

## Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014

### Background

Front-line services funded by the Department of Communities, Child Safety and Disability Services (the Department) and other Queensland Government agencies are essential to the state's wellbeing and involve a large investment of public funds.

Currently, the Department of Communities, Child Safety and Disability Services administers its investment under three Acts — the *Community Services Act 2007*, *Disability Services Act 2006* and the *Family Services Act 1987*.

The *Family Services Act 1987* is dated in style and content. The other two Acts provide a contemporary legislative base for providing and safeguarding funding, ensuring the delivery of funded services and products and protecting vulnerable service users.

However, using three Acts has resulted in duplicative, inconsistent and unnecessary legislative requirements that increase red tape costs for funded organisations.

### Overview of the Bill

The Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014 (the Bill) streamlines the current laws while preserving essential safeguards that protect tax payer's money, the delivery of essential community services and service users.

Under the Bill, the *Community Services Act 2007* will provide a simpler and shared legislative base for funding across the Department, and other agencies that decide to use it. This will reduce red tape costs for funded organisations and support and enable the streamlining of funding contracts and other administrative reforms.

This document summarises the Bill's provisions in five key topic areas:

- provisions to be retained and repealed
- revised objects and principles for the *Community Services Act 2007*
- applying the revised *Community Services Act 2007*
- dealing with serious concerns — investigative and remedial powers, and
- transitional arrangements.

### Provisions to be retained and repealed

To create a common and simplified legislative base for funding, the Bill:

- repeals the *Family Services Act 1987*
- removes duplicative funding, monitoring and enforcement provisions from the *Disability Services Act 2006* (the DSA), and
- streamlines the *Community Services Act 2007* (the CSA) by removing unnecessary requirements and matters that can instead be dealt with administratively or through funding contracts.

Further details of the provisions to be repealed and retained are provided in Attachment 1.

It should be noted that the scope of the amended CSA will not include direct funding to individuals to obtain disability services. The power to give funding to people to obtain

disability services will remain in Part 5A of the DSA, pending the implementation of the National Disability Insurance Scheme in Queensland.

### **Revised objects and principles for the *Community Services Act 2007***

The amended CSA will have a narrower scope than the current Act. It will mainly set out investigative and remedial powers that enable departments to take swift and decisive action to investigate serious concerns about the use of public funds or the delivery of funded products or services. The Bill amends the objects and principles to better align with this scope.

The revised object is to safeguard funding for the delivery of products or services to the community that contribute to Queensland's economic, social and environmental wellbeing, and enhance the quality of life of individuals, groups and communities.

This object will be achieved by providing clear and consistent powers that safeguard funding for, and the delivery of, products and services.

Principles are provided to guide decisions made under the amended CSA. The matters covered by the revised principles are:

- the efficient and effective administration of funding
- clear contractual arrangements between government and funded entities
- the benefits of accountability in the delivery of funded products and services, and
- recognition of each other's autonomy and accountabilities.

### **Applying the revised *Community Services Act 2007***

Removing the current provisions that require Ministers to approve funding and Directors-General to enter into a written funding agreement means that a new way of providing clarity about which funding is subject to the investigative and remedial powers in the amended Act is needed.

The Bill provides that the amended CSA will apply to funding that is the subject of a Ministerial funding declaration that is published on a department's website.

As well as publishing each declaration, the Bill requires departments to keep and publish on their websites a complete list of their declared funding.

A declaration may relate to a funding program or one-off funding. In deciding whether to make a declaration, a Minister may consider a range of factors including, for example, the nature of the product or service to be provided, the importance of the product or service to the community, the vulnerability of service users, the amount government invests in the product or service and whether the funding is regulated under another law.

Ministers will be able to make declarations either before their department provides the funding to NGOs (e.g. under a new funding program) or after funding has been provided (e.g. under an existing funding program). If a declaration is made after the funding has been provided, the department must give each affected NGO written notice of the declaration within one month.

### **Dealing with serious concerns — investigative and remedial powers**

The vast majority of entities use government funding in good faith to provide the best possible services and products. If problems occur, these are usually resolved cooperatively between the parties, under the terms of funding contracts.

From time to time, however, serious concerns can arise — and, in some situations, it may not be possible to manage these effectively through cooperative means or contracts. In these cases, government needs to be able to take action to investigate and remedy the concerns.

Currently, the CSA contains remedial and investigative powers that may be used, depending on the nature of the matter, how much is known about it, the need to continue delivery of the product or service, and the level of cooperation between the parties.

These powers allow departments to:

- have specially authorised officers investigate a matter — including entering and searching a place with the consent of the occupier or a court issued warrant
- require specified information or documents to be provided
- issue a compliance notice requiring a funded organisation to take specified remedial action
- appoint an interim manager to manage the funding, or
- recover misspent or unused funding as a debt.

The Bill retains these powers in the CSA. The current safeguards that apply to the use of these powers will also be retained. For example, resolving concerns collaboratively will still be preferred. Importantly, the availability of legislative powers does not limit the ability to address concerns in other ways, such as through the terms of a funding agreement.

In the event that a cooperative approach is not feasible, the CSA will continue to describe the circumstances in which remedial and investigative powers may be used. However, the powers do not have to be used, even if the circumstances allow it. Decisions about whether use of the powers is warranted will continue to be made on a case-by-case basis, often by a chief executive (or their delegate).

The Bill removes provisions setting prescribed requirements in accompanying regulations, a breach of which triggers the investigative and remedial powers. To provide clarity about use of the powers while relieving the compliance burden, the Bill specifies four serious concerns that will trigger the powers.

The Bill defines serious concerns as the presence, or serious risk, of:

- improper use of funding (e.g. for dishonest or fraudulent purposes, or purposes contrary to the funding contract)
- failure to deliver funded products and services (e.g. closing an emergency service that is required to be continually open)
- harm to a person resulting from a funded entity's act or omission in delivering a funded product or service, or
- a breach of the DSA (e.g. employment screening requirements or the provisions regulating the use of restrictive practices).

By defining serious concerns, the Bill makes remedial and investigative powers available where necessary and justified, without imposing any red tape costs on funded entities.

Where an entity receives funding from more than one department, the Bill allows a chief executive to share information about a serious concern with the other funders. Further, the chief executive of one of the departments may exercise a power on behalf of some or all of the other chief executives.

### **Transitional arrangements**

The amended CSA will be applied to existing funding arrangements by making Ministerial funding declarations. Existing funding will not automatically be deemed to be subject to the revised CSA.

If existing funding contracts are declared to be subject to the revised Act, no action will need to be taken to renegotiate or renew those contracts. Similarly, if existing funding contracts are not declared, those contracts will continue but the powers in the revised CSA will not be available to deal with any serious concerns that arise.

In line with fundamental legislative principles, the powers in the amended CSA will only be available to deal with serious concerns that arise after a declaration is made. The powers will not apply to events that occur before the declaration is made and the Bill commences.

On commencement, any matters in progress under the current funding laws (i.e. investigations, remedial action, prosecutions and reviews of relevant decisions) will be completed under the current laws.