that:

*Other principles and concepts within the Child Protection Act 1999 that have not been included in the Bill reflect the different roles of Child Safety and the Public Guardian, including that Child Safety has a role in removing children from their parents and in some cases becomes the guardian of the child.*<sup>26</sup>

### 3.3.2 Adults with impaired capacity

There is no change to the principles that currently apply to administration of the adult guardian functions under the Guardianship and Administration Act. Clause 6 of the Public Guardian Bill provides that when performing a function or exercising a power in relation to an adult with impaired capacity, the principles to be applied are those in schedule 1 of the Guardianship and Administration Act, and the regard must be had to the acknowledgements in section 5 of that Act.

## 3.4 Public Guardian functions

Clauses 12 and 13 respectively set out the Public Guardian's adult guardian functions and child advocate functions.

### 3.4.1 Adult guardian functions

The Public Guardian's adult guardian functions in clause 12 are the same as those set out in section 174 of the Guardianship and Administration Act, with minor modifications. The Public Guardian Bill omits Chapter 8 of the Guardianship and Administration Act and transfers it into the Bill.

### 3.4.2 Child advocate functions

The Public Guardian's child advocate functions in relation to a *relevant child*<sup>27</sup> are set out in clause 13 of the Bill and summarised below:

- developing a trusting and supportive relationship with the child, so far as is possible

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<sup>24</sup> QLS, Submission 17, p.5

<sup>25</sup> *Public Guardian Bill 2014: Response to Health and Community Services Committee Submissions*, pp.23-24

<sup>26</sup> *Public Guardian Bill 2014: Response to Health and Community Services Committee Submissions*, p.24

<sup>27</sup> See section 4.1.1 below for a summary of the definition of *relevant child*

- providing advice and information to the child about matters the child is concerned about
- supporting the child at, and participating in conferences or mediations, family group meetings, or other meetings
- helping the child to resolve issues or disputes with others
- monitoring any plan for the child's health, education or benefit to ensure it is adhered to;
- working with government agencies and non- providers of service or facilities for the child
- seeking to resolve, with the chief executive (child safety), disputes about reviewable decisions (defined in section 126(1))
- helping the child to make an official complaint to someone
- helping the child to seek, or respond to, the revocation or variation of an order under the Child Protection Act that affects the child
- helping the child to initiate or, on the child's behalf, initiating an application to the Queensland Civil and Administrative Tribunal (the tribunal) for review of a child protection matter
- helping a recognised entity to support the child in referring a matter to the tribunal
- supporting the child at a proceeding before a court or the tribunal
- in a proceeding before a court relating to a court assessment order or child protection order – making submissions, calling witnesses and testing evidence in the proceeding, including by cross-examining witnesses
- in a proceeding before the tribunal relating to a child protection matter – making submissions, calling witnesses and testing evidence in the proceeding, including by cross-examining witnesses.
- for a child under care at a visitable home or a child staying at a *visitable site* – providing a community visitor program to promote and protect the rights and interests of the child
- for a child under the custody of the chief executive (child protection) to help the child if they consider that the charter of rights (Schedule 1, Child Protection Act) is not being complied with.

#### *3.4.3 Potential overlap of Public Guardian and other roles*

Submissions to the committee raised concerns about the clarity of the Public Guardian's functions, potential overlap with the functions of others and the potential for the Public Guardian to have a role conflict when in the role of both guardian for an adult with impaired capacity, and child advocate for the adult's child.

PeakCare Queensland Inc. (PeakCare) expressed concern about the potential overlap of the Public Guardian's functions and those of others in the child protection system. A particular concern was the potential for family group meetings and court related matters to become more adversarial, and potentially confusing and overwhelming.<sup>28</sup>

The Youth Advocacy Centre Inc. also expressed concern about the potential confusion and questioned whether the model of advocacy proposed for the Public Guardian was sufficiently well developed.<sup>29</sup>

The Department advised that the Bill provides a framework which will allow for adjustments that are needed to address actual circumstances as they unfold. The framework:

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<sup>28</sup> PeakCare, Submission 10, p.6

<sup>29</sup> Youth Advocacy Centre Inc., Submission 18, pp.10-12

*.. allows the Public Guardian to develop detailed supporting policies that can shift over time in response to changes in the needs of children both as the Commission reforms are implemented and further into the future.*<sup>30</sup>

*Potential conflict between adult guardian functions and child advocate functions*

The QLS submission suggests that there will be situations where the Public Guardian has a conflict as both the guardian for an adult with impaired capacity for a matter who is a parent, and the child advocate for a child of that adult. The submission proposes that the Bill should be amended to provide clear guidance about how such a conflict is managed.<sup>31</sup>

In response, the DJAG advised:

*Should any apparent conflict of interest potentially appear between the role of the Public guardian in acting for an adult with impaired capacity and that of a child in the child protection system, action will be taken, as currently occurs in conflict of interest positions in, for example legal firms, to protect the interests of both parties. What action will be taken will be determined by the circumstances of each individual case. Where appropriate the engagement of external service providers will be considered.*<sup>32</sup>

*Committee comment*

The committee is satisfied that the principles for administration of the legislation and the proposed functions of the Public Guardian are appropriate.

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30 *Public Guardian Bill 2014: Response to Health and Community Services Committee Submissions*, p.32

31 QLS, Submission 17, p.7

32 *Public Guardian Bill 2014: Response to Health and Community Services Committee Submissions*, p.27

## 4 Child advocacy and community visiting

### 4.1 Commission of Inquiry recommendations

The Commission of Inquiry recommended:

*That the role of Child Guardian – operating from statewide ‘advocacy hubs’ that are readily accessible to children and young people – assume the responsibilities of the child protection community visitors and re-focus on young people who are considered most vulnerable.*<sup>33</sup>

The Commission of Inquiry reported that the current community visitor program has attempted to reach all children in out-of-home care. Children and young people raise concerns informally and most are resolved locally, which aligns with research findings that few young people are willing to use formal complaint mechanisms.<sup>34</sup> The Commission of Inquiry considered that regular visits should be continued to children and young people who are considered most vulnerable,<sup>35</sup> and that the focus be on a child and youth advocacy program to provide advocacy, mediation, information and advice to children and young people in care.<sup>36</sup>

In accepting the Commission of Inquiry recommendation the Government stated that it is committed to children having access to an independent, individual advocate who will safeguard their rights in the child protection system.<sup>37</sup>

### 4.2 Children and places to whom the Public Guardian functions apply

#### 4.2.1 Relevant child

The Public Guardian will have powers in relation to a *relevant child* and children staying at a *visitable site*.

A *relevant child* is defined in clause 52, and includes a child who is subject to orders, intervention or agreements under the *Child Protection Act 1999*. In addition:

*The Public Guardian will also be able to assist children who are receiving help from the Public Guardian immediately before a child protection order, agreement or intervention under the Child Protection Act ceases. For example, the Public Guardian may have been helping a child on a child protection order work through a complaints process and the child protection order ceases, but the Public Guardian might believe that it is in the child’s best interests to continue to assist the child with the complaint even though the order stopped.*<sup>38</sup>

#### 4.2.2 Visitable site

Clause 51 defines a *visitable site* to mean a residential facility, a detention centre, boot camp centre, corrective service facility, or authorised mental health service. A *visitable home* is a residence where a child in the custody of the chief executive (child safety) is placed in care.

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33 Queensland Child Protection Commission of Inquiry Report, Recommendation 12.7, p.418

34 Queensland Child Protection Commission of Inquiry Report, p.414

35 Queensland Child Protection Commission of Inquiry Report, p.415

36 Queensland Child Protection Commission of Inquiry Report, p.417

37 Queensland Government, *Queensland Government response to the Queensland Child Protection Commission of Inquiry final report*, p.22

38 Ms Jenny Lang, *Public Briefing Transcript*, 26 March 2014, p.10

### 4.3 Community visitor program (child)

#### 4.3.1 Purpose and functions of community visitor program

The purpose of the community visitor program for children is to protect the rights and interests of children staying at visitable locations.

In line with the Commission of Inquiry recommendations, the community visitor program is to focus on the most vulnerable children and young people, who may or may not be a *relevant child*. For example, a child in a detention centre might not always be on a child protection order, but given the nature of the site, they will be visited as part of the community visitor program. The scope of the community visitor program is broader than child advocacy, which applies only to a *relevant child*.<sup>39</sup>

Community visitors' functions are similar to those in the *Commission for Children Young People and Child Guardian Act 2000* (Commission for Children Act). The functions include:

- advocate on behalf of the child by listening to, voicing and facilitating resolution of the child's concerns and grievances
- facilitate the child's access to appropriate support services to meet the child's needs
- inquire into and report on the child's physical and emotional wellbeing
- inspect a *visitable home* and report on the appropriateness of the accommodation and ensure the child's needs are being met
- inspect a *visitable site* and report on the accommodation and service (having regard to relevant State and Commonwealth laws, policies and standards) and ensure the child's needs are being met.<sup>40</sup>

PeakCare argues that the scope of the community visitor programme is too wide and should not include children under guardianship orders to another person, and children with a kinship carer. The submission suggests there is overlap in the roles of community visitors and various practitioners who are in contact with a child in care.

The DJAG advised that:

*Resources will be focussed on children who need visits most, matching frequency of visits to children's needs, reducing the extent of the current overlap that exists between the community visitor program of the commission for Children and Young People and Child Guardian and other providers, while maintaining an important check and balance on the series provide to children in out-of-home care.*<sup>41</sup>

A particular concern for PeakCare is inspection and reporting on the appropriateness of accommodation at a *visitable home* and of accommodation and services at a *visitable site*, which PeakCare states "indicate the imperative for objective, transparent and culturally respectful criteria at the same time as further over-regulation of licensed care services".<sup>42</sup>

#### 4.3.2 When a visit must occur

The role of community visitors encompasses both *visitable homes* and *visitable sites*. A *visitable home* is one where a child has been placed in care under the Child Protection Act (e.g. in foster care, with a licensed care service, an entity conducting a departmental care service, kinship care). A *visitable site* is a residential facility, detention centre, boot camp, corrective services facility or authorised mental health service where telehealth child is staying.<sup>43</sup>

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39 Ms Jenny Lang, *Public Briefing Transcript*, 26 March 2014, p.10

40 See clause 56 of the Public Guardian Bill

41 *Public Guardian Bill 2014: Response to Health and Community Services Committee Submissions*, p.13

42 PeakCare, Submission 10, p.2

43 See clause 51 of the Public Guardian Bill for the full definitions

Clause 55 provides that the Public Guardian may allocate community visitors for a visitable location (a *visitable home* or *visitable site*). Clause 57 provides that the Public Guardian may direct a community visitor to visit a child staying at a *visitable home* and sets out matters to which the Public Guardian may have regard in deciding whether a community visitor must visit a child.

PeakCare argued that the criteria in clause 57 to determine which children should be visited by a community visitor are “too open”. Mr Lindsay Wegener suggested that decisions about which children should be visited need to address two major factors of the child’s vulnerability, and particular circumstances related to the system operations and decisions.

*The priority setting for children in care and who should be visited really needs to take care of both factors and the intersection of those factors. ... We think there could be better examples given (in clause 57) and there should be some onus placed on the Public Guardian to look at evidence based research in informing ... decisions about who should be visited and when.*<sup>44</sup>

A *visitable site* must be visited regularly (clause 58). Clauses 59 and 60 provide that a community visitor must visit a child under care at a *visitable home* or a child at a *visitable site* if the child requests a visit. A staff member at a *visitable site* must tell the Public Guardian of a child’s request for a community visitor.

#### *Frequency of visits by community visitors*

The committee heard from Mr Adam Johnson of CREATE Foundation, who suggested that all young people coming into care should have at least one visit from the community visitor, approximately six weeks into a placement. He acknowledged that not all children and young people in care want or need a community visitor, however an initial visit:

*... should be part of the assessment process for determining whether further visits from community visitor are needed. The benefits of this would be not only would you make the young person aware of the public guardian; you would also better spread the word about the new system.*<sup>45</sup>

Mr Johnson also argued for an amendment to the bill to specifically identify the timing of regular visits and reviews of the need for a community visitor, and suggested there should be an annual review for the first two years, followed by a review every two to three years.<sup>46</sup>

#### *4.3.3 Powers of community visitors*

The Public Guardian Bill provides powers to enable a community visitor to carry out their functions. A community visitor may enter a *visitable home* with the consent of a carer, or if authorised by a warrant. Entry to a *visitable site* during normal hours does not require a notice or consent, and the Public Guardian may authorise entry outside normal hours.<sup>47</sup> Community visitors for children will have the same powers as community visitors under the current Commission for Children Act, except that consent is not required to visit to a *visitable site* during normal hours. This change creates consistency between the entry powers for community visitors (adult) and community visitors (child).<sup>48</sup>

While it acknowledges the current power to obtain a warrant for a community visitor, PeakCare suggests that obtaining a warrant could be perceived as heavy handed. PeakCare does not support

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44 Mr Lindsay Wegener, PeakCare, *Public Hearing Transcript*, 29 April 2014 p.8

45 Mr Adam Johnson, CREATE Foundation, *Public Hearing Transcript*, 29 April 2014 p.2

46 Mr Adam Johnson, *Public Hearing Transcript*, 29 April 2014 p.2

47 Clauses 61 and 67-68

48 Ms Jenny Lang, *Public Briefing Transcript*, 26 March 2014, p.11

the use of warrants and notes that it could result in, for example, entry to a kinship care or a “self-placement” by warrant.<sup>49</sup>

#### 4.3.4 Community visitors, visitable homes and visitable sites

PeakCare suggests there is overlap in the roles of community visitors and various practitioners who are in contact with a child in care, in particular the inspection and report on the appropriateness of accommodation at a *visitable home* or *visitable site*. PeakCare asserts that the scope of the community visitor programme is too wide and should not include children under guardianship orders to another person and children with a kinship carer.<sup>50</sup>

A submission from CREATE Foundation suggests amendment of the Bill to provide that Public Guardian work with stakeholders to assess the needs of children in visitable homes to determine whether they should be allocated a community visitor.<sup>51</sup>

### 4.4 Child advocacy officer

#### 4.4.1 Functions and powers

The Public Guardian Bill provides that a child advocacy officer may provide advocacy for a *relevant child*. A child advocacy officer may enter a *visitable site* during normal visiting hours without notice or outside normal hours with the Public Guardian’s authorisation. Entry to other places is either with consent or when authorised by a warrant.

A child advocacy officer may exercise child advocate functions and powers only in relation to a *relevant child*. A child advocacy officer may not perform child advocate functions in relation to a child at a *visitable site* such as a detention centre unless the child is a *relevant child*. In contrast, a community visitor may perform their functions in relation to any child in a *visitable site*.

### 4.5 Advocacy hubs

Recommendation 12.8 of the Commission of Inquiry recommended that the community visitor functions would operate mainly out of “advocacy hubs”.

The Department advised that trial advocacy hubs will be established by the Public Guardian:

*Planning is underway to operate three physical child and youth advocacy hubs in Brisbane, Townsville and Ipswich to commence on 1 July. For other locations across Queensland, planning is underway for advocacy services to be managed by 13 hub managers across Queensland, with access to these services through a central phone, text and email service. Other relevant technologies to increase service access to children and young people will be developed post 1 July. Both forms of service delivery will be evaluated to determine how the child advocacy service will be delivered in the medium to long term.*<sup>52</sup>

### 4.6 Information exchange

The Bill authorises the exchange of information about a child and their circumstances to help the Public Guardian to perform his or her functions in relation to relevant children.<sup>53</sup> The Public Guardian may request information from relevant departments, public sector health services and other specified entities. The information must be provided to the Public Guardian, except for example,

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49 PeakCare, Submission 10, pp.5-6

50 PeakCare, Submission 10, p.3

51 CREATE Foundation, Submission 19, p.3 and pp.7-8

52 *Public Guardian Bill 2014: Response to Health and Community Services Committee Submissions*, p.14

53 Public Guardian Bill, clauses 83-91



where it is subject to legal professional privilege or would prejudice an investigation. The information exchange provisions are also discussed in Chapter 6, in relation to fundamental legislative principles.

The QLS submission notes that the Bill grants wide powers to exchange information and questions whether such powers are necessary and suggests that the powers in the Child Protection Act are sufficient.<sup>54</sup> The Department provided a summary of the relevant provisions of the Bill about information exchange, and advised that they are required because the Child Protection Act "... limits the type of information that may be exchanged to information that relates to Child Safety functions and child protection". Using the powers in the Child Protection Act "would not allow for the exchanges of information needed for the Public Guardian to fulfil its role effectively".<sup>55</sup>

#### **4.7 Separate representative and information exchange**

The QLS submission noted that an exception to the information exchange provisions is provided in the Bill, which considers is a fundamental protection, and notes that Legal Aid Queensland is a prescribed entity in the Bill. The QLS suggested that an additional protection is needed in relation to a child's separate representative.<sup>56</sup>

The Department's comments on submissions states:

*The submission related to the issue of information exchange and separate representatives is noted and is being considered by the Department.*<sup>57</sup>

#### **4.8 Public Guardian intervention in child protection proceedings**

##### **4.8.1 The Bill**

The Bill enables the Public Guardian, or a person authorised by the Public Guardian, to appear before the tribunal in child protection matters to present the child's views and wishes and make submissions call witnesses and test evidence. The Public Guardian is entitled to support a *relevant child* and participate in conferences or mediations ordered by the tribunal. To facilitate the Public Guardian's involvement, the Bill provides for the tribunal registry to notify the Public Guardian of child protection matters under an arrangement between the principal registrar and the Public Guardian.<sup>58</sup>

Clause 201 proposes new sections 108B to 108D to be inserted in the Child Protection Act to provide that that Public Guardian may appear in a proceeding on an application for an order for a child. The Public Guardian's role is to present the child's views and wishes and make submissions, call witness and test evidence, however, the Public Guardian is not a party to the proceeding.

##### **4.8.2 Submissions and hearing evidence**

Submissions from the Youth Advocacy Centre Inc. and QLS sought greater clarity on a range of issues including:

- in court and tribunal proceedings, whether the Public Guardian would take instructions from the child, act in the child's best interests or in another capacity
- what would occur if a child wishes to pursue a course that the Public Guardian disagreed with, or did not wish to have the Public Guardian intervene
- how is it intended that child advocacy officers, appointed under the Public Guardian Act, interact with community visitors, child safety officers, or separate legal representatives for a child

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54 QLS, Submission 17, p.10

55 *Public Guardian Bill 2014: Response to Health and Community Services Committee Submissions*, p.30

56 QLS, Submission 17, pp.10-11

57 *Public Guardian Bill 2014: Response to Health and Community Services Committee Submissions*, p.30

58 Public Guardian Bill, clauses 127 -129

- is it intended that the Public Guardian would provide both a legal representative and a support person for a family group meeting, mediation, conference or court proceeding
- confidentiality of information, including if a child has separate legal representation and the Public Guardian intervenes in a proceeding, and between a community visitor and a child advocacy officer employed by the Public Guardian.

The Department of Justice and Attorney-General response to these issues in submissions includes that the Public Guardian will only intervene if there is a systems failure and there is no other way for the child's views to be heard,<sup>59</sup> and:

*If existing agencies are working effectively and properly representing the views of a child, including any direct legal or separate representation role, there should be no necessity for any separate action by the Public Guardian.*

*Where, however, this does not prove to be the case then the Public Guardian is empowered to take action in accordance with the functions vested in it in clause 13 and elsewhere in the Bill.<sup>60</sup>*

More detailed responses to the specific questions raised above are in the Department's comments on submissions.<sup>61</sup>

The committee notes that the intended operation and practical implications of the provisions in the Bill regarding advocacy and representation raised concerns for stakeholders. It was not apparent that the public advocate would intervene in proceedings only if there was a systems failure. The committee notes that more detailed information in the Explanatory Notes or in consultations with child protection stakeholders may have addressed those concerns.

#### **4.9 Appointment of community visitors and child advocacy officers**

Clauses 107 to 112 provide for the appointment of community visitors and child advocacy officers. Clause 107 states that the Public Guardian may appoint a person, on a full-time, part-time or casual basis, to be a:

- community visitor (child)
- community visitor (adult)
- both a community visitor (child) and community visitor (adult)
- child advocacy officer.

Community visitors must have the knowledge, experience or skills that the Public Guardian considers are needed to perform the functions of community visitor (adult) or community visitor (child) respectively. Certain people are excluded from appointment - for example, an employee of the disability services or health department - to avoid conflicts of interest (clauses 108 and 109). For both community visitors (adult) and community visitors (child), the Public Guardian must take into account the desirability of:

- having a range of knowledge, experience or skills relevant to the exercise of the respective functions, and
- reflecting the social and cultural diversity:
  - of the general community (for community visitors (adult)), and
  - of children in Queensland (for community visitors (child)).

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59 Public Guardian Bill 2014: Response to Health and Community Services Committee Submissions, p.18

60 Public Guardian Bill 2014: Response to Health and Community Services Committee Submissions, p.17

61 Public Guardian Bill 2014: Response to Health and Community Services Committee Submissions, pp.25-27

Four submissions commented on the eligibility criteria for appointment as a community visitor or child advocacy officer.

#### 4.9.1 *Aborigines and Torres Strait Islanders*

The Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd (ATSILS) submission argues that, given the over-representation of Aboriginal and Torres Strait children in the child protection system, special provision must be made for the appointment of Aboriginal and Torres Strait Islander people to the community visitor and child advocacy roles.<sup>62</sup> At the public hearing Ms Jennifer Ekanayake said that up to 40 per cent of children in care are Aboriginal and Torres Strait Islanders, and when allocating staff that should be taken into consideration.<sup>63</sup>

The committee notes that eligibility for appointment as a community visitor requires the Public Guardian to consider social and cultural diversity, but does not specifically provide for the appointment of Aboriginal people or Torres Strait Islanders. The committee notes that eligibility for appointment as a child advocacy officer, in clause 110, does not address cultural diversity or the appointment of Aboriginal or Torres Strait Islander officers.

#### 4.9.2 *Appointment in both community visitor roles*

Two submissions raised concerns about potential appointments as both a community visitor (adult) and community visitor (child), and noted the importance of such appointees possessing the relevant skills and knowledge for each of the two roles.<sup>64</sup> PeakCare suggested that more detail is needed to recognise the requirements for working with children and young people in the child protection system:

*Community visitors (child) must be able to communicate effectively with a wide range of children and young people – ages, developmental stages, abilities, cultural backgrounds, languages, needs, vulnerabilities – and navigate a complex child protection system that has many inter-relationships with other service sectors.*<sup>65</sup>

#### 4.9.3 *Appointment as child advocacy officer*

The QLS proposed expanding the eligibility requirements to include the ability to communicate effectively, particularly with children and young people, an understanding of child development and the importance of consultation with a child. The QLS submission also proposed that the Bill should include standards of conduct for child advocacy officers.<sup>66</sup> The Department advised that clause 110 provides the Public Guardian with the flexibility needed to ensure the most suitably qualified people are employed, and that the Public Guardian will have policies in relation to standards of conduct.<sup>67</sup>

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62 ATSILS, Submission 4, p.5

63 Ms Jennifer Ekanayake, ATSILS, *Public Hearing Transcript*, 29 April 2014, p.12

64 Submission 10, p.7, Submission 19, p.3 and 8

65 Submission 10, p.7

66 Submission 17, pp.11-12

67 *Public Guardian Bill 2014: Response to Health and Community Services Committee Submissions*, pp.30-31

## 5 Adults with impaired capacity

### 5.1 Functions transferred from the Guardianship and Administration Act

#### 5.1.1 Overview

Chapter 3 of the Public Guardian Bill (clauses 16 to 49) contains provisions relating to adults with impaired capacity. The provisions include to powers to:

- give advice to and impose supervision on an attorney, guardian or administrator
- investigate complaints or allegations
- protect an adult with impaired capacity by suspension of an attorney's power, and
- consent to a forensic examination of an adult with impaired capacity.

#### 5.1.2 Investigation powers

The powers to investigate a complaint or allegation are similar to those that currently rest with the Adult Guardian in relation to an adult with impaired capacity for a matter. The powers are omitted from the Guardianship and Administration Act by clause 201 of the Public Guardian Bill. The Public Guardian will have powers to investigate complaints and allegations about neglect, exploitation, abuse or inappropriate or inadequate decision making arrangements.<sup>68</sup>

Clause 22 of the Public Guardian Bill provides that the Public Guardian has a right to all information necessary to investigate a complaint or allegation or to carry out an audit in connection with an adult.

The QLS notes that clause 22 is modelled on section 183 of the Guardianship and Administration Act, and is concerned that legal practitioners acting for an adult with impaired capacity, an attorney or other interested party are compelled to produce information that is subject to confidentiality and legal professional privilege.

The DJAG advised the committee that it is Government policy not to make changes to the current adult guardian program. The response states that the provision is a power to investigate potential abuse or neglect, and "Legal professional privilege should not be able to be used to prevent a full and proper investigation of such abuse".<sup>69</sup>

The committee notes that clause 22 and existing section 183 of the Guardianship and Administration Act provide that it overrides legal professional privilege, subject to subclause 4 which states that it is a reasonable excuse not to comply with an information notice if it might tend to incriminate the person.

#### 5.1.3 Protective powers

Powers to seek to recover the property or monies owed to an adult with impaired capacity, and to suspend an attorney's power in relation to an adult, are provided for in the Public Guardian Bill, and also omitted from the Guardianship and Administration Act.

### 5.2 Community visitor program (adult)

#### 5.2.1 Transfer of community visitor functions

The Bill transfers the function of community visitors for adults with impaired capacity for a matter to the Public Guardian Bill, responsible to the Public Guardian. Clause 232 omits chapter 10 (Community visitors) from the Guardianship and Administration Act and new provisions are included in the Public

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<sup>68</sup> Public Guardian Bill, clauses 19-32

<sup>69</sup> *Public Guardian Bill 2014: Response to Health and Community Services Committee Submissions*, p.22

Guardian Bill. As noted in 3.3 above, the Bill does not change the functions or powers of community visitors for adults with impaired capacity.

*5.2.2 Purpose, functions and powers*

The purpose of the community visitor program is to protect the rights and interests of consumers at *visitable sites*, which are defined for community visitors (adult) as a mental health service, a forensic disability service or a place prescribed by a regulation, other than a private dwelling. Community visitors (adult) have both inquiry and complaint functions.

## 6 Fundamental legislative principles

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.

### 6.1 Suspension of Public Guardian – natural justice (clause 97)

Clause 97(4) provides that the Minister may recommend suspension of the Public Guardian for up to sixty days if there is an allegation of misconduct or if the Minister considers that there may be grounds for removal. The committee considered whether this clause is consistent with the principles of natural justice.

The committee noted that an allegation of misconduct or suspected grounds for removal may or may not result in a finding of misconduct or actual grounds for removal; and that the determination of an allegation or suspected grounds for removal may not be finalised within 60 days.

The committee considers that suspension would be a rare event, and that the Public Guardian should be afforded natural justice while an allegation or a suspected ground for removal is investigated and considered.

Issues that are not clear from the Bill and the Explanatory notes include: the criteria or threshold that would apply before recommending the Public Guardian’s suspension as a result of an allegation; whether a 60 day suspension could be extended if an allegation of misconduct or suspected grounds for removal had not been determined in that time; and whether a suspended Public Guardian would continue to receive remuneration until a determination was made about an allegation of misconduct or suspected grounds for removal.

To assist Members, the committee asks the Attorney-General to clarify the expected operation of clause 97(4) during the second reading debate.

### 6.2 Early termination of Adult Guardian – rights and liberties of individuals (clause 162)

Clause 162 provides that the person who, immediately before the commencement of the legislation, held the position of Adult Guardian goes out of office. Under clause 162(6) provides that no compensation is payable except in terms of the person’s contract of employment, however the Bill also provides for the appointment of the existing Adult Guardian as the Public Guardian, if he consents.

The committee considered whether clause 162 has sufficient regards to the rights and liberties of individuals. The committee notes that the Explanatory Notes state that, as the Bill allows for the appointment of the existing Adult Guardian, “the actual impact on the person holding the position of Adult Guardian could be minimal”.<sup>70</sup> The committee considers that, on balance, the clause has sufficient regard to the rights of an individual.

### 6.3 Confidentiality and privacy

Part 4 of the Bill (clauses 83 to 91) provide for the exchange of information, including confidential information, between a prescribed entity and the Public Guardian. Prescribed entities include, for example, the chief executives of child safety, health, disability services and youth justice services. The Explanatory Notes state that the provisions are to establish “... a framework to assist prescribed

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<sup>70</sup> Explanatory Notes, p.9

entities to work cooperatively with the Public Guardian to help the Public Guardian to promote and protect the rights and interests of relevant children”.<sup>71</sup>

The committee considered whether these provisions have sufficient regard to the rights of individuals. The committee noted the confidentiality requirements at clauses 138 to 141, which impose significant penalties for the unauthorised release of confidential information. In light of those protections and the purpose of the information exchange provisions, the committee considered that the provisions are acceptable.

#### **6.4 Powers to enter premises**

Clauses 61 and 74 provide powers for community visitors (child) and child advocacy officers to enter premises, including the capacity for a community visitor (child) to enter a *visitable home* where a child under the guardianship or protection of the chief executive is placed. The power of entry *visitable home* by warrant (clause 61):

*will be necessary in those rare cases where the community visitor or child advocacy officer is refused entry to the child’s home and those officers need to see a child to perform their functions. The requirement for a magistrate to issue a warrant will provide the necessary checks and balances to ensure powers of entry without consent are only exercised in appropriate cases.*<sup>72</sup>

A community visitor (adult) may, under clause 44, visit a visitable site (other than a private dwelling) and require staff to answer questions and produce documents, take copies of documents, confer alone with a consumer or staff member, and require a staff member to give the community visitor reasonable help. The Explanatory Notes indicate that the powers of entry to perform adult guardian functions are not changed, and state that clause 44 “protects the consumer or anyone else from liability if they comply with a requirement ...”<sup>73</sup>

The committee considers that the powers of entry are appropriate in the circumstances, if consent cannot be obtained, in order to protect children under care or adults with impaired capacity.

#### **6.5 Protection against self-incrimination**

Clause 28 provides that, in adult guardian matters, self-incrimination is not a reasonable excuse for failing to comply with a notice or for refusing to answer or failing to answer a question to the court’s satisfaction. This provision has been transferred from section 188 of the Guardianship and Administration Act.

The committee notes the long established principle of common law that a person accused of a criminal offence should not be obliged to incriminate himself or herself. The committee notes that the application of clause 28 is limited in scope, and is an element of the scheme to protect adults with impaired decision making capacity. The committee brings the clause to the attention of the Legislative Assembly.

#### **6.6 Amendment of an Act only by another Act (“Henry VIII” provision)**

The committee considered whether the transitional regulation making power in clause 157 of the Bill has sufficient regard to the institution of the Legislative Assembly. Clause 157 provides that a transitional regulation may provide for any saving or transitional matters to facilitate the transition from the former Commission for Children Act to the new Public Guardian. A transitional regulation may operate retrospectively to the date that proposed section 157 commences. Proposed section 157, and any transitional regulation made under it, would expire after six months.

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71 Explanatory Notes, p.30

72 Explanatory Notes, p.8

73 Explanatory Notes, p.20

As a general principle, a provision in an Act which enables an Act to be amended by regulation raises the issue of whether the provision has sufficient regard to the institution of Parliament, and is a potentially inconsistent with the fundamental legislative principles in the *Legislative Standards Act 1992*. The Explanatory Notes state that the transitional regulation-making power “is considered reasonable as its limited application is to affect only transitional matters and it expires 6 months after commencement”.<sup>74</sup>

In light of the automatic expiry of proposed section 157 and any regulation made under it, the committee considers that, on balance, the provision is justified to facilitate any transitional arrangements that have not been sufficiently provided for in the Bill.

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74 Explanatory Notes, p.10



## Appendices

### Appendix A – List of Submissions

*NB: The committee invited submissions on three child protection Bills; only those submissions which commented on the Public Guardian Bill are listed below.*

Sub #	Submitter
004	Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd
007	Office of the Public Advocate
009	Australian Association of Social Workers Inc.
010	PeakCare Queensland Inc.
013	Australian Christian Lobby
014	Queensland Council of Social Service Inc.
016	Australian Medical Association Queensland
017	Queensland Law Society
018	Youth Advocacy Centre Inc.
019	CREATE Foundation

## Appendix B – Witnesses at public hearings and briefings

### Public briefing – 26 March 2014, Brisbane

#### Department of Justice and Attorney-General

- Ms Jenny Lang, Assistant Director-General
- Ms Natalie Parker, Director Strategic Policy
- Ms Angela Moy, Senior Legal Officer, Strategic Policy

### Public hearing – 29 April 2014, Brisbane

#### CREATE Foundation

- Mr Adam Johnson, Young Consultant

#### PeakCare Queensland Inc.

- Mr Lindsay Wegener, Executive Director

#### Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd

- Ms Jennifer Ekanayake, Director of Family Law

#### Australian Association of Social Workers

- Professor Karen Healy, National President

#### Department of Justice and Attorney-General

- Ms Natalie Parker, Child Safety Director
- Ms Angela Moy, Legal Officer

**Appendix C – Letter from the Department of Justice and Attorney-General, providing the Department's report on issues in submissions received on the Bill** <sup>75</sup>



Department of Justice and Attorney-General  
Office of the Director-General

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02 MAY 2014

Mr Trevor Ruthenberg MP  
Chair  
Health and Community Services Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Mr Ruthenberg

I refer to recent stakeholder submissions made to the Health and Community Services Committee (the Committee) on the Public Guardian Bill 2014, Family and Child Commission Bill 2014 and Child Protection Reform Amendment Bill 2014 (the Child Protection Reform Bills).

As the Committee is aware, three departments have led the development of the Child Protection Reform Bills: the Department of Justice and Attorney-General led the development of the Public Guardian Bill 2014; the Department of the Premier and Cabinet has led the development of the Family and Child Commission Bill 2014; and the Department of Communities, Child Safety and Disability Services has led the development of the Child Protection Reform Amendment Bill 2014. The responsible department for each Bill has prepared a written report on the issues raised in the submissions.

In accordance with the Committee's request, I enclose the departments' respective reports on the issues raised in the submissions for the Bills.

If anything further is required, please contact Mrs Michelle Scott, Principal Legal Officer, Strategic Policy by telephone on [REDACTED] or by email at: [REDACTED]

Yours sincerely

A black rectangular box representing the signature of John Soso.

John Soso  
Director-General

Encl

<sup>75</sup> The report on the issues raised in submission on this Bill is published on the committee's website at: <http://www.parliament.qld.gov.au/work-of-committees/committees/HCSG/inquiries/current-inquiries/PublicGuardianB14>

## Statement of Reservation – Jo-Ann Miller MP

**JO-ANN MILLER MP**

SHADOW MINISTER FOR HEALTH

SHADOW MINISTER FOR NATURAL RESOURCES AND MINES

SHADOW MINISTER FOR HOUSING

MEMBER FOR BUNDAMBA

PO Box 15057, City East QLD 4002

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12 May 2014

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

Dear Mr Ruthenberg

### **Statement of Reservation – *Public Guardian Bill 2014***

I wish to notify the committee that the Opposition has reservations about aspects of Report No. 46 of the Health and Community Services Committee into the *Public Guardian Bill 2014*.

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

Yours sincerely

A black rectangular box redacting the signature of Jo-Ann Miller MP.

Jo-Ann Miller MP

**Shadow Minister for Health**

**Shadow Minister for Housing**

**Shadow Minister for Natural Resources and Mines**