Parliamentary Committees

Child Protection Reform Amendment Bill 2014

Report No. 48

Health and Community Services Committee

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Abbreviations and glossary

Note: terms below in italics are defined terms in legislation

Attorney-General	Attorney-General and Minister for Justice
chief executive	Director General of the Department of Communities, Child Safety and Disability Services
the child protection Bills	the Child Protection Amendment Bill, Family and Child Commission Bill and the Public Guardian Bill
Child Safety	the child safety function in the Department of Communities, Child Safety and Disability Services
Commission of Inquiry	Queensland Child Protection Commission of Inquiry
the committee	Health and Community Services Committee
CCYPCG	Commission for Children and Young People and Child Guardian
Child Protection Act	*Child Protection Act 1999*
the Bill	Child Protection Reform Amendment Bill 2014
child protection system	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 the full definition
Commission for Children Act	*Commission for Children and Young People and Child Guardian Act 2000*
DCCSDS	Department of Communities, Child Safety and Disability Services
DJAG	Department of Justice and Attorney-General
DPC	Department of the Premier and Cabinet
Family and Child Commission	Queensland Family and Child Commission
Family and Child Commission Bill	Family and Child Commission Bill 2014
Minister	Minister for Communities, Child Safety and Disability Services
PSBA	Public Safety Business Agency
Public Guardian Bill	Public Guardian Bill 2014
QPS	Queensland Police Service
the Reform Roadmap	the Child Protection Reform Roadmap

Chair's foreword

On behalf of the Health and Community Services Committee of the 54th Parliament of Queensland, I present this report on the Child Protection Reform Amendment Bill 2014.

The Child Protection Reform Amendment 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 implements some of the recommendations of the Queensland Child Protection Commission of Inquiry, including measures to reduce what is seen as unsustainable demand on the child protection system.

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 and who appeared as witnesses at the committee's public hearing. Thanks also to officials from the Department of Justice and Attorney-General, the Department of the Premier and Cabinet and the Department of Communities, Child Safety and Disability Services, the committee's staff and the Technical Scrutiny Secretariat.

I commend the report to the House.

Trevor Ruthenberg MP
Chair

Recommendations

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 Child Protection Reform Amendment 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-General also introduced the Family and Child Commission Bill 2014 and the Public Guardian 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 the Department of Justice and Attorney-General (DJAG), the Department of Premier and Cabinet (DPC) 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-two submissions were received, 19 of which (see list at Appendix A) commented on this Bill.

At the committee's request, the DCCSDS 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.

At the committee's request, the Department Communities, Child Safety and Disability Services (DCCSDS) provided comments on the issues in submissions, some of which are reflected in this report. The DCCSDS comments on issues raised in submissions is published on the committee's inquiry web page, which can be accessed via links at Appendix C, which contains a covering letter from the Director General of DJAG.

The committee held a public hearing to examine the Bill on 29 April 2014 at Parliament House, Brisbane; witnesses from six organisation commented on the Child Protection Reform Amendment 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.

1.3 Policy objectives of the Bill

The stated policy objectives of the Child Protection Reform Amendment Bill 2014 are that it is intended to implement recommendations of the Commission of Inquiry relating to:

- oversight of the child death review process
- complaints about the child protection system
- first step measures to reduce the current levels of unsustainable demand on the child protection system, including the consolidation of all mandatory reporting requirements into the Child Protection Act 1999 (CPA)
- changes to the administration of working with children checks ("Blue Card") and
- improvements to the administration of the Children's Court.

To achieve these objectives, the Bill will amend the:

- *Child Protection Act 1999*
- *Childrens Court Act 1992*
- *Commission for Children and Young People and Child Guardian Act 2000*.

The Bill also makes amendments to the *Magistrates Act 1991*, the *Ombudsman Act 2001*, the *Public Health Act 2005* and a number of other Acts.

1.4 Summary of the Bill

The Bill amends the *Child Protection Act 1999* (Child Protection Act) to streamline child death case reviews undertaken by Department of Communities, Child Safety and Disability Services and refocus them on learning. The department will be required to undertake a review in all cases where a child dies or is seriously injured and they were known to Child Safety within 12 months of their death or injury.[1]

The Bill provides measures to reduce the current levels of unsustainable demand on the child protection system. It amends the definition of a child who is in need of protection to now refer to "significant" harm, and to provide consistency for mandatory reporters. In his explanatory speech, the Attorney-General and Minister for Justice (the Attorney-General) noted that, previously, the definition and interpretation of "harm" had varied across agencies.[2]

The Bill makes amendments to when reports about a child must be made to Child Safety. In the Explanatory Speech the Attorney-General said the Bill clarifies and consolidates the various policy and legislative reporting requirements into one place: the Child Protection Act.[3] It enables prescribed entities to share information with service providers when children are likely to become in need of protection if support is not provided to their family. The Bill also makes it clear that people who report concerns about a child to Child Safety are protected from liability when they provide information honestly and reasonably.

The Bill omits the complaint and oversight functions performed by the Commission for Children and Young People and Child Guardian (CCYPCG) in favour of the oversight of complaints by the Ombudsman. The Attorney-General said this is to improve processes for handling complaints in relation to the child protection system and avoid duplication.[4]

The Bill amends the *Childrens Court Act 1992* and the *Magistrates Act 1991* to clarify the leadership of the Childrens Court when constituted by magistrates and to improve administration of the Childrens Court.[5]

Amendments to the *Commission for Children and Young People and Child Guardian Act 2000* (CCYPCG Act) propose to rename that Act as the *Working with Children (Risk Management and Screening) Act 2000*, and to transfer the responsibility for administering working with children checks

1 Attorney-General and Minister for Justice, Explanatory Speech, 20 March 2014, p.833
2 Explanatory speech, p.833
3 Explanatory speech, p.833
4 Explanatory speech
5 Explanatory speech, p.834

(the "Blue Card" scheme) to the Public Safety Business Agency in a new stand-alone piece of legislation.

The Bill also omits a requirement for annual reporting by departments with child protection responsibilities.

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 19 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 Child Protection Reform Amendment Bill 2014 be passed.

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 1999* and relevant parts of the *Commission for Children and Young People and Child Guardian Act 2000.* 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.[6] 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,[7] 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.*[8]

The *Queensland Government response to the Queensland Child Protection Commission of Inquiry final report*[9] 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.*[10]

The Commission of Inquiry set out a the 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.[11]

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

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

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

9 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, http://www.parliament.qld.gov.au/apps/TabledPapers/RelatedDocs.asp?RefNo=5413T4181 accessed 27 March 2014

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

11 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 of DJAG 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.*[12]

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.*[13]

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 Public Guardian Bill 2014, is part of the first phase of implementation of a ten year Child Protection Reform Roadmap.

2.2 Commission of Inquiry recommendations implemented by this Bill

The Explanatory Notes indicate that the Child Protection Reform Amendment Bill gives effect to the following recommendations of the Commission of Inquiry: Recommendations 4.1, 4.2, 4.6, 4.8, 12.9, 12.11, 12.17, 13.3 and 13.8. Those recommendations are reproduced in Appendix C.

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."[14]

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 the Department of Communities, Child Safety and Disability Services will "prepare detailed five-year and 10-year blueprints for implementation of the government's response."[15]

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

12 Ms Jenny Lang, *Public Briefing Transcript*, 26 March 2014, p.2
13 Ms Jenny Lang, *Public Briefing Transcript*, 26 March 2014, pp.3-4
14 Ms Jenny Lang, *Public Briefing Transcript*, 26 March 2014, p.2
15 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

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 Attorney-General and Minister for Justice or the Minister for Communities, Child Safety and Disability Services:

- 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.

3 Reducing unsustainable demand on the child protection system

3.1 Definition of "child in need of protection" – clause 5

3.1.1 Commission of Inquiry recommendation

The Commission of Inquiry examined the factors contributing to what it saw as growing and unsustainable demand on the Queensland statutory child protection system. It identified two main factors contributing to demand: the high number of intakes to Child Safety (that is, the reporting stage) and too many investigations being undertaken by Child Safety (that is, the notification stage).[16]

A high proportion of reports to Child Safety did not meet the threshold for notification in 2011-12, and the Commission of Inquiry expressed concern that "finding the small proportion of children who actually need ongoing statutory intervention has been described as like 'finding a needle in a haystack'".[17]

The Commission of Inquiry considered the sources of child protection notifications, reporting obligations and the standards of other Australian jurisdictions in defining a "child in need of protection".[18] It recommended an amendment to section 10 of the Child Protection Act by replacing "harm" with "significant harm".[19]

3.1.2 Current definition

Section 10 of the Child Protection Act defines who is a "child in need of protection" as a child who:

> *(a) has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm; and*
>
> *(b) does not have a parent able and willing to protect the child from the harm.*

Section 14 of the Child Protection Act requires Child Safety to take the action considered necessary if the chief executive (or his or her delegate) has a reasonable suspicion that a child is a "child in need of protection".

3.1.3 "Significant harm" and "parent able and willing to protect"

The Government accepted the Commission of Inquiry recommendation to amend section 10 as "one of a number of initiatives to strengthen how government, non-government agencies and professionals respond to vulnerable families and children".[20] In his Explanatory Speech, the Attorney-General noted that "previously the definition and interpretation of 'harm' varied across agencies. The Bill includes an amendment to implement this recommendation and make the definition consistent."[21]

Clause 5 of the Bill amends section 10 (Who is a child in need of protection) to include the word 'significant' to clarify the threshold for intervention. The definition of a child in need of protection is amended by inserting "significant" to read:

> *… is a child who-*
>
> *(a) has suffered significant harm, or is at unacceptable risk of suffering significant harm; and*
>
> *(b) does not have a parent able and willing to protect the child from the harm.*

16 Queensland Child Protection Commission of Inquiry Report, p.83
17 Queensland Child Protection Commission of Inquiry Report, p.84
18 Queensland Child Protection Commission of Inquiry Report, p.89
19 Recommendation 4.1, Queensland Child Protection Commission of Inquiry Report, p.90
20 Queensland Government, *Queensland Government response to the Queensland Child Protection Commission of Inquiry final report*, p.3
21 Explanatory Speech, pp.832-833

Section 9 of the Child Protection Act already defines harm "as any detrimental effect of a significant nature". The Explanatory Notes state, therefore, that "the amendment does not alter the threshold. Rather, it is included to reinforce the message to reporters that harm must be of a significant nature."[22]

Parents have the primary responsibility for care of their children and protecting them from harm. Child Safety's role is to intervene only as a last resort.

As described above, the definition of a *child in need of protection* has two elements. The second element, that a child does not have a parent who is able and willing to protect them from harm, is not changed by the Bill.

3.1.4 Submissions and hearing evidence

A number of submitters were concerned about the insertion of "significant" in the definition of a "child in need of protection". Some stakeholders appeared to be concerned that the amendments would mean that only "significant harm" rather than "harm" could be reported. Those concerns are discussed below in relation to clause 6 (proposed sections 13A to 13J).

Submitters were also concerned that the second element of the definition of a *child in need of protection* would require assessment of parents' ability and willingness to protect a child. Some potential reporters did not consider they are qualified, or do not consider it their role to make such an assessment.

In response to those concerns the DCCSDS advised the committee that adding "significant" to the first part of the definition does not change the second part, "which will continue to be an important consideration for whether a child is in need of protection".[23] The Explanatory Notes also state that "the Bill does not alter other factors about a parent's willingness or ability to protect a child from harm. These factors must still be considered when determining if a child is a *child in need of protection*".[24]

The DCCSDS advised that:

> *Both elements of the definition of 'child in need of protection' have been included in the [Child Protection Act] as the threshold for tertiary intervention by Child Safety since the Act first came into effect and both need to be satisfied to justify state intervention in a family's care for their children.*[25]

3.2 Reporting to Child Safety - clause 6

New provisions about reporting to Child Safety are inserted by clause 6. Proposed sections 13A to 13J deal with the matters summarised below. The proposed new sections deal with matters that may be reported, and matters that must be reported by particular people.

22 Explanatory Notes, p.7
23 Mr Matthew Lupi, *Public briefing transcript*, p.15
24 Explanatory Notes, p.3
25 *Child Protection Reform Amendment Bill 2014: Response to Health and Community Services Committee Submissions*, p.23, available at http://www.parliament.qld.gov.au/documents/committees/HCSC/2014/ChildProtectReformAmB14/cor-02May2014-CPRAB.pdf

Proposed section	Summary of provision
13A	reporting by any person of a reasonable suspicion a child is in need of protection
13B	action (giving information to a service provider) by a mandatory reporter if a child is not "in need of protection" but is likely to become so without preventative support
13C	considerations for any person, including mandatory reporters, in forming a reasonable suspicion of significant harm
13D	protection from liability for any person who reports
13E	mandatory reporting of a reasonable suspicion that a child is, has, or is at risk of significant harm caused by physical or sexual abuse – by doctors, nurses, teachers, certain police officers and a person engaged by the Public Guardian to perform a child advocate function,
13F	mandatory reporting of a reasonable suspicion that a child is, has, or is at risk of significant harm caused by physical or sexual abuse – by people employed in the department, in a departmental care service of licensed care service, or an authorised officer
13G	required content of a report under proposed sections 13E and 13F, including the capacity to make a regulation to prescribe the way a report must be given
13H	enabling a relevant person (a mandatory reporter) to give information to others for specified purposes, e.g. a teacher may give information to a school principal
13I	a relevant person is not required to report under proposed section 13G until they have formed a reasonable suspicion; once a reasonable suspicion has been formed the person must report
13J	the chief executive of child safety is required to give a copy of a report under proposed section 13F to the Public Guardian

3.2.1 Any person may report – proposed section 13A

In his Explanatory Speech, the Attorney-General noted that any person can report concerns about a child to Child Safety in Queensland.[26] Clause 6 of the Bill inserts a new section (proposed section 13A of new Part 1AA) to make it clear that any person can inform the department of a reasonable suspicion that a child may be in need of protection. The Attorney-General advised that this will "help people make a decision about whether to report concerns to Child Safety" and bring Queensland into line with other jurisdictions, such as New South Wales and Victoria.[27]

3.2.2 Considerations when forming a "reasonable suspicion" – proposed section 13C

The amendments proposed in the Bill also identify the matters that a person may consider when forming a reasonable suspicion that harm is significant. Clause 6 inserts a new section 13C which list a range of matters a person may consider. These matters include whether there are detrimental effects on the child's body or psychological or emotional state that are evident or might become evident and, if there are evident detrimental effects, their nature and severity, the likelihood that they will continue or arise in the future and the age of the child.[28]

With regard to consideration of detrimental effects on the child's body or psychological or emotional state, both the YAC and Queensland Law Society (QLS) suggest in their submissions that, instead of referring to a child's "emotional state", clause 13C(2)(a) should be amended to refer to the child's "emotional wellbeing".[29]

26 Explanatory Speech, p.833
27 Explanatory Speech, p.833
28 Mr Matthew Lupi, *Public Hearing Transcript*, 29 April 2014, p.15
29 QLS, Submission 17, p.13 and YAC, Submission 18, p.5

3.3 Mandatory reporting

3.3.1 Commission of Inquiry recommendation

The Commission of Inquiry suggested that one of the reasons for over-reporting by professionals such as police, teachers and health professionals was inconsistency between their reporting obligations in various legislation and policies.[30] The Commission of Inquiry considered current mandatory reporting obligations in Queensland and formed the view that the "problem of escalating reports to Child Safety Services will not be solved while the legislative provisions remain fragmented, unclear and inconsistent."[31] The Commission of Inquiry recommended that reporting obligations should be reviewed and consolidated, and that reporters should be supported by the provision of joint training to help them decide when they should report significant harm.[32]

3.3.2 Current mandatory reporting requirements

The Commission of Inquiry summarised the current mandatory reporting requirements, which are inconsistent and are located in several pieces of legislation. The current mandatory requirements to report to Child Safety are:

- authorised officers, or an officer or employee of the department involved in the administration of the Child Protection Act, or employees of departmental care services or licensed care services who become aware, or reasonably suspect, that a child in care has been harmed (*Child Protection Act 1999,* section 148)
- medical practitioners and registered nurses who become aware, or reasonably suspect, that a child has been, is being, or is likely to be harmed (*Public Health Act 2005*, section 191)
- the Commissioner for Children and Young People if the Commissioner considers a child may be in need of protection under the Child Protection Act (*Commission for Children and Young People and Child Guardian Act 2000,* section 25)
- Family Court employees and counsellors who have reasonable grounds for suspecting that a child has been abused or is at risk of being abused (*Family Law Act 1975* (Cwlth), section 67ZA)

In addition teachers and school employees have an obligation to report to their school principal, who in turn will report to the police, if they become aware, or reasonably suspect, that a student has been sexually abused (*Education (General Provisions) Act 2006,* sections 365-366).[33]

3.3.3 Consolidation of mandatory reporting obligations – proposed sections 13E and 13F

The Explanatory Notes state that new part 1AA, Division 2 provides:

> - *a consolidated provision for all existing mandatory reporting obligations contained in legislation or government policy;*
> - *a single 'standard' to govern reporting obligations and determine what is a reportable suspicion; and*
> - *guidance to help professionals consider if any concerns they hold about a child are a reportable suspicion, and how and when to make reports.* [34]

In his Explanatory Speech, the Attorney-General pointed out that the current arrangements set different obligations and different definitions for a range of professional groups noted that the provisions:

30 Explanatory Notes, p. 3
31 Queensland Child Protection Commission of Inquiry Report, p.89
32 Queensland Child Protection Commission of Inquiry Report, Recommendation 4.2, see Appendix C
33 Queensland Child Protection Commission of Inquiry Report, pp.84 and 119
34 Explanatory Notes, p.7

> *…make it clear that doctors and nurses, teachers working in schools, police with child protection responsibilities and the staff of the new Public Guardian and Child Safety staff who visit residential case services have an obligation to report child protection concerns when they have a reasonable suspicion that a child is in need of protection that is caused by physical or sexual abuse.*[35]

The Explanatory Notes state that a principal objective of consolidating mandatory reporting requirements is to:

> *… relieve pressures on the child protection system and improve outcomes for families by establishing a consistent approach to reporting child protection concerns across Queensland Government agencies that more directly aligns with the legislated threshold for Child Safety intervention and Child Safety's role to intervene when a child is in need of protection …*[36]

Proposed section 13E requires doctors, nurses, teachers, certain police officers and a person who performs a child advocate function under the Public Guardian Act, to give a written report to the chief executive of Child Safety if they have a *reportable suspicion*, which is

> *… a reasonable suspicion that the child-*
>
> *(a) has suffered, is suffering, or is at unacceptable risk of suffering, significant harm caused by physical or sexual abuse; and*
>
> *(b) may not have a parent able and willing to protect the child from the harm.*

At the public briefing the department advised the committee that these were "professionals who are already required to report concerns under either legislation or policy. They were specifically considered by the Commission of Inquiry in delivering its final report."[37]

A similar requirement to report applies to authorised officers, public service employees in the department and people employed in a departmental or licensed care service under proposed section 13F. The reporting requirement does not include a reasonable suspicion that the child may not have a parent able and willing to protect the child, as those professionals are working with children in care.

People who are required to report under proposed sections 13E and 13F are able to confer with colleagues before forming a "reportable suspicion". The Explanatory Notes state that this provision is "intended to acknowledge a relevant person's reportable suspicion can be formed over a period of time and as an outcome of further consultation with colleagues".[38]

Proposed section 13I provides that a person required to report is not required to do so until they have formed a *reportable suspicion* and once formed, a report must be given, despite any other action the relevant person may take. The Explanatory Notes state that:

> *The provision is intended to acknowledge:*
>
> - *a relevant persons' suspicion may not be immediately formed, and*
> - *a report under 13G may be made in addition to other responses a relevant person may take in relation to the child.*[39]

35 Explanatory Speech, p.833
36 Explanatory Notes, p.4
37 Mr Matthew Lupi, Public Briefing Transcript, p.15
38 Explanatory Notes, p.9
39 Explanatory Notes, p.9

3.3.4 Stakeholders views

Submissions made to the committee generally supported moves to reform the child protection system and pursue implementation of the Commission of Inquiry's child protection road map. A range of concerns about the amendments relating to reducing demand for child protection services, however, were raised in submissions.

3.3.5 Mandatory reporting limited to physical and sexual abuse – proposed sections 13E and 13F

Submissions raised concerns that mandatory reporting under proposed sections 13E and 13F was limited to physical and sexual abuse and did not take account of neglect and emotional abuse.[40] For example, Kerrilee Brown stated that professional mandatory reporting requirements have previously ensured that all major types of harm to children - physical abuse, sexual abuse, neglect and emotional abuse - must be reported.[41] Dr O'Neill commented that it is "difficult to understand why my mandatory reporting obligations should be different if I believe a child has suffered significant harm from sexual or physical abuse, compared with emotional abuse or neglect", and suggests that emotional abuse and neglect should be included in mandatory reporting requirements. Dr O'Neill commented that a positive working relationship with families is continued if she is required to report, rather than deciding to report.[42]

Two submissions raised the differences between proposed sections 13C and 13F. For example the Queensland Nurses Union (QNU) noted that 13C appears to offer a broader definition of the range of detrimental effects a child may suffer than proposed section 13E, and suggested that emotional abuse should be included in mandatory reporting requirements for professionals.[43]

Department's advice

In its response to submissions the DCCSDS advised:

> *The reporting requirements in section 13E and 13F are limited to circumstances where there is a concern about physical or sexual abuse. This reflects that these are matters that require an urgent response. It does not mean that these are the only matters that can be reported to Child Safety.*[44]

At the public hearing the DCCSDS noted that mandatory reporters are also covered by proposed section 13A and may still report concerns about other types of abuse. The DCCSDS explained that this is similar to the Victorian *Children, Youth and Families Act 2005* in which reporting requirements operate in a way that enables families to be directly referred to community based non-government agencies for the support they need to care for their children safely.

Committee comment

The committee notes that proposed section 13C (Considerations when forming a reasonable suspicion about harm to a child) includes a range of matters that a person may consider when forming a reasonable suspicion about significant harm. One of these matters is "whether there are detrimental effects on the child's body or the child's psychological or emotional state".[45]

The committee is satisfied that proposed amendments to mandatory reporting requirements do not mean that emotional abuse or neglect of children is not important, nor that this form of harm may

40 For example, Submissions 12, 18, 21, 22,
41 Kerrilee Brown, Submission 22
42 Dr O'Neill, Submission 24, p.1
43 QNU, Submission 21, p.4 and ACCYPN, Submission 23, p.2
44 *Child Protection Reform Amendment Bill 2014: Response to Health and Community Services Committee Submissions*, p.2
45 Recommendation 4.3, Queensland Child Protection Commission of Inquiry Report, p.90

not be reported to Child Safety. Proposed section 13A enables any person to report to Child Safety if they reasonably suspect that a child or unborn child may be "in need of protection".

The committee considers that the consolidation of reporting requirements from several pieces of legislation into the Child Protection Act is consistent with the Commission of Inquiry recommendation.

The committee also notes additional concerns that were raised by the non-State school sector, which are discussed at section 3.3.9 below.

3.3.6 Mandatory reporters - "significant harm" and "parent willing and able to protect"

A number of submissions raised concerns about the changed threshold for mandatory reporting, and the potential difficulty of assessing "significant harm" caused by physical or sexual abuse, and whether there was a parent willing and able to protect the child.

Issues raised included: that reporters will be required to exercise judgement regarding whether harm is "significant" enough to report;[46] that a detailed definition of "significant harm" is needed and that "nurses and other reporters will need a clearer guideline on making a determination whether to report a matter to Child Safety or refer it along a different pathway."[47] It was suggested that "it is beyond the scope of practice for registered nurses, … to make the determination regarding the degree of harm or risk".[48] Another issue raised was that child abuse is often "multiple and/or chronic and prolonged, developmentally adverse traumatic events which has its most pervasive impact during the first decade of life …". The Queensland Child and Family Health Nurses Association was concerned about diminution of the reporting on child abuse,[49] and the QNU sought clarification of how a child's situation will become flagged for mandatory reporting if a single episode in a series of events does not reach the "significant harm" threshold.[50] The QNU submission includes a case study which highlights its concerns about reporting where there is an accumulation of single incidents, each below the threshold of "significant harm".[51]

Concerns were also raised by submitters about assessment of whether there is "parent able and willing to protect" and questioned the reasonableness of expecting mandatory reporters to assess this.[52] The Queensland Catholic Education Commission (QCEC) believes that assessment of the second part may put teachers in a compromised position, given the relationship they have with parents in the education process.[53]

The committee notes that the current definitions of *harm* in the *Public Health Act 2005* and the *Education (Accreditation of Non-State Schools) Regulation 2001* already provide that the harm is significant.

Department's advice

The DCCSDS advice to the committee was that the current wording in the Bill does not require reporters to "determine" whether the level of harm or risk of harm to a child is not "significant", nor does it require a reporter to "determine" whether a child has a parent who is able and willing to protect the child from harm.

> *The proposed amendments require much less than a determination of these matters. The proposed amendments require mandatory reporters to report matters where they have*

46 QLS, Submission 17, p.13
47 QNU, Submission 21, p.3
48 QCAFHNA, Submission 3, pp.1-2
49 ACCYN, Submission 23, p.2
50 QNU, Submission 21, p.5
51 QNU, Submission 21, pp 5-7
52 ISQ, Submission 15, QCEC, Submission 8, AASW Submission 9, QNU Submission 21, WLS, Submission 2, p.4
53 QCEC, Submission 8, p.4

> *formed, on the basis of the information available to the reporter, a 'reasonable suspicion' that a child is in need of protection.*[54]

In light of stakeholder concerns about the reporting obligations of teachers, the committee has recommended (in section 3.3.9 below) further clarification of the obligations of teachers in relation to a parent being "able and willing to protect" a child from harm.

3.3.7 Extending mandatory reporting to foster and kin carers

Three submissions suggested that the obligation to report a reasonable suspicion that a child has suffered, is suffering or is at unacceptable risk of suffering significant harm from physical or sexual abuse should apply to foster and kin carers, as well as staff of the department and licensed care services.

In its comments on submissions the DCCSDS said:

> *The matters which foster or kinship carers must notify Child Safety about are not limited to instances of 'significant harm', and do not have to involve physical or sexual abuse. Foster and kinship carers are held to a higher reporting standard that the groups of professionals who are mandatory reporters under the Bill and as such are not included as mandatory reporters in the Bill.*
>
> *The Foster and Kinship Carer Handbook states that foster and kinship carers are required to report all "matters of concern" to Child Safety. .."matters of concern' are any concerns raised in relation to the quality of care provided to a child placed in out-of-home care under the CPA where a breach of standards under s.122 of the CPA is indicated*.[55]

3.3.8 Training for mandatory reporters

A number of submitters highlighted the importance of training and resources to assist mandatory reporters to understand their obligations.[56] As noted in section 3.3.3, the Commission of Inquiry recommended joint training to support decisions about reporting significant harm.

The government response to the Commission of Inquiry recommendation noted that, as well as consolidating mandatory reporting obligations, there would be "… training, guides and tools to enable more effective responses and referrals, and notifications when necessary".[57] The DCCSDS confirmed that training and resources would be provided and advised that Child Safety has commenced discussions with relevant partner agencies about how best to support the cultural change required to implement the provisions. It also advised that the *Queensland Child Protection Guide* will be reviewed and updated.

The committee notes that training and resources will be provided to support people in decisions about reporting significant harm. In light of the concerns raised by stakeholders about understanding of the proposed new reporting requirements, the committee recommends that the Minister inform the Legislative Assembly about the expected scope and timing of training and support for mandatory reporters.

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54 *Child Protection Reform Amendment Bill 2014: Response to Health and Community Services Committee Submissions*, p.7

55 *Child Protection Reform Amendment Bill 2014: Response to Health and Community Services Committee Submissions*, p.9

56 Submissions 8, 15, 17, 21

57 Queensland Government, *Queensland Government response to the Queensland Child Protection Commission of Inquiry final report*, p.3

Recommendation 3

The committee recommends that the Minister for Communities, Child Safety and Disability Services inform the Legislative Assembly of the type and timing for delivery of training, guides and tools to support mandatory reporters to understand their obligations and make appropriate decisions about reporting of significant harm to ensure implementation of the changed reporting requirements in January 2015, or alternatively, when this information will be available.

3.3.9 Mandatory reporting by teachers – consistency with other education sector reporting obligations

Amendments to require teachers to report

As outlined above, the Commission of Inquiry noted the inconsistency between the obligations on various professionals, different reporting thresholds and confusion among mandatory reporters about whether concerns must be reported immediately or after some consideration.

Currently, school staff (including, but not limited to, teachers) are required to immediately report sexual abuse of children to Queensland Police under the *Education (General Provisions) Act 2006*. Under the *Education (Accreditation of Non-State Schools) Regulation 2001*, in addition to processes for reporting sexual abuse, a school must have a process in place for reporting concerns about harm to children to Child Safety, "that accord with legislation applying in the State about the care and protection of children". In the Regulation *harm* is defined as "any detrimental effect of a significant nature on the student's physical, psychological or emotional wellbeing", regardless of how the harm is caused. The Bill does not amend these provisions in education portfolio legislation.

At the public briefing the department stated that the *Education (General Provisions) Act 2006* requires school employees to report sexual abuse, and this requirement would be retained in its current form. The department advised the committee that the requirement is to report suspected criminal offences (sexual abuse) to police and is based on a "different threshold of concern" from that of the amended Child Protection Act.[58]

The proposed amendment to the Child Protection Act (proposed section 13E) would require a teacher (but not all staff at a school) to report a *reasonable suspicion* that a child is in need of protection. As noted above, the Bill inserts a new section 13C, which outlines the considerations individuals might take into account in deciding that they have a *reasonable suspicion* that a child has suffered, is suffering or is at risk of suffering significant harm.

Concerns of non-state school sector

Representatives of non-state schools were very concerned about the mandatory reporting provisions of the Bill and their impact on teacher and school reporting requirements.[59]

In its submission the QCEC noted that the proposed changes do not consolidate reporting requirements for teachers and school staff in Queensland. Instead, in the QCEC's view, the amendments cause inconsistencies and schools will have reporting obligations under three pieces of legislation.[60] The QCEC also noted the difficulties for teachers in avoiding becoming ethically compromised with regard to their relationships with students and parents.[61] Both Independent Schools Queensland (ISQ) and QCEC were very concerned about the additional reporting requirement placed on teachers, noting that the requirement to report direct to Child Safety was not

58 Mr Matthew Lupi, *Public briefing transcript*, p. 16
59 QCEC, Submission 8 and ISQ, Submission 15
60 QCEC, Submission 8, pp.2-3. Also ISQ, Submission 15, p.8
61 QCEC, Submission 8, p.4

consistent with other reporting procedures that go via a school's principal.[62] They were also concerned about the timeframe for implementing the new arrangements and stressed the need for further guidance and training.[63]

The concerns expressed to the committee about the amendments by the QCEC and ISQ highlighted the complexities of the legislative obligations relating to reporting and related procedures and definitional issues, both within the education sector and in interaction with the child protection framework.[64]

Department response

The department provided the committee with a response to the concerns of non-state schools and advised that amendments to the *Education (Accreditation of Non-State Schools) Regulation 2001* are currently under development by the Department of Education, Training and Employment to align the Regulation's definition of harm for reporting purposes to the changed definition of harm in the Child Protection Act proposed in the Bill.[65] It is anticipated that the amended Regulation will commence operation at the same time that mandatory reporting requirements commence for teachers in early 2015.

In its response the department also noted that policies and procedures about reporting concerns to Child Safety had not been sufficiently aligned with the role of Child Safety. The response noted, in particular, that many policies, including those implemented in the non-state school sector, have not considered the second element of the definition of a *child in need of protection*. The DCCSDS suggested this had contributed to unnecessary and/or over reporting.[66]

The DCCSDS also stated that to form a *reportable suspicion* a teacher is not required to undertake an investigation of whether a parent is able and willing to protect a child from harm but "to turn their mind to whether the concerns they have about a child relate to a failure on the part of the child's parents".[67]

As noted in section 3.3.5 above, the DCCSDS advised the committee that the reporting requirements of proposed sections 13E and 13F are limited to circumstances where there is a concern about physical or sexual abuse, as these matters require an urgent response. It advised that the limitation in these sections does not mean that these are the only matters that can be reported to Child Safety, pointing to proposed section 13A under which any person can report under the broader definition of a child in need of protection.[68]

The DCCSDS also maintained in its response that it believes that proposed section 13H, which explicitly allows a teacher to bring concerns to a principal, addresses the issue of appropriate reporting lines within schools.[69]

62 QCEC, Submission 8, p.5 and ISQ, Submission 15, p7
63 QCEC, Submission 8, p.2 and ISQ, Submission 15, pp.9-10
64 QCEC, Submission 8, p.2 and ISQ, Submission 15, pp.6,7,8
65 Child Protection Reform Amendment Bill 2014: Response to Health and Community Services Committee Submissions, p.11
66 Child Protection Reform Amendment Bill 2014: Response to Health and Community Services Committee Submissions, p.12
67 Child Protection Reform Amendment Bill 2014: Response to Health and Community Services Committee Submissions, p.24
68 Child Protection Reform Amendment Bill 2014: Response to Health and Community Services Committee Submissions, p.15
69 Child Protection Reform Amendment Bill 2014: Response to Health and Community Services Committee Submissions, p.13

Committee comment

The committee acknowledges QCEC's view that Catholic schools and other non-state school authorities have extensive accountabilities which go beyond those of the state school sector, and that the Bill does not amend those requirements.[70] The committee also noted the particular concerns of the ISQ and QCEC with regard to the amendments.

Recommendation 4

The committee recommends that, during the second reading debate, the Minister for Communities, Child Safety and Disability Services or the Attorney-General and Minister for Justice clarify the intended operation of the reporting obligations of teachers and other mandatory reporters proposed by proposed section 13E, in particular what is expected in forming a "reasonable suspicion" that a child "may not have a parent able and willing to protect the child from harm", illustrated by practical examples of how it may work in practice.

The committee considered the response provided by the DCCSDS on the issues of consistency raised by non-state school representatives. The committee believes the more detailed explanations provided after its public hearing clarify the amendments and the consideration that has been given to appropriate consolidation of legislative reporting requirements. The committee also noted the department's advice that it is intended that the *Education (Accreditation of Non-State Schools) Regulation 2001* will be amended in time for the implementation of mandatory reporting requirements for teachers in early 2015.

Based on the DCCSDS response to submissions, it appears there are differing understandings of the reporting obligations that currently apply, and are proposed to apply, to schools and teachers. To facilitate appropriate implementation of the proposed and current reporting requirements, the committee recommends that relevant Ministers ensure their departments work with the non-state school sector to clarify the requirements for school policies and processes to be in accord with the Child Protection Act.

Recommendation 5

The committee recommends that the Minister for Communities, Child Safety and Disability Services and the Minister for Education and Training ensure that their departments work with non-State school organisations to improve policies about child protection and reporting, so that they accord with the requirements of the Child Protection Act, as required by section 10 of the Education (Accreditation of Non-State Schools) Regulation 2001.

Stakeholders did not have a clear understanding of the distinction, drawn by the DCCSDS, between existing obligations for non-state schools to report sexual abuse to police, and proposed obligations for teachers to report significant harm from physical or sexual abuse to Child Safety. The committee recommends that consideration be given to a cross reference in connection with proposed section 13E to refer to the separate obligations to report sexual abuse to police.

70 QCEC, Submission 8, pp.1 and 2

Recommendation 6

The committee recommends that the Minister for Communities, Child Safety and Disability Services consider whether, in relation to proposed section 13E, an editorial note or other amendment would assist in understanding the distinction between the respective reporting obligations in the *Education (General Provisions) Act 2006* and proposed section 13E of the *Child Protection Act 1999.*

3.4 Replacing investigation with 'risk assessment and harm substantiation' – clause 7

3.4.1 Commission of Inquiry recommendation

The Commission of Inquiry considered investigation and risk assessment undertaken by statutory child protection officers. The Commission of Inquiry noted that the term 'investigation' is not defined in the Child Protection Act but generally refers to the process of gaining more information about the child in order to determine the child's need for protection.[71]

The Commission of Inquiry recommended that consideration be given to amending section 14(1) of the Child Protection Act to remove the reference to investigation and to replace it with 'risk assessment and harm substantiation'.[72]

The government accepted this recommendation, noting that the required amendments would be introduced to "better reflect the role of child safety officers to substantiate whether a child has been harmed and assess whether there is a risk of future harm to a child".[73]

3.4.2 'Substantiation' instead of 'investigation'

Clause 7 of the Bill amends section 14 (Investigation of alleged harm) of the Child Protection Act by replacing the term 'Investigation' with 'Substantiation' in the heading. The Explanatory Notes point out that the emphasis on 'substantiation' is to "better reflect the role of child safety officers to substantiate whether a child has been harmed and assess whether there is a risk of future harm to a child".[74]

Currently section 14(1)(a) requires that the chief executive must have "an authorised officer investigate the allegation and assess the child's need of protection". Clause 7 of the Bill amends this to require that "an authorised officer investigate the allegation, assess whether the alleged harm or risk of harm can be substantiated and, if it can, assess the child's protective needs".

3.4.3 Submissions and hearing evidence

In its submission, the Aboriginal and Torres Strait Islander Legal Service (ATSILS) was concerned that the amendment to section 14(1)(a), does not focus the definition on managing risk and therefore is not fully in line with the Commission of Inquiry's recommendation 4.8. In ATSILS's view the amendment is "open to being interpreted as whether an alleged harm can be substantiated as opposed to managing risk".[75] PeakCare Queensland Inc. (PeakCare) also indicated concern about the amendment and queried whether it adequately clarifies the statutory agency's role.[76] The QLS raised the same concern and suggested that the proposed amendment "may run the risk that the focus will be whether the alleged harm/or risk of harm can be substantiated (or proved), as opposed to the real

71 Queensland Child Protection Commission of Inquiry Report, p.103
72 Recommendation 4.8, Queensland Child Protection Commission of Inquiry Report, p.103
73 Queensland Government, *Queensland Government response to the Queensland Child Protection Commission of Inquiry final report*, p.5
74 Explanatory Notes, p.9
75 ATSILS, Submission 4, p.3
76 PeakCare, Submission 12, p.3

intent behind the proposed amendment which appears to focus on undertaking a conscious risk assessment."[77]

3.5 Increased emphasis on referral to family support rather than reporting

3.5.1 Commission of Inquiry recommendation

The Commission of Inquiry noted that the high number of child safety reports made in Queensland is not only driven by mandatory reporting requirements, but also by a framework that has Child Safety as the only reporting destination.[78] The Commission of Inquiry considered that a dual pathway approach could enable reports to be made to Child Safety or to a community-based intake service.[79] Such a model could reduce child safety reports while also encouraging vulnerable families to access support.[80]

The Commission of Inquiry recommended that the Child Protection Act be amended to:

> *allow mandatory reporters to discharge their legal reporting obligations by referring a family to the community-based intake gateway, and afford them the same legal and confidentiality protections currently afforded to reporters*
>
> *provide that reporters only have protection from civil and criminal liability if in making their report they are acting not only honestly but also reasonably*
>
> *provide appropriate information-sharing and confidentiality provisions to support community-based intake*.[81]

The government accepted the Commission of Inquiry's recommendation, noting that it would introduce amendments "so that a dual referral pathway can operate effectively with appropriate protections and enabling provisions".[82]

3.5.2 Amendments to facilitate referral to family support – proposed section 13B

Proposed section 13B (inserted by clause 6) provides for "other appropriate action" under the Act if a child is likely to become in need of protection if preventive support is not given. The proposed section provides the example that, if the relevant person is a prescribed entity the person may give information under that section to a service provider so the service provider can offer help and support to the child or child's family to stop the child becoming a child in need of protection. [83]

In his Explanatory Speech the Attorney-General said that this provision:

> *clarifies when concerns about a family can be referred to local family support services to avoid unnecessary reports to Child Safety. These provisions set the foundation for this government's commitment to increase the support to families who need help as recommended by the Commission of Inquiry.*[84]

The Attorney-General also said:

77 QLS, Submission 17, p.15
78 Queensland Child Protection Commission of Inquiry Report, p.91
79 Queensland Child Protection Commission of Inquiry Report, p.91
80 Queensland Child Protection Commission of Inquiry Report, p.92
81 Recommendation 4.6, Queensland Child Protection Commission of Inquiry Report, p.95
82 Queensland Government, *Queensland Government response to the Queensland Child Protection Commission of Inquiry final report*, p.4
83 Entities are prescribed in section 159M of the Child Protection Act 1999; for example, a school or hospital
84 Explanatory Speech, p.833

> *Implementing these provisions will require changing culture and practices within schools, hospitals and police. Information, training and tools to help decision making will be required to support this change.*[85]

3.5.3 Submissions and hearing evidence

The Australian Medical Association Queensland (AMAQ) considers that the amendments reflect the intention of recommendation 4.6 of the Commission of Inquiry to enable reporting to alternative community based organisations.[86]

In its submission, PeakCare says that it considers that proposed section 13B should include more detail about "other appropriate action under the Act" that could be taken by persons who suspect child abuse or neglect.[87] The ISQ suggested in its submission that a definition is needed of the other "appropriate action".[88]

The Queensland Council of Social Services (QCOSS) suggested there is insufficient clarity in the Bill to enable the referral of families and children to family support services through the proposed community based referral gateways. The QCOSS submission highlighted Victorian legislation which clearly articulates options for community based referral.[89] Other issues raised in submissions and at the committee's hearing included that referral for assistance does not guarantee that the family will acknowledge that there is a problem, and could lead the parent to be angry or embarrassed;[90] that the provision should cover the Department of Child Safety;[91] that services need to be available for referrals to be effective;[92] and whether a "service provider" to whom information may be given for a referral could include a school.[93]

3.6 Protection from civil and criminal liability for reporters

3.6.1 Providing protection from civil and criminal liability for reporters

As noted above, the Commission of Inquiry recommended that the Child Protection Act be amended to provide that reporters only be provided with protection from civil and criminal liability if in making their report they are acting not only honestly but also reasonably. Currently section 22 of the Child Protection Act protects mandatory reporters from liability when they act honestly in reporting a concern about child safety.

> *The Commission formed the view there are currently circumstances where reports are made to Child Safety based on very little information or a one-off occurrence of a minor incident. Consistent with the Commission's recommendation (recommendation 4.6) the Bill amends section 22 of the CPA to include the additional requirement that reports should be made "reasonably" for the protections in section 22 to apply*.[94]

Clause 8 amends section 22 of the Child Protection Act to insert a "reasonableness" test, so anyone who reports child abuse "honestly and reasonably" is protected from liability for reporting. The Attorney-General described the intent of the amendment:

> *The bill extends protection from liability for people who make reports to Child Safety to continue to encourage appropriate reporting and to protect those who do report. This*

85 Explanatory Speech, p.833
86 AMAQ, Submission 16, p.1
87 PeakCare, Submission 12
88 ISQ, Submission 15, p.11
89 QCOSS, Submission 14, pp.1-2
90 YAC, Submission 18, p.5
91 WLS, Submission 2. p.4
92 Mr Lindsay Wegener, *Public Hearing Transcript,* 26 April 2014, p.7
93 ISQ, Submission 15, p.10
94 Explanatory Notes, p.4

> *protection from liability will apply when information is provided to Child Safety that is honest and reasonable to encourage people who report concerns to provide reasonable information to support their concerns.* [95]

The Bill provides a similar protection for mandatory reporters if they communicate with colleagues in order to decide whether to make a report, and protects them from a breach of professional or ethical requirements.[96]

The Commission of Inquiry also recommended that the Child Protection Act provide appropriate information-sharing and confidentiality provisions to support community-based intake, in line with the establishment of a dual pathway for reporting. Clause 22 of the Bill makes amendments to the definition of *relevant information* in section 159C of the Child Protection Act. Information may be provided to another service provider to help the service provider to "offer help and support to child or child's family to stop the child becoming a child in need of protection". This means that a person sharing information in a way that meets these requirements will be protected from liability.

3.6.2 Submissions and hearing evidence

The submission from the YAC suggested that the "reasonableness" test may be appropriate for mandatory reporters. It was concerned that members of the public who may report a concern about child abuse will not know the law in sufficient detail to understand that they need to meet a test of "reasonableness" in making their concern known. In YAC's view:

> *to remove a person's protections when they may have thought they were doing the right thing (and honestly) seems somewhat harsh and mitigates against the mantra in the National Framework for Protecting Australia's Children 2009-2020 - "protecting children is everyone's business."*[97]

The Australian College of Children and Young People's Nurses (ACCYPN) was concerned that clause 22 would not provide sufficient protection of the health privacy of families and individuals.[98] Two submitters raised concerns about the sharing of confidential health information, and it was suggested "once families know that their information can be passed around they will either not present to health at all which will further increase the risk to the child or in fact they will omit important relevant health information …".[99]

The committee considered this and related issues about individual rights, which are discussed in chapter 7 in consideration of the fundamental legislative principles.

95 Explanatory Speech, p.833
96 Mr Matthew Lupi, Public briefing transcript, p.16
97 YAC, Submission 18, p.8, note the submission refers to clause 22 instead of clause 8
98 ACCYPN, Submission 23, p.3
99 Karen Berry, Submission 1, p.2 and Kerrilee Brown, Submission 22, p.2

4 Oversight of the child protection system

4.1 Child deaths

4.1.1 Commission of Inquiry recommendation

The Commission of Inquiry recommended that the department establish a specialist investigation team to investigate cases where children in care have died or sustained serious injuries (and other cases requested by the Minister). The Commission of inquiry also recommended that the timeframe for such a child "being known" to the department be set at one year rather than the current three years, and that reports of child death investigations be reviewed by a multidisciplinary independent panel appointed for two years in place of the current Child Death Care Review Committee (CDCRC).[100]

The Government accepted this recommendation, noting that deaths of children known to the Department would be externally reviewed.[101]

4.1.2 Child death register

The CCYPCG is currently responsible for keeping a register of child deaths in Queensland.[102] The provisions of the Commission for Children Act relevant to the child death register are omitted by clause 54 of the Bill. The Family and Child Commission Bill provides for the register of child deaths, and annual reporting on matters relating to the register, to be a function of the new Family and Child Commission.

4.1.3 Current arrangements – review of child deaths

The Child Protection Act (sections 246A to 246H) currently provides for the Department of Communities, Child Safety and Disability Services (DCCSDS) to undertake a review of specified child deaths. Those reviews are considered by the CDCRC, established under the Commission for Children Act. The CDCRC reviews and reports on reviews carried out under the Child Protection Act,[103] and reports annually to the Minister.[104]

The CDCRC must review and report on reviews carried out under the Child Protection Act within three months.[105] Reports may include recommendations to the chief executive about:

- improving policies related to delivering services to children in the child safety system
- improving relationships with other entities involved in the child safety system, and
- whether any disciplinary action should be taken against departmental staff in relation to their involvement with a child in the child safety system.[106]

A key finding of the CDCRC's 2012-13 report included that, although the CDCRC found that the majority of departmental reviews were sufficiently comprehensive, the quality of the department's reviews remained variable indicating that there was "value in ongoing external independent scrutiny of child deaths in Queensland".[107]

100 Queensland Child Protection Commission of Inquiry Report, Recommendation 12.11, p.425
101 Queensland Government, *Queensland Government response to the Queensland Child Protection Commission of Inquiry final report*, p.23
102 Commission for Children Act, ss.120 and 143
103 Commission for Children Act, ss.120, 116 and 134
104 Commission for Children Act, ss.141 and 146
105 Commission for Children Act, s.135
106 Commission for Children Act, s.117
107 CDCRC, *Queensland Child Death Case Review Committee Annual Report 2012-13*, p. 5

4.1.4 Reviews of child deaths and serious physical injuries by the chief executive

Clause 4 of the Bill expands the chief executive's function to review the department's involvement with certain children who have died, to include children who have suffered serious physical injury. Serious physical injury is defined at clause 40 as:

> *(a) the loss of a distinct part or an organ of the body; or*
>
> *(b) serious disfigurement; or*
>
> *(c) any bodily injury of a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health*.[108]

Clause 29 inserts proposed section 246AA (Purpose) and replaces section 246A to establish the legislative framework for the department's role in conducting reviews in the revised child death case review process.[109]

Proposed Section 246AA (Purpose) clarifies the intent and purpose of reviews made under chapter 7A of the Child Protection Act.[110] The purpose of the review is to facilitate ongoing learning and improvement of the provision of services by the department and to promote its accountability.

Proposed section 246A requires that the chief executive must carry out a review if at the time of the child's death or serious physical injury the child was in the chief executive's custody or guardianship or if the child has 'been known' to the department in various ways listed in subsections 2(b) to 2(d) within one year of the death or injury.

Proposed section 246A also allows the Minister to request a review if the circumstances of the death or serious physical injury may be relevant to the chief executive's functions under or relating to the administration of the Child Protection Act.

Clause 30 of the Bill amends section 246B by inserting a new subsection that allows the chief executive to consider the nature of the department's involvement with a child and its relevance to the cause of death or injury in deciding the terms of reference for and extent of the review. The Explanatory Notes state that this is intended to clarify that it may be decided that a full child death case review does need not be conducted in cases where a child or their family had minimal contact with the department before their death or where there is little scope for learnings. This is to avoid the undertaking of "cumbersome reviews that result in little public benefit".[111]

Clause 31 amends section 246C of the Act in order for the chief executive to seek information for reviews relating to serious physical injury.

4.1.5 Independent review panel - child death and serious physical injury reviews

Clause 32 of the Bill sets in place the framework for independent review of the chief executive's review into a child's death or serious injury. It replaces the current section 246D of the Child Protection Act with four new sections: 246D, 246DA, 246DB, and 246DC.

Proposed section 246D provides that the chief executive must complete a review as soon as practicable or within six months of the triggering event for the review and provide the review documents to the independent review panel. Section 246DA allows the independent review panel to obtain further information if necessary. Section 246DB provides for conduct of an independent review of the chief executive's review by the independent review panel and requires it must be done as soon as practicable and in time to comply with section 246DC, that is, within six months.

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108 Clause 40, Child Protection Reform Amendment Bill 2014
109 Explanatory Notes, p.10
110 Explanatory Notes, pp.10-11
111 Explanatory Notes, pp.10-11

Clause 37 of the Bill provides for a Child Death Case Review Panel to be established to undertake the independent review of reviews of child deaths and serious injuries conducted by the department by inserting 'Part 2 Child Death Case Review Panels'. Division 1 of this new part covers the establishment of a pool of review panel members including eligibility, terms of office and conditions of appointment and Division 2 provides for the establishment and operation of review panels.

Section 246HH in Division 2 provides that a review panel must consist of members chosen by the Minister from the pool and that each panel must include at least three members who are not public service employees and who the Minister is satisfied have specialist knowledge and experience in child protection issues, at least one and not more than three public service officers employed in the department and at least one public service officer who is employed, as a senior executive or senior officer, in a department other than the department administering the Act. At least one member of the panel must be an Aboriginal or Torres Strait Islander person.

Section 246Hl requires the chief executive to report to the Minister annually on the operations of review panels and actions taken in response to review panel reports.

4.1.6 Submissions and hearing evidence

The QLS commended the change in focus to review of both child deaths and serious physical injury. It noted that the requirement to undertake a review will be limited to children "known" to the department in the 12 months prior to the incident, instead of the current three years, which could reduce the number of incidents reviewed. The QLS is concerned that deaths or serious injuries that fall outside the new time limit may not be reviewed, and potential learnings may not be available. The QLS suggests that the committee investigate the impact of the change on the number of incidents to be reviewed and monitored.[112]

The committee notes that in its 2012-13 annual report the current CDCRC said that, in order to promote accountability and transparency, "it would be more appropriate that the panel or committee reviewing the deaths not include in its membership, officers of the department whose service delivery is being reviewed".[113]

The committee considered the inclusion of officers of the department being reviewed on the independent review panel. The committee notes that under proposed section 246HH, inserted by clause 37, departmental officers could not be a majority on the independent review panel. The committee also considers that there is likely to be benefit in an officer of the department contributing their expertise to an independent review panel and for ensuring that there is ongoing learning and improvement in service provision by the department.

4.2 Complaints

4.2.1 Commission of Inquiry recommendation

The Commission of Inquiry recommended that complaints about departmental actions or inactions, currently directed to the CCYPCG, be investigated by the relevant department through its accredited complaints management process, with oversight by the Ombudsman.[114]

The Commission of Inquiry did not see the benefit of an additional complaints function, as each department is required to take responsibility for a thorough, independent complaints-handling process and the Ombudsman provides oversight. Appeals against statutory decisions can be made through the Queensland Civil and Administrative Tribunal.[115] The Commission of Inquiry also pointed

112 QLS, Submission 17, pp.15-16
113 CDCRC, *Queensland Child Death Case Review Committee Annual Report 2012-13*, p. 7
114 Recommendation 12.9, Queensland Child Protection Commission of Inquiry Report, p.421
115 Queensland Child Protection Commission of Inquiry Report, pp.421-422

out that Ministers and directors-general have various avenues for the conduct of an external review if necessary, including referral to the Public Service Commission.[116]

The Commission of Inquiry found that:

> *the department has a mature complaints system, but for the public to have confidence in the department's accountability, it needs to adopt a stronger culture of review that seeks feedback, wants to know what stakeholders are thinking and provides reasonable remedies when things go wrong.*[117]

4.2.2 Amendments to complaints management

In his explanatory speech the Attorney-General said the Bill streamlines complaint functions by removing the duplicated oversight role performed by the CCYPCG in favour of the oversight currently provided by the Ombudsman. This is to improve processes for handling complaints in relation to the child protection system and avoid duplication.[118]

The Bill also amends the *Ombudsman Act 2001* to allow the Queensland Ombudsman to delegate work to appropriately qualified officers and ensure the timely resolution of child protection complaints.[119]

116 Queensland Child Protection Commission of Inquiry Report, p.423
117 Queensland Child Protection Commission of Inquiry Report, pp.421-422
118 Explanatory speech, p.834
119 Explanatory speech, p.834

5 Working with children checks

5.1 Current arrangements for working with children checks

The Commission for Children Act prescribes a criminal history screening process for people employed in particular employment, including volunteers, or people operating particular businesses (collectively, regulated service environments). The employment and businesses to which screening applies include child care facilities, clubs and associations, and residential facilities.[120] The screening system is commonly known as the "blue card" and is administered by the CCYPCG.

The blue card system includes:

- employment screening, which uses known police and disciplinary information to determine whether a person is eligible to work with children and young people in regulated service environments; eligible people receive a blue card
- daily monitoring through an electronic interface with the Queensland Police Service (QPS), of blue card holders and applicants to ensure action can be taken to protect children and young people if a blue card holder or applicant is charged with a concerning offence
- risk mitigation strategies, including a requirement for organisations providing child related services to have policies and procedures to identify and minimise the risk of harm to children.[121]

In 2012-13, the CCYPCG processed 196,378 blue and exemption card applications and authorisations, monitored 623,800 blue and exemption card holders, and prevented 1085 "high risk" individuals from working with children.[122]

5.2 Commission of Inquiry recommendation

The Commission of Inquiry received evidence that indicated that the cost of the current arrangements for working with children checks may outweigh the benefits, and that foster and kinship carer applications may be inhibited by the requirements. It noted that automated online services in other jurisdictions had reduced costs and approvals and that the QPS already conducts criminal history screening for the public service.[123]

The Commission of Inquiry recommended that the administration of working with children checks be rationalised and made more efficient while being "based on a balanced view of risk and downstream effects on community participation, with the intent being to screen out adults that have a relevant criminal or disciplinary history".[124] It recommended red tape reduction reforms including transferring employment screening to the QPS and streamlining it further.[125]

Following the Commission of Inquiry reporting, the Government accepted a recommendation of the Police and Community Safety Review undertaken by Mr Mick Keelty in 2013 that a new service agency, the Public Safety Business Agency (PSBA), be established to provide corporate service capabilities for the QPS and the Queensland Fire and Rescue Service.[126] The Government decided,

120 Commission for Children Act, Schedule 1
121 CCYPCG, *Annual Report 2011–12*, p.20
122 CCYPCG, *Annual Report 2012-13*, p.102 and 2013-14 Queensland State Budget – Service Delivery Statements – CCYPCG, p.58
123 Queensland Child Protection Commission of Inquiry Report, p.444
124 Queensland Child Protection Commission of Inquiry Report, p.444
125 Recommendation 12.17, Queensland Child Protection Commission of Inquiry Report, p.446
126 Queensland Government, *Queensland Government response to the Queensland Child Protection Commission of Inquiry final report;* Media release, joint statement by the Premier the Hon. Campbell Newman MP and the Minister for Police and Community Safety, the Hon Jack Dempsey MP, September 10 2013 'Emergency Services to work closer after Keelty Review' accessed on 16 April 2014 from http://statements.qld.gov.au/Statement/2013/9/10/emergency-services-to-work-closer-after-keelty-review; and 'Police and Community Safety Review, Frequently Asked Questions' accessed on 16 April 2014 from http://www.communitysafety.qld.gov.au/info/pdf/FAQ-PACSR.pdf

therefore, that it would be more appropriate to transfer the administration of working with children screening to the PSBA.[127]

The Public Safety Business Agency Bill 2014 was introduced into the Legislative Assembly by the Minister for Police, Fire and Emergency Services on 6 March 2014. It was passed by the Legislative Assembly on 6 May 2014 and will commence on proclamation.

5.3 Transfer of working with children screening to the Public Safety Business Agency

5.3.1 Amendments proposed by the Bill

Part 4 of the Bill transfers administration of screening for working with children (the blue card system) to the PSBA, with the blue card system being administered under its own, stand-alone legislation.[128] Proposed amendments (clause 51) to the Commission for Children Act will result in it becoming the Working with Children (Risk Management and Screening) Act 2000.

The long title of the Commission for Children Act is amended by clause 49 to become "An Act to establish a scheme requiring the development and implementation of risk management strategies, and the screening of persons employed in particular employment or carrying on particular businesses, to promote and protect the rights, interests and wellbeing of children in Queensland".

To facilitate transfer of working with children screening to the PSBA, clause 52 of the Bill inserts:

- a revised section 5 'Object of Act' with a new focus on the development and implementation of risk management strategies and screening of people in particular employment and businesses
- a revised section 6 'Principles for administering this Act', reducing the principles to those necessary for the screening function
- a new section 7 which identifies the PSBA to administer this Act
- a new section 8 which provides that the chief executive's main functions are to administer an employment screening scheme under this Act.

Clauses 53 and 54 omit the following chapters of the Commission for Children Act which do not relate to the business of working with children screening: chapter 2 (Commissioner, assistant commissioner and commission); chapter 3 (Powers and obligations relating to commissioner's monitoring functions); chapter 4 (Complaints and investigations); chapter 6 (Child deaths), and chapter 7 (Advisory committees). Those functions and powers are replaced by new provisions in this Bill, the Family and Child Commission Bill and the Public Guardian Bill. In addition, clause 66 omits chapter 8A, part 4 (Employment screening of persons engaged, or to be engaged, in child-related duties) as employees of the PSBA will not be in regulated employment or undertaking child-related duties that are currently undertaken by CCYPCG staff.[129]

A range of other amendments are made to change terminology, align the re-named Act with the PSBA and the transfer of some CCYPCG functions to other entities. Transitional arrangements are provided for in clause 90, and definitions are amended by clauses 91 and 92.

5.3.2 Implementation

In its briefing for the committee, the Department noted that once the transition of the blue card system to the PSBA has been undertaken, "a comprehensive independent policy and business process review, including a review of the workforce requirements and consideration of whether the working with children check should be simplified, will be undertaken after 1 July 2014".[130]

127 Explanatory Notes, p.4
128 Explanatory Speech, p.834
129 Explanatory Notes, p.15
130 Mr Matthew Lupi, *Public briefing transcript*, 26 March 2014, p.18

6 Administration of the Childrens Court

6.1 Commission of Inquiry recommendations

The Commission of Inquiry noted that child protection proceedings do not currently use the case management approach of other courts. There are no other specific processes to ensure that child protection proceedings are expedited, despite recognition that "time is of the essence because the child ages fast through the process and may be disadvantaged by delay."[131]

The Commission of Inquiry canvassed whether a case management approach should be established for child protection proceedings and, if so, what the main features should be.[132] Stakeholders, including the Childrens Court President and magistrate, supported developing a case-management system specifically for child protection.[133] To support this approach, the Commission of Inquiry recommended changes to the administration of the Childrens Court to facilitate introduction of a case management system to improve timeliness and decision making in child protection matters and to clarify the respective roles of the President of the Childrens Court and the Chief Magistrate.[134]

The Commission of Inquiry also found that the number of dedicated specialist Childrens Court magistrates need to be increased.[135] It recommended that the Attorney-General and Minister for Justice, in consultation with the Chief Magistrate, appoint existing magistrates as Childrens Court magistrates in key locations.[136]

6.2 Leadership of the Childrens Court

The Bill amends the *Childrens Court Act 1992* (Childrens Court Act) and the *Magistrates Act 1991* (Magistrates Act) to facilitate the implementation of the Commission of Inquiry recommendations.

Amendments to the Childrens Court Act are intended to clarify the leadership of the Childrens Court when constituted by magistrates and give the Chief Magistrate powers, functions and associated responsibility for the orderly and expeditious exercise of the jurisdiction of the Childrens Court when it is constituted by magistrates or justices of the peace.[137] In his Explanatory Speech the Attorney-General said this "will allow the Chief Magistrate to ensure that Childrens Court matters, including child protection, youth justice and adoption matters are dealt with in an efficient manner."[138]

Proposed section 8A, inserted by clause 43 of the Bill, provides for leadership of the court. It provides that the President's function is the exercise of jurisdiction of the Childrens Court when it is constituted by a Childrens Court judge, and the Chief Magistrate's function is the exercise of jurisdiction when the court is constituted by a magistrate or justices.

Clause 42 amends section 8 of the Childrens Court Act to enable the chief magistrate to issue directions for the court when constituted by a Childrens Court magistrate or justices, after consultation with the President of the Childrens Court. An amendment to section 21 (clause 46) of the Act enables both the president and the chief magistrate to give directions about Court sitting times.

Clause 94 amends the Magistrates Act to give the Chief Magistrate powers over the Childrens Court when constituted by magistrates or justices, including deciding the magistrates and justices who are

131 Queensland Child Protection Commission of Inquiry Report, p.456
132 Queensland Child Protection Commission of Inquiry Report, p.456
133 Queensland Child Protection Commission of Inquiry Report, p.457
134 Explanatory Notes, p.5; and Recommendation 13.3, Queensland Child Protection Commission of Inquiry Report, p.460
135 Queensland Child Protection Commission of Inquiry Report, p.465
136 Recommendation 13.8, Queensland Child Protection Commission of Inquiry Report, p.466
137 Attorney-General, Explanatory Speech, 20 March 2014, p.834
138 Explanatory Speech, p.834

to constitute the Childrens Court at particular places and times and issuing directions about procedure.[139]

6.3 Appointment of Childrens Court magistrates

The Bill amends the Childrens Court Act to allow Childrens Court magistrate appointments, including current appointments, to continue for the length of the magistrate's appointment rather than being limited to five years. Clause 45 of the Bill omits section 14A of the Childrens Court Act, which currently limits the maximum term of a Childrens Court magistrate. This means that all Childrens Court magistrates will have continuing appointment rather than having a maximum term of appointment of five years. [140]

The Attorney-General said in his Explanatory Speech that the amendment would "increase the number of Childrens Court magistrates over time and assist with implementing the Commission of Inquiry's recommendation that more existing magistrates be appointed as Childrens Court magistrates".[141]

139 Explanatory Notes, p.17
140 Explanatory Notes, p.13
141 Attorney-General, Explanatory Speech, 20 March 2014, p.834

7 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.

7.1 Privacy and confidentiality – rights and liberties of individuals

The committee considered whether provisions of the Bill about information disclosure have sufficient regard to the rights and liberties of individuals. Clauses 31, 32, 37, 64 and 65 provide for child death case review committees and independent child death review panels.

Clause 31 enables the chief executive to seek information from entities prescribed under section 159D of the Child Protection Act e.g. Corrective Services, a Hospital and Health Service, a licensed service under the Child Protection Act. Entities are authorised, under clause 32, to provide information for a child death case review committee, or an independent child death review panel.

The disclosure of confidential information about a child and others for the purpose of reviewing child deaths affects the rights of individuals. The committee considers that the potential breach of an individual's right to privacy is acceptable in the context of the public benefit that may result from the review of the death of a child known to Child Safety.

The Bill provides for people external to the DCCSDS to be appointed to a Child Death Case Review Panel. Proposed section 246HA (inserted by clause 37) provides for potential appointees to consent to a criminal history check. The Explanatory Notes state that members will have access to sensitive and confidential information about vulnerable children and their families, and that the potential breach of an individual's privacy is justified on the basis that the primary purpose of the screening tis to promote and protect the rights, interests and wellbeing of children.[142]

7.2 Immunity from proceedings

The committee considered whether the immunity from proceedings in clauses 8, 26 and 33 is justifiable. Clause 8 protects from liability a person who gives information, honestly and reasonably, about alleged harm or risk of harm. Clause 26 extends protection of officials to members of a review panel, and clause 33 protects people who, acting honestly, provide information to the Child Death Case Review Panel.

The immunity from proceedings in these provisions are central to operation of the child protection system, and the committee considers that they are appropriate and reasonable.

7.3 Amendment of an Act only by another Act ("Henry VIII" provision)

The committee considered whether the transitional regulation making power in the Bill has sufficient regard to the institution of the Legislative Assembly. Proposed section 548 (inserted by clause 90) provides that a transitional regulation may provide for any saving or transitional matters to facilitate the transition from the current Child Protection Act to the amended Act. Proposed section 548, and any transitional regulation made under it, would expire after six months.

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

142 Explanatory Notes, p.6

reasonable as its limited application is to affect only transitional matters and it expires 6 months after commencement."[143]

In light of the automatic expiry of proposed section 548 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.

143 Explanatory Notes, p.6

Appendices

Appendix A – List of Submissions

Sub #	Submitter
001	Ms Karen Berry
002	Women's Legal Service
003	Queensland Child and Family Health Nurses Association
004	Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd
008	Queensland Catholic Education Commission
009	Australian Association of Social Workers
012	PeakCare Queensland Inc
013	Australian Christian Lobby
014	Queensland Council of Social Service Inc.
015	Independent Schools Queensland
016	Australian Medical Association Qld
017	Queensland Law Society
018	Youth Advocacy Centre Inc.
019	CREATE Foundation
020	Qld Child Safety Legislation Action Network
021	Queensland Nurses' Union
022	Ms Kerrilee Brown
023	The Australian College of Children and Young People's Nurses
024	Dr Erica O'Neill

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
Department of Communities, Child Safety and Disability Services • Mr Matthew Lupi, Executive Director, Child Safety Policy and Programs • Ms Megan Giles, Director, Child Safety Strategic Policy and Design

Public hearing – 29 April 2014, Brisbane
CREATE Foundation • Mr Adam Johnson, Young Consultant
PeakCare Inc. • Mr Lindsay Wegener, Executive Director
Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd • Ms Jennifer Ekanayake, Director of Family Law
Independent Schools Queensland • Mr David Robertson, Executive Director • Ms Helen Coyer, Deputy Executive Director
Queensland Catholic Education Commission • Mr Peter Hill, Chair, Student Protection Subcommittee • Mr Mike Wilkinson, Student Protection Subcommittee • Ms Alison Jeffries, Student Protection Subcommittee
Australian Association of Social Workers Inc. • Professor Karen Healy, National President
Department of Communities, Child Safety and Disability Services • Mr Matthew Lupi, Executive Director, Child Safety Policy and Programs

Appendix C – Queensland Commission of Inquiry Recommendations

The following recommendations of the Queensland Child Protection Commission of Inquiry are relevant to the Child Protection Reform Amendment Bill.[144]

Recommendation 4.1

That the Minister for Communities, Child Safety and Disability Services propose that section 10 of the Child Protection Act 1999 be amended to state that 'a child in need of protection is a child who has suffered significant harm, is suffering significant harm, or is at unacceptable risk of suffering significant harm'.

Recommendation 4.2

That the Department of the Premier and Cabinet and the Department of Communities, Child Safety and Disability Services lead a whole-of-government process to:

- review and consolidate all existing legislative reporting obligations into the Child Protection Act 1999
- develop a single 'standard' to govern reporting policies across core Queensland Government agencies
- provide support through joint training in the understanding of key threshold definitions to help professionals decide when they should report significant harm to Child Safety Services and encourage a shared understanding across government.

Recommendation 4.6

That the Minister for Communities, Child Safety and Disability Services propose amendments to the Child Protection Act 1999 to:

- allow mandatory reporters to discharge their legal reporting obligations by referring a family to the community-based intake gateway, and afford them the same legal and confidentiality protections currently afforded to reporters
- provide that reporters only have protection from civil and criminal liability if in making their report they are acting not only honestly but also reasonably
- provide appropriate information-sharing and confidentiality provisions to support community-based intake.

Recommendation 4.8

That the Department of Communities, Child Safety and Disability Services in its review of the Child Protection Act 1999 consider amending section 14(1) to remove the reference to investigation and to replace it with 'risk assessment and harm substantiation'.

Recommendation 12.9

That complaints about departmental actions or inactions, which are currently directed to the Children's Commission, be investigated by the relevant department through its accredited complaints-management process, with oversight by the Ombudsman.

Recommendation 12.11

That the Department of Communities, Child Safety and Disability Services:

- establish a specialist investigation team to investigate cases where children in care have died or sustained serious injuries (and other cases requested by the Minister for Communities, Child Safety and Disability Services),

144 Ms Jenny Lang, *Public Briefing Transcript*, 26 March 2014, p.4

- set the timeframe for such a child 'being known' to the department at one year,
- provide reports of investigations be reviewed by a multidisciplinary independent panel appointed for two years.

Recommendation 12.17

That the Department of Communities, Child Safety and Disability Services progress and evaluate red-tape reduction reforms, including:

- transferring employment screening to the Queensland Police Service and streamlining it further
- consider ceasing the licensing of care services
- streamlining the carer certification process including a review of the legislative basis for determining that carers and care service personnel do not pose a risk to children.

Recommendation 13.3

That the Attorney-General and Minister for Justice propose amendments to the Childrens Court Act 1992 and the Magistrates Act 1991 to clarify the respective roles of the President of the Childrens Court and the Chief Magistrate to:

- give the Chief Magistrate responsibility for the orderly and expeditious exercise of the jurisdiction of the Childrens Court when constituted by Childrens Court magistrates and magistrates and for issuing practice directions with respect to the procedures of the Childrens Court when constituted by magistrates, to the extent that any matter is not provided for by the Childrens Court Rules - this should be done in consultation with the President of the Childrens Court
- ensure that the powers and functions of the Chief Magistrate extend to the work of Childrens Court magistrates and magistrates.

Recommendation 13.8

That the Attorney-General and Minister for Justice, in consultation with the Chief Magistrate, appoint existing magistrates as Childrens Court magistrates in key locations in Queensland (subject to rec. 13.3).

Appendix D – Letter from the Department of Justice and Attorney-General, providing the Department's report on issues in submissions received on the Bill [145]

Queensland Government

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

Our reference: 2508039

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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

[redacted]

John Sosso
Director-General

Encl

145 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/documents/committees/HCSC/2014/ChildProtectReformAmB14/cor-02May2014-CPRAB.pdf

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
reception@oppositionqld.gov.au (07) 3838 6767

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 – *Child Protection Reform Amendment Bill 2014*

I wish to notify the committee that the Opposition has reservations about aspects of Report No. 48 of the Health and Community Services Committee into the *Child Protection Reform Amendment Bill 2014*.

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

Yours sincerely

[redacted]

Jo-Ann Miller MP
Shadow Minister for Health
Shadow Minister for Housing
Shadow Minister for Natural Resources and Mines