

Family and Child Commission Bill 2014

Report No. 47

Health and Community Services Committee

May 2014

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Abbreviations and glossary

Note: terms below in italics are defined terms in legislation

AASW	Australian Association of Social Workers
ATSILS	Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd
the Attorney-General	the Attorney-General and Minister for Justice
the Bill	the Family and Child Commission Bill
CCYPCG	Commission for Children and Young People and Child Guardian
Child Protection Act	<i>Child Protection Act 1999</i>
<i>child protection system</i>	the system of services provided by relevant agencies to children and young people in need of protection or at risk of harm, including preventative and support services to strengthen and support families – see Schedule 2 of the Family and Child Commission Bill for full definition
Commission of Inquiry	Queensland Child Protection Commission of Inquiry
the committee	Health and Community Services Committee
DCCSDS	Department of Communities, Child Safety and Disability Services
DJAG	Department of Justice and Attorney-General
DPC	Department of the Premier and Cabinet
Family and Child Commission	the Queensland Family and Child Commission, to be established by the Bill
Family and Child Commission Bill	Family and Child Commission Bill 2014
the Minister	the Premier
QLS	Queensland Law Society
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 Family and Child Commission Bill 2014.

The Family and Child Commission 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 provides for the establishment of the Queensland Family and Child Commission.

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, Department of the Premier and Cabinet and Department of Communities, Child Safety and Disability Services who briefed the committee, the committee's staff and the Technical Scrutiny secretariat.

I commend the report to the House.



Trevor Ruthenberg MP
Chair

Recommendations

Recommendation 1

3

The committee recommends that the Family and Child Commission Bill 2014 be passed.

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 Family and Child Commission Bill 2014 (the Family and Child Commission 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). The Attorney-General also introduced the Child Protection Reform Amendment 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 the 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-four submissions were received on the three Bills, eight of which commented on the Family and Child Commission Bill (see list at Appendix A).

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

The committee held a public hearing to examine the three Bills on 29 April 2014 at Parliament House, Brisbane and heard from nine witnesses who made submissions; one witness commented on the Family and Child Commission Bill (see 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 Family and Child Commission Bill are to establish the Queensland Family and Child Commission (the Family and Child Commission) as a new statutory body to:

- *provide systemic oversight of the child protection system delivered by public sector and publicly funded non-government organisations providing child safety services or support services to families to improve the safety and well-being of children and young people, including those in need of protection*

- *drive best practice in the provision of services to this cohort, including by developing a workforce development strategy, coordinating a research program, and by evaluating the performance at a system level*
- *promote and advocate to families and communities their responsibility for protecting and care for their children including through education and providing information to enhance community awareness.*¹

The Bill is intended to provide the legislative framework for establishment of the Family and Child Commission in response to the Commission of Inquiry. The Commission of Inquiry recommended that:

the Premier establish the Family and Child Council to:

- *monitor, review and report on the performance of the child protection system in line with the National Framework for Protecting Australia's Children 2009-2020*
- *provide cross-sectoral leadership and advice for the protection and care of children and young people to drive achievement of the child protection system*
- *provide an authoritative view and advice on current research and child protection practice to support the delivery of service and the performance of Queensland's child protection system*
- *build the capacity of the non-government sector and the child protection workforce.*

*The council should have two chairpersons, one of whom is an Aboriginal person or Torres Strait Islander.*²

1.4 Summary of the Bill

The Bill provides for establishment of the Family and Child Commission as a statutory body consisting of the commissioners and staff. The two commissioners, one of whom must be an Aboriginal person or a Torres Strait Islander, are appointed by the Governor in Council for a term of up to three years.³ A commissioner is subject to directions from the Minister (the Minister responsible for this legislation is the Premier).⁴

The Bill sets out the Family and Child Commission's functions (discussed in section 3.3) and provides for the establishment of advisory councils.⁵ The Bill provides for the principal commissioner to obtain information from public entities, and for managing confidential information.

The Bill transfers the systemic oversight, research coordination and child death register functions of the Commission for Children and Young People Child Guardian (CCYPCG) to the proposed Family and Child Commission.⁶

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 eight submissions which commented on the bill.

1 Explanatory Notes, Family and Child Commission Bill 2014, p.2

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

3 Family and Child Commission Bill 2014, clauses 6, 11 and 13

4 Family and Child Commission Bill 2014, clause 22

5 Family and Child Commission Bill 2014, clauses 30 - 34

6 Ms Jenny Lang, Department of Justice and Attorney-General, *Public Briefing Transcript*, 26 March 2014, p.3

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 Family and Child Commission Bill 2014 be passed.

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

2.1 The Commission of Inquiry

The 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* (Child Protection Act) 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.⁷ 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,⁸ 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.*⁹

The Queensland Government response to the Queensland Child Protection Commission of Inquiry final report¹⁰ 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.*¹¹

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

- reduce the number of children and young people in the child protection system
- revitalise child protection frontline services and family support, breaking the intergenerational cycle of abuse and neglect
- refocus oversight on learning, improving and taking responsibility.¹²

7 Queensland Child Protection Commission of Inquiry Report, p.1

8 Queensland Child Protection Commission of Inquiry Report, ch.15

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

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

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

12 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 2023-24.¹³

At a briefing on the Bills on 26 March 2014, Ms Lang told the committee that:

*Implementing the commission's reforms will require a fundamental shift in the way that government agencies deliver services as well as child safety professionals and community organisations. The reforms place greater emphasis on supporting vulnerable families to take appropriate care of their children and reforming the system in Queensland to better provide for the safety, wellbeing and best interests of our most at-risk children.*¹⁴

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.*¹⁵

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

13 Queensland Child Protection Commission of Inquiry Report, p.525

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

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

3 Queensland Family and Child Commission

3.1 Commission of Inquiry recommendations

The Commission of Inquiry reported that there were mixed opinions about the strengths and weaknesses of the current system of external oversight of the child protection system. It reported that many of those consulted expressed the need for stronger systemic accountability and oversight of the child protection system as a whole.¹⁶ The Commission of Inquiry emphasised the importance of promoting greater understanding of how to support families to care for their children, and the importance of a whole of government response to support reform of the child protection system.

A Family and Child Council was recommended by the Commission of Inquiry to provide external oversight of the child protection system. It was envisaged that it would bring a multidisciplinary approach to child protection and help implement the Reform Roadmap. It would maintain a systemic advocacy role to promote and protect the rights, interests and wellbeing of children and young people, with more attention to preventive measures.¹⁷ In its response to the Commission of Inquiry recommendations the Government supported establishment of a body to be called the Queensland Family and Child Commission.¹⁸

The committee was advised that the Bill implements this recommendation (Recommendation 12.3) and seven other recommendations of the Commission of Inquiry.¹⁹ Those recommendations are reproduced in Appendix C.

3.2 Establishment of the Queensland Family and Child Commission and appointment of the Commissioners

3.2.1 *Establishment of the Queensland Family and Child Commission*

Clauses 6 to 8 of the Bill establish the Queensland Family and Child Commission (the Family and Child Commission), consisting of the commissioners and staff, and provide that it represents the State and that it is subject to the *Crime and Misconduct Act 2001*, the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*.²⁰

As anticipated by the Government response to the Commission of Inquiry recommendations, the name of the commission differs from that recommended by the Commission of Inquiry. This will align Queensland with most Australian jurisdictions, except South Australia, which have a 'Commissioner' for children.²¹

3.2.2 *Appointment of the commissioners*

The new Family and Child Commission is proposed to commence from 1 July 2014,²² with two commissioners. The commissioners are appointed by the Governor in Council for a term of up to three years, and at least one must be an Aboriginal person or a Torres Strait Islander.²³ Several submissions made positive comments about this requirement.²⁴ The committee also considers that it is a positive step to require that at least one of the commissioners is an Aboriginal person or Torres Strait Islander.

16 Queensland Child Protection Commission of Inquiry Report, pp.403-5

17 Queensland Child Protection Commission of Inquiry Report, p.407

18 Queensland Government, *Queensland Government response to the Queensland Child Protection Commission of Inquiry final report*, p.21

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

20 Family and Child Commission Bill 2014, clauses 6 - 8

21 Explanatory Notes, p.1

22 Family and Child Commission Bill 2014, clause 2

23 Family and Child Commission Bill 2014, clauses 11 and 13

24 Submissions 4, 11 and 17

Clause 19 provides that one of the two commissioners is the principal commissioner, “to ensure that governance arrangements and accountability for the new organisation are clear”.²⁵ Continuity is also provided for by transitional arrangements in the Bill. Clause 45 provides that the person who is Commissioner for Children and Young People and Child Guardian immediately before commencement of the new Act is appointed as the principal commissioner. The term of the appointment is for the earliest of: the remainder of the term of the person’s original appointment; the appointment of a principal commissioner under the Act; or the person’s resignation.²⁶

3.3 Functions of the Queensland Family and Child Commission

3.3.1 Commission of Inquiry recommendations

As noted in 3.1 above, the Commission of Inquiry made a number of recommendations relevant to the functions of the proposed the Family and Child Commission, which are reproduced in Appendix C. The Commission of Inquiry envisaged a body that, as well as providing external oversight of the child protection system, would:

- ensure that on-line information about community services for children and families is available (Recommendation 6.1)
- support collaborative partnerships across government and non-government services, and monitor the effectiveness of those partnerships (Recommendation 6.3)
- lead the development of capacity building and governance strategy for non-government agencies (Recommendation 6.6)
- lead the development of a workplace planning and development strategy (Recommendation 10.7)
- develop a rolling research schedule with research institutions and practitioners to build the evidence base for child protection practice (Recommendation 12.3)
- along with the Child Protection Reform Leaders Group, lead a change process to develop a positive culture in child protection practice in government and the community (Recommendation 12.15)
- develop resource material and information for children and families to assist in understanding rights, how the child protection system works (Recommendation 13.26).

3.3.2 Proposed functions of the Queensland Family and Child Commission

Clause 9 of the Family and Child Commission Bill sets out the commission’s functions. In summary the proposed functions are:

- to provide oversight of the child protection system
- to promote and advocate the responsibilities of families and communities to protect children, and to promote the safety and well-being of children and protection, particularly children in need of protection
- inform and educate the community about services available and the way the child protection system works, and about relevant research
- develop a research program in consultation with stakeholders and relevant agencies
- assist relevant agencies to evaluate the efficacy of their programs and identify effective service models
- provide leadership and expert advice to relevant agencies
- increase collaboration and build capacity across different sectors to improve the delivery of services to children, young people and families
- analyse and evaluate, at a systemic level, policies and practices relevant to the child protection system and the performance of relevant agencies, and

²⁵ Ms Jenny Lang, *Public Briefing Transcript*, 26 March 2014, p.4

²⁶ Family and Child Commission Bill 2014, clause 45

- report to the Minister about matters relating to the above functions.

3.3.3 Oversight of the child protection system

As noted above, the Bill provides that a function for the Family and Child Commission is oversight of the child protection system. The adequacy of the Bill to enable adequate oversight of the child protection system was questioned by the Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd (ATSILS). While clause 9 states that the Family and Child Commission is to provide oversight of the child protection system, the Bill does not provide for monitoring and audit of DCCSDS and service providers, and monitoring compliance with the Child Protection Act in relation to individual cases.²⁷

In lights of the broad functions of the Family and Child Commission, the Australian Association of Social Workers (AASW) submitted that it would require a high level of resources. The AASW asked what accountability mechanisms would be in place in the event that the Family and Child Commission was unable to fulfil its statutory functions.²⁸

3.3.4 Children and young people's rights and participation

The CREATE Foundation suggested a number of amendments to the functions of the Family and Child Council, which centre around the participation of children and young people in the child protection system, and in informing that system. In summary, CREATE Foundation's suggestions are to:

- include promoting the rights of children and young people clause 9(1), along with promoting their safety, wellbeing and best interests
- additional functions of promoting the establishment by service providers of mechanisms for children's participation in matters that affect them, as in section 17(1)(h) of the *Commission for Children Young People and Child Guardian Act 2000*; and consulting with children to promote their participation in decision making by the Family and Child Commission
- including in the research function of the Family and Child Commission, undertaking research with young adults who were formerly part of the child protection system, and
- that the workforce planning function should be informed by feedback from children and young about out of home care.²⁹

Committee comment

The committee considers that the views of young people who have been involved in the child protection system should inform the way the Family and Child Commission functions. The committee notes that Part 4 of the Bill provides for the principal commissioner to form advisory councils, and encourages the use of advisory councils as a way to ensure that young people with experience of the child protection system are able to contribute to oversight and improvement of that system.

Submissions from ATSILS, PeakCare and the Queensland Law Society (QLS) raised the question of accountability for implementation of the child placement principle. Both ATSILS and QLS proposed that the Family and Child Commission's functions should include monitoring compliance with the child placement principle, and PeakCare suggested that reporting about compliance with the principle should be required in the Family and Child Commission's annual report.³⁰ This is discussed in section 3.4 below.

27 ATSILS, Submission 4, p.4

28 Australian Association of Social Workers, Submission 9, p.5

29 CREATE Foundation, Submission 19, p.3 and later pages

30 Submission 4, p.4; QLS, Submission 17, p.17

3.4 Aboriginal people and Torres Strait Islanders

3.4.1 Commission of Inquiry

The Commission of Inquiry considered the over-representation of Aboriginal and Torres Strait Islander children in the child protection system and noted that “an estimated 50 per cent of Indigenous children are known to Child Safety”.³¹ As the committee was advised, the Commission of Inquiry report “provides very strong advice about the need to ensure that program responses that we establish are effective for Indigenous communities”.³²

3.4.2 Role of Aboriginal people and Torres Strait Islanders in the Family and Child Commission

The committee asked departmental officials about the intent of the Bill in relation to Aboriginal people and Torres Strait Islanders. The Commission of Inquiry placed importance on addressing the overrepresentation of Indigenous children in the child protection system. The committee was advised that:

*... it is a requirement of the bill that the functions are shared by both commissioners and that one will be an Aboriginal person or a Torres Strait Islander. Another critical section within the bill is clause 23, which talks about the ways in which commissioners are to perform their functions. There is a strong emphasis there in terms of ensuring that the interests of Aboriginal people and Torres Strait Islanders are adequately and appropriately represented. It also includes a focus on Aboriginal and Torres Strait Islander service providers.*³³

Among other things, clause 23 of the Family and Child Commission Bill requires a commissioner to:

- ensure that the interests of Aboriginal people and Torres Strait Islanders are adequately and appropriately represented
- respect and promote the role of Aboriginal and Torres Strait Islander service providers in supporting Aboriginal and Torres Strait Islander families and communities to protect and care for their children and young people.

3.4.3 Aboriginal and Torres Strait Islander child placement principle

As noted above, two submitters proposed that the functions of the Family and Child Commission should include monitoring of compliance with the child placement principle in section 83 of the Child Protection Act. A third submission proposed that the Family and Child Commission be required to report on compliance with the child placement principle in its annual report. Section 83 of the Child Protection Act requires that a recognised entity (under 246I of that Act) must have an opportunity to participate in the process of deciding where an Aboriginal or Torres Strait Islander child will live.³⁴

As well as the over-representation of Aboriginal and Torres Strait Islander children in the child protection system, the Commission of Inquiry discussed the importance of children in care maintaining cultural connections.³⁵ While the Commission of Inquiry considered some critiques of the effectiveness of the child placement principle, it recommended measures to ensure that Aboriginal and Torres Strait Islander children remain connected with their communities and culture.

Committee comment

The committee notes the focus on Aboriginal people and Torres Strait Islanders in the appointment of commissioners and in clause 23 of the Bill. The committee considers that the effectiveness of

31 Queensland Child Protection Commission of Inquiry Report, p.349

32 Mr Justin Murphy, Department of Premier and Cabinet, *Public Briefing Transcript*, 26 March 2014, p.5

33 Dr Belinda Mayfield, Department of Premier and Cabinet, *Public Briefing Transcript*, 26 March 2014, p.5

34 see sections 83 and 246I, *Child Protection Act 1999*

35 see Chapter 7, Queensland Child Protection Commission of Inquiry

measures to maintain cultural connection for Aboriginal and Torres Strait Islander children in care should be monitored. The committee therefore asks the Attorney-General or the Premier to explain during the second reading debate what steps will be taken to ensure that Aboriginal and Torres Strait Islander children in care maintain adequate and appropriate cultural connection, and how this will be monitored and reported.

3.5 Advisory councils

3.5.1 Establishment and function of advisory councils

Clauses 30 to 34 enable the principal commissioner to establish advisory councils to advise on matters relating to the Family and Child Commission's functions. While the principal commissioner may decide on the membership of appropriately qualified members he or she considers appropriate, at least one member of each advisory council is to be an Aboriginal person or a Torres Strait Islander.³⁶

The function of an advisory council under clause 32 is to help the Family and Child Commission to perform its functions by advising on matters referred to it by the principal commissioner. An advisory council's function is not to advise on the day to day management of the Family and Child Commission.

The QLS noted that the principal commissioner had broad powers in relation to advisory councils, and suggested that parameters should be put in place for the principal commissioner.³⁷ The committee considers that advisory councils are a potentially useful mechanism to involve stakeholders and ensure that the Family and Child Commission will receive advice from a range of perspectives.

3.6 Commission subject to Ministerial direction

Clause 22 provides that a commissioner is subject to the directions of the Minister in performing the commissioner's statutory functions and that the commissioner must comply with a direction.

The AASW raised concerns about the governance arrangements and independence of the Family and Child Commission, and whether it would be subject to direction from the Minister responsible for child protection.

The QLS suggested that clause 22 is overly prescriptive and suggests it be amended to require a commissioner to take all reasonable steps to comply with a Ministerial direction.³⁸ The CREATE Foundation also suggested that the Family and Child Commission should be an independent statutory body.³⁹

At the committee's public hearing Professor Healy from the AASW raised the organisation's concern about the independence of the Family and Child Commission.

*The role of the Family and Child Commission should be to fearlessly advocate for changes and for monitoring of the child welfare system in Queensland. We are concerned that the current proposed governance arrangements will not entirely allow for the level of independence and fearlessness that we think is necessary for this council to function as a body that effectively monitors the child protection system.*⁴⁰

36 Family and Child Commission Bill 2014, clauses 30 - 31

37 Submission 17, p.19

38 Submission 17, p.18

39 Submission 19, p.9

40 Professor Karen Healy, Australian Association of Social Workers, *Public Hearing Transcript*, 29 April 2014, p.19

At the hearing, DPC clarified that the Family and Child Commission would report to and be subject to the direction of the Premier. Any directions given will be included in the Family and Child Commission's annual report.⁴¹

3.7 Information and confidentiality

To enable the Family and Child Commission to perform its functions, the Family and Child Commission Bill provides that the principal commissioner may ask a public entity for information, and the public entity must comply with the request. A number of exceptions to the requirement to comply with a request are specified in clause 35(3), for example, that disclosure of the information is impracticable, or would prejudice the investigation of a possible contravention of the law.

Clause 36 provides that confidential information gained through the administration of the Act must not be disclosed except in circumstances specified in subclauses 36(3) and (4), for example, the information is disclosed under the Act, or with the written consent of the person to whom the information relates.

3.8 Child deaths register – kept by principal commissioner

Part 3 of the Family and Child Commission Bill (clauses 25 to 29) provides that the principal commissioner must keep a register of information relating to child deaths in Queensland, conduct or facilitate research on child deaths, and report to the Minister annually on child deaths. A child death register is currently maintained by the CCYPCG. Clause 46 of the Family and Child Commission Bill provides that the register maintained by the CCYPCG becomes the register kept by the principal commissioner.

The purpose of the child death register is to help “to reduce the likelihood of child deaths by classifying and analysing information to identify patterns or trends and conducting research, along or in cooperation with other entities”.⁴²

3.9 Review of the Act and the Queensland Family and Child Commission

Clause 41 of the Family and Child Commission Bill requires the Minister to arrange an independent review of the performance by the commission of its functions within five years of commencement of the clause, proposed to be 1 July 2014. In addition, the Minister must review the effectiveness of the Act as soon as practicable after five years of commencement of the Act, and must table a report in the Legislative Assembly.

Two submissions commented on when an independent review of the Family and Child Commission should occur. The Youth Advocacy Centre Inc. suggested that a review should commence after four years, and the QLS suggested it should commence after three years.⁴³

41 Dr Belinda Mayfield, *Public Hearing Transcript*, 29 April 2014, p. 28

42 Explanatory Notes, p.5

43 Youth Advocacy Centre Inc, Submission 18, p.13; Submission 17, p.19

4 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.

4.1 Suspension of a commissioner – natural justice

Clause 15(4) provides that the Minister may recommend suspension of a commissioner for up to sixty days if there is an allegation of misconduct or if the Minister considers that there may be grounds for removal. The committee considered whether this clause is consistent with the principles of natural justice. The Bill provides (clause 14) that commissioners are to be appointed on terms and conditions that are decided by the Governor in Council.

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

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

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

To assist Members, the committee asks the Attorney-General or the Premier to clarify the expected operation of clause 15(4) during the second reading debate.

4.2 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 26 to 28 and clauses 36 and 37 provide for provision of information and confidentiality.

Clause 26 enables the principal commissioner to obtain confidential information for the child death register and for research and other functions relevant to child deaths. Clause 27 enables the commissioner to enter into an arrangement with a public entity to facilitate the provision of information, and clause 28 provides for access to information on the child death register for genuine research.

Confidential information may be disclosed by the principal commissioner for research or to prevent or minimise the risk of harm to a person (clause 36). Significant penalties (200 penalty units or \$22,000) apply if a person who gains confidential information through involvement in the administration of the proposed Family and Child Commission Act discloses it recklessly, or if a person who receives confidential information uses it or discloses it to anyone else without authorisation (clause 37).

The Explanatory Notes state that disclosure of information is permitted in the current *Commission for Children and Young People and Child Guardian Act 2000*, and that the provisions are justified to

enable the principal commissioner and others to perform research and other functions which aim to reduce the likelihood of child deaths.⁴⁴ Before disclosing information on the child death register for research, the Bill requires the principal commissioner to be satisfied that the person is a genuine researcher and that the information is for research to help reduce the likelihood of child deaths. Identifying information may be disclosed only if the principal commissioner reasonably believes it is necessary for the research to be effective, and the opportunity for increased knowledge from the research outweighs the need to protect privacy.⁴⁵

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 commission's oversight activities and research using information from the child death register. In particular, the committee notes the significant penalties that are proposed for any unauthorised disclosure of confidential information about an individual, and the matters that the principal commissioner must consider before deciding to provide identifying information to a researcher.

4.3 Delegation of administrative power

The committee considered whether the delegation of administrative powers is in appropriate cases and to appropriate persons. Clause 38 provides that the principal commissioner may delegate their functions to the other commissioner, and that a commissioner may delegate functions to an appropriately qualified staff member of the Family and Child Commission. The committee noted that Schedule 1 of the *Acts Interpretation Act 1954* defines "appropriately qualified" for the purpose of delegations, and was satisfied that the delegation of administrative powers in clause 38 is appropriate.

4.4 Protecting officials from liability

The committee considered whether the immunity from civil liability for officials in clause 39 was justified. Clause 39 provides that an official is not civilly liable for an act done or omission made, honestly and without negligence.

The committee considers that the civil immunity for officials who act honestly and without negligence is appropriate and justified.

4.5 Transitional regulation making power – sufficient regard to the institution of Parliament

The committee considered whether the transitional regulation making power in the Bill has sufficient regard to the institution of the Legislative Assembly. Clause 49 provides that a transitional regulation may provide for any saving or transitional matters to facilitate the transition from the former *Commission for Children and Young People and Child Guardian Act 2000* to the new Family and Child Commission. A transitional regulation may operate retrospectively to the date that proposed section 49 commences. Proposed section 49, 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 reasonable as its limited application is to affect only transitional matters and it expires 6 months after commencement."⁴⁶

44 Explanatory Notes, pp.5-6

45 Explanatory Notes p.11

46 Explanatory Notes, p.6

In light of the automatic expiry of proposed section 49 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.

Appendices

Appendix A – List of Submissions

NB: The committee invited submissions on three child protection Bills; only those submissions that commented on the Family and Child Commission Bill are listed below.

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

Appendix B – Witnesses at public hearings and briefings

Public briefing – 26 March 2014, Brisbane
Department of Justice and Attorney-General <ul style="list-style-type: none"> • Ms Jenny Lang, Assistant Director General
Department of the Premier and Cabinet <ul style="list-style-type: none"> • Ms Justin Murphy, Program Director, Child Protection Inquiry Task Force • Dr Belinda Mayfield, Program Manager, Child Protection Inquiry Task Force
Commissioner for Children and Young People and Child Guardian <ul style="list-style-type: none"> • Mr Steve Armitage, Commissioner
Department of Communities, Child Safety and Disability Services <ul style="list-style-type: none"> • 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
Australian Association of Social Workers <ul style="list-style-type: none"> • Professor Karen Healy, National President
Department of the Premier and Cabinet <ul style="list-style-type: none"> • Dr Belinda Mayfield, Program Manager, Child Protection Inquiry Taskforce

Appendix C – Commission of Inquiry recommendations

The following recommendations of the Commission of Inquiry are relevant to the Family and Child Commission Bill.⁴⁷

Recommendation 6.1⁴⁸

That the Family and Child Council (proposed in rec. 12.3) ensure the establishment and maintenance of an online statewide information source of community services available to families and children to enable easy access to services and to provide an overview of services for referral and planning purposes.

Recommendation 6.3

That the Family and Child Council (proposed in rec. 12.3) support the development of collaborative partnerships across government and non-government service sectors, and regularly monitor the effectiveness and practical value of these partnerships.

Recommendation 6.6

That the Family and Child Council (proposed in 12.3) lead the development of a capacity-building and governance strategy for non-government agencies, especially those with limited resources, that will:

- improve relationships between government and non-government agencies
- facilitate the establishment of a community services industry body, which will champion the non-government service sector in its delivery of high-quality community services.

Recommendation 10.7

That the Family and Child Council (proposed in rec. 12.3) lead the development of a workforce planning and development strategy as a collaboration between government, the nongovernment sectors and the vocational education and training sector and universities. The strategy should consider:

- shared practice frameworks across family support, child protection and out-of-home care services
- the delivery of joint training
- opportunities for workplace learning including practicum placements, mentoring, and internship models of learning
- enhanced career pathways, for example, through considering senior practitioner roles for the non-government sector and creating opportunities for secondments across agencies including between government and non-government agencies
- staged approach to the introduction of mandatory minimum qualifications for the nongovernment sector, with particular focus on the residential care workforce
- a coordinated framework for training where training opportunities align with the Australian Qualification Training Framework
- the development of clearly articulated, accessible and flexible pathways between vocational training and tertiary qualifications, particularly for the Child Safety support officer role
- working with universities to investigate the feasibility of developing a Bachelor degree in child protection studies and/or a Masters level or Graduate Diploma level qualification in child protection.

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

48 See the Queensland Child Protection Commission of Inquiry Report

Recommendation 12.3

That the Premier establish the Family and Child Council to:

- monitor, review and report on the performance of the child protection system in line with the National Framework for Protecting Australia's Children 2009–2020
- provide cross-sectoral leadership and advice for the protection and care of children and young people to drive achievement of the child protection system
- provide an authoritative view and advice on current research and child protection practice to support the delivery of services and the performance of Queensland's child protection system
- build the capacity of the non-government sector and the child protection workforce.

The council should have two chairpersons, one of whom is an Aboriginal person or Torres Strait Islander.

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

Recommendation 12.15

That the Child Protection Reform Leaders Group and the Family and Child Council lead a change process to develop a positive culture in the practice of child protection in government and the community, including setting benchmarks and targets for improvement of organisational culture, staff satisfaction and stakeholder engagement, and report this in the Child Protection Partnership report.

Recommendation 13.26

That the Family and Child Council develop key resource material and information for children and families to better assist them in understanding their rights, how the child protection system works including court and tribunal processes and complaints and review options in response to child protection interventions.

Appendix D – Letter from the Department of Justice and Attorney-General, providing a report on issues in submissions received on the Bill ⁴⁹



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

Our reference: 2508039

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50 Ann Street Brisbane
Queensland 4001 Australia
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ABN 13 846 673 994

02 MAY 2014

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

Dear Mr Ruthenberg

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

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

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

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

Yours sincerely

A black rectangular box redacting the signature of John Sosso.

John Sosso
Director-General

Encl

⁴⁹ 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/FamilyChildCommB14/cor-02May2014-FACCB.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@opposition.qld.gov.au (07) 3939 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 – *Family and Child Commission Bill 2014*

I wish to notify the committee that the Opposition has reservations about aspects of Report No. 47 of the Health and Community Services Committee into the *Family and Child Commission Bill 2014*.

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

Yours sincerely

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

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