The Commission for Children and Young People Bill 2000: A New Framework for Children’s Advocacy in Queensland

Cathy Green

LEGISLATION BULLETIN NO 11/00
THE COMMISSION FOR CHILDREN AND YOUNG PEOPLE BILL 2000: A NEW FRAMEWORK FOR CHILDREN’S ADVOCACY IN QUEENSLAND

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ABSTRACT

The Children’s Commission of Queensland is currently established under the Children’s Commissioner and Children’s Services Appeals Tribunals Act 1996 (Qld), which came into effect in November 1996. The Commission serves to protect and promote the wellbeing of children and young people in Queensland.

The Commission for Children and Young People Bill 2000 was introduced into the Queensland Legislative Assembly on 22 June 2000. This legislation will repeal the current Act and establish the Commission as the Commission for Children and Young People. The Bill, in part, implements the Government’s response to the recommendations of the Forde Inquiry and Briton Review.

The proposed Bill extends the Commission’s mandate as an advocate for all children and young people in Queensland. The proposed Bill, inter alia, establishes the Commission as an independent statutory body, expands the community visitor program and increases the Commission’s powers and functions in relation to complaint handling. An employment screening program for child-related employment is also introduced under the proposed Bill.

This Legislation Bulletin discusses selected recommendations of the Forde Inquiry and the Briton Report which relate to the Commission. It also examines preliminary aspects of the Commission for Children and Young People Bill 2000, in addition to areas such as advocacy, advisory committees, community visitors, complaint handling, inquiries and employment screening. The position in South Australia, New South Wales and Tasmania, which also have a children’s commission or its equivalent in place, is also briefly discussed. The Legislation Bulletin does not canvass the provisions of the Children’s Services Tribunal Bill 2000 which, as the name suggests, establishes the Tribunal under its own legislation.
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1 INTRODUCTION

The Children’s Commission of Queensland is currently established under the *Children’s Commissioner and Children’s Services Appeals Tribunals Act 1996* (Qld), which came into effect in November 1996. The Commission serves to protect and promote the wellbeing of children and young people in Queensland.¹

The Commission for Children and Young People Bill 2000 was introduced into the Queensland Legislative Assembly on 22 June 2000. This legislation will repeal the current Act and establish the Commission as the Commission for Children and Young People. The Bill, in part, implements the Government’s response to the recommendations of the Forde Inquiry and Briton Review.²

The proposed Bill extends the Commission’s mandate as an advocate for all children and young people in Queensland.³ The proposed Bill, inter alia, establishes the Commission as an independent statutory body, expands the community visitor program and increases the Commission’s powers and functions in relation to complaint handling. An employment screening program for child-related employment is also introduced under the proposed Bill.

This Legislation Bulletin discusses selected recommendations of the Forde Inquiry and the Briton Report which related to the Commission. It also examines preliminary aspects of the Commission for Children and Young People Bill 2000, in addition to areas such as advocacy, advisory committees, community visitors, complaint handling, inquiries and employment screening. The position in South Australia, New South Wales and Tasmania, which also have a children’s commission or its equivalent in place, is also briefly discussed. The Legislation Bulletin does not canvass the provisions of the related Children’s Services Tribunal.

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Bill 2000 which, as the name suggests, establishes the Tribunal under its own legislation.  

2 CHILDREN’S COMMISSION

The Queensland Children’s Commission is currently established under the Children’s Commissioner and Children’s Services Appeals Tribunal Act 1996 (Qld). The Commission serves to protect and promote the wellbeing of all children and young people in Queensland.  

The outcomes the Commission seeks to achieve are:

- A safe and secure society where the rights of all Queenslanders are protected
- Children protected from harm
- Children are cared for in a safe, supportive and culturally appropriate environment
- Maximising opportunities for children and young people to achieve their full potential.

The Children’s Commissioner reports to the Minister for Families, Youth and Community Care and Minister for Disability Services.

The Commissioner’s functions are contained in Part 2 of the Children’s Commissioner and Children’s Services Appeals Tribunal Act 1996 (Qld). These functions may be broadly classified as:

- Systemic and preventative functions of monitoring and reviewing entities engaged in the provision of prescribed children’s services provided or

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6 Queensland, Minister for Families, Youth and Community Care and Minister for Disability Services, 2000-2001 State Budget - Ministerial Portfolio Statement - Children’s Commission, p 3-1.

funded by the department; collaborating with relevant government agencies in investigating and eradicating abuse and sexual exploitation of children; and conducting relevant research and advising the Minister

- Individual redress functions of receiving and referring complaints about alleged offences involving children; receiving and investigating complaints about the delivery of prescribed children’s services provided or funded by the department; and to make recommendations accordingly.

- The implementation and maintenance of a program of official visitors to residential facilities provided or funded by the State for children in the care of the department or funded body

- The establishment of Children’s Services Appeals Tribunals to hear appeals of reviewable decisions made by departmental officers in the delivery of children’s services.

The *Children’s Commissioner and Children’s Services Appeals Tribunal Act 1996* (Qld) focuses on children in, or with potential to be involved in, the child protection system – a group who comprise about 1% of all young Queenslanders.\(^8\)

As such, it appears that the Commission has no role in the vast majority of children and young people who never come into contact with the Department and no role even with those that do when things that go wrong in their lives go wrong somewhere else.\(^9\)

This lack of a general rights focus has invoked some criticism of the *Children’s Commissioner and Children’s Services Appeals Tribunal Act 1996* (Qld). While the organisational goals of the Commission are informed by the principles of the United Nations Convention on the Rights of the Child\(^10\), the Act itself does not refer

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\(^8\) Queensland, Children’s Commission, *1998-1999 Annual Report*, p 4. The Commission’s jurisdiction is confined to “children’s services” (or provided by the DFYCC) which are “services provided under or in relation to the Adoption of Children Act 1964 (Qld), the Child Care Act 1991 (Qld), the Child Protection Act 1999 (Qld) and the Family Services Act 1987 (Qld).


to the concept of the “the best interests of the child”\(^{11}\) or the United Nations Convention on the Rights of the Child.\(^{12}\)

### 3 FORDE COMMISSION OF INQUIRY

The Commission of Inquiry into the Abuse of Children in Queensland Institutions (the “Forde Inquiry”) was established in August 1998 to inquire into, and report on, the care and treatment of children in out-of-home residential facilities and juvenile detention centres.

The Forde Inquiry also reported on the general deficiencies it perceived in the current legislative framework for children in institutions\(^{13}\) and consequently made a number of recommendations relating to, and designed to strengthen, the Children’s Commission.

The Forde Inquiry recommendations included:

- **That the provision of advocacy services for young people in residential care facilities and juvenile detention centres be required by legislation**
- **That amendments be made to the Children’s Commissioner and Children’s Services Appeals Act 1996 (Qld) to ensure the independence of the office of Children’s Commissioner, and provisions be made for its attachment for administrative support services to the Premiers Department**
- **Investing the role of Independent Inspector of residential care facilities and juvenile detention centres with wide powers of inspection in relation to such matters as the treatment of residents, preparation for release, morale of residents and staff, quality of health care and education, physical facilities and management**
- **Empowering the Commissioner to conduct Inquiries into matters affecting children and young people including the authority to investigate and resolve complaints about the provision of services to children and young people**
- **Establishing a comprehensive research function to enable research to be conducted into all matters relating to the rights, interests and well-being of children and young people in residential facilities and juvenile detention centres**

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\(^{13}\) *Commissions of Inquiry Order (No. 1) 1998* (Qld), s 3D(iii) provides for the Commission to make appropriate recommendations in relation to necessary changes to current policies, legislation and practices.
• Providing the Commissioner with the power to monitor the role of the Department in overseeing the care of young people in detention centres and residential care facilities.14

4 BRITON REVIEW

In September 1998, the Minister for Families Youth and Community Care and Minister for Disability Services, the Hon Anna Bligh, commissioned a review team led by John Briton15 to conduct an independent review16 of the Children’s Commissioner and Children’s Services Appeals Tribunals Act 1996 (Qld).

The review’s terms of reference were to:
• Inquire into the scope and effectiveness of the Act
• Identify any gaps and anomalies, and
• Recommend any reforms that may be required to ensure that the legislation better protects and promotes the rights and interests of Queensland children and young people.17

The terms of reference also required the review team to consult with the Children’s Commissioner, Director-General and widely with agencies which provide services to children and young people, organisations which represent the rights and interests of children and young people, other relevant bodies and interested members of the community.18


15 At the time the Briton Report was released, it was noted therein that Mr Briton was the Director of Dispute Management Services. The Briton Report also states that Mr Briton was formerly a Queensland Anti-Discrimination Commissioner, State Director of Human Rights and Equal Opportunity Commission, and Deputy Public Advocate in Victoria’s Office of Public Advocate: Queensland, Department of Families, Youth and Community Care, Review of the Queensland Children’s Commissioner and Children’s Services Appeals Tribunals Act 1996: Report and Recommendations, April 1999 (the “Briton Report”), p 1.

16 The Act stipulated a review of the legislation within three years. The Briton review commenced in September 1998 and was completed in April 1999.

17 The Briton Report, p 1.

18 The Briton Report, p 1.

The Issues Paper identified two guiding principles as a frame of reference for the review. The first principle was that the Act should ensure an independent informed and articulate voice for the rights, interests and well being of Queensland children and young people. Secondly, the Commission should be enabled to be pro-active, systemic and preventative in the way it goes about its business.\(^\text{21}\) According to the Briton Report, the latter principle simply adopts what is increasingly coming to be recognised as national and international best practice for statutory agencies of this kind.\(^\text{22}\)

The Briton Report made 66 recommendations for change to the *Children’s Commissioner and Children’s Services Appeals Tribunal Act 1996* (Qld). These recommendations are listed in Appendix A. About half of these recommendations related to broadening of the role of the Children’s Commission to enhance its effectiveness in meeting the needs of children and young people in Queensland. The remainder of the recommendations related to the Children’s Services Appeals Tribunal.

According to the Briton Report, these recommendations were based on the following key themes which were designed to better protect and promote the rights interests and well being of Queensland children:

- Extend the Commission’s jurisdiction to include all children, not just those in the care of the Department;
- Spell out its ‘objects purposes and principles’ drawing on the Convention of the Rights of the Child as a source of inspiration and guidance
- Change the name of the Commission to be the Commission for Children and Young People
- Ensure the Commissioner’s independence and make it more accountable


• Strengthen the Commission’s research, monitoring and review functions, and incorporate general advocacy, community awareness and consultation functions
• Clarify that the Commission has no role to ‘investigate complaints about alleged offences involving children’
• Replace the Commission’s function to ‘receive and investigate complaints about the delivery of children’s services’ with the function to ‘receive and seek to resolve complaints about particular children and young people, including by acting for and making representations on their behalf’
• Equip the Commission with effective powers to investigate complaints about the way in which services are provided to particular children and young people
• Authorise the Commission with the Minister’s approval to conduct inquiries into specified matters affecting children and young people more generally, and equip it with effective powers to obtain the information it requires
• Ensure protection for whistleblowers who bring matters to attention
• Recast official visitors as community visitors with a relationship based advocacy role, and ‘harmonise’ their operations with like programs under other legislation
• Constitute the Children’s Services Appeals Tribunal entirely separately to the Commission, and give it more detailed powers which enable the participation of children and young people subject to appeals and encourage ‘alternate dispute resolution’ and investigative, rather than adversarial procedures
• Strengthen the qualifications for appointment to positions under the Act.23

4.1 CONSULTATION ON THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE BILL 200024

According to the Explanatory Notes, extensive consultations with government and non-government stakeholders occurred in connection with the Forde Inquiry and the Briton Review. Since the completion of the Briton Review, consultation has occurred with all government departments and relevant statutory bodies as well as major advocacy, legal, sporting and recreational, educational and child-welfare organisations.

23 The Briton Report, pp 4, 5.

24 Extracted from the Explanatory Notes, p 3.
An exposure draft of the Bill was released for public consultation during April and May 2000, in conjunction with two Information Papers about the proposed employment screening, community visitor, complaints and advocacy functions. The Minister for Families, Youth and Community Care and Minister for Disability Services also established a working party, comprised of key youth, sporting and recreational organisations and chaired by the Children’s Commissioner, to develop a framework for employment screening for child-related employment. Additional consultation in the form of stakeholder forums and broad community consultation occurred following the release of the draft Bill.

5 THE COMMISSION FOR CHILDREN AND YOUNG PEOPLE BILL 2000

5.1 SHORT TITLE OF THE BILL

One of the recommendations made in the Briton Report was that the Commission be renamed the Commission(er) for Children and Young People, and that the Act be renamed accordingly. This recommendation was based on the view that the Commission should be named to reflect the fundamental principles that children and young people have a right to be heard commensurate with their age and maturity, and to participate in decision-making which affects them.

Like the Children’s Commissioner and Children’s Services Appeals Tribunals Act 1996 (Qld), the Bill applies to all individuals under 18 years of age. According to the Explanatory Notes, the short title of the Bill, which refers to the Commission for Children and Young People, acknowledges that many older children prefer to be regarded as “young people” rather than “children”. It is further noted, however, that

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27 The Briton Report, p 17.

28 Children’s Commissioner and Children’s Services Appeals Tribunal Act 1996 (Qld), s 3, Schedule: Definition of “child”.

29 See Acts Interpretation Act 1954 (Qld), s 36.
for brevity and to avoid confusion, only the term “children” is used throughout the provisions of the Bill.

5.2 Objects, Purposes and Principles

Many Acts of Parliament, particularly in the fields of social policy and community services, contain “objects, purposes and principles” provisions which “articulate the spirit of the legislation” and explain what it is there to do. These types of provisions reflect the relevant policies underpinning the legislation, and may also be used as an aid in statutory interpretation. The Children’s Commissioner and Children’s Services Appeals Tribunal Act 1996 (Qld) does not contain such provisions.

The question of whether the new Act should make reference to the United Nations Convention of the Rights of the Child was raised in the Briton review and received varied responses. While most submissions supported an explicit reference to the Convention as a source of inspiration and guidance, a number preferred to incorporate the guiding principles of the Convention into the new Act but to omit any reference to the Convention itself to avoid “needless controversy”.

The Briton Report concluded that:

Mentioning the principles without mentioning the Convention denies the opportunity to set them in the context, as the Convention itself does, of an affirmation of the role of parents and family in the lives of young people...Parliament should amend the Act to reaffirm in this context its support for the Convention, and to incorporate its guiding principles set squarely in the context of its own preamble affirming the family as the fundamental unit of society, and of its other provisions calling for


31 The Briton Report noted that, while the current Act gives the Commissioner the function of “promoting practices and procedures that uphold the principles that parents and legal guardians of children have the primary responsibility for the upbringing and development of their children”, it is the only principle referred to in an Act which “recognises the need for a children’s voice, or advocate”: The Briton Report, p 15, fn 7.

32 The Convention of the United Nations on the Rights of the Child was ratified by Australia on 17 December 1990. Article 4 of the Convention requires State parties to undertake to the maximum extent of their available resources all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the convention. In this context, the Briton Report noted that the Queensland Parliament has acknowledged and supported the Commonwealth’s ratification of the Convention in the preamble to the Anti-Discrimination Act 1991 (Qld): The Briton Report, p 15.

33 The Briton Report, p 15.
respect for rights and duties of parents and others with legal or customary responsibility to provide direction and guidance to children.\(^{34}\)

The Briton Report recommended that the body of the Act set out and affirm the Parliament’s support for the following principles, in particular that:

- The best interests of children and young people should be a primary consideration in all actions concerning them, without discrimination of any kind
- Children and young people are entitled to express their views freely without fear of recrimination in all matters which affect them, and their views should be given due weight in accordance with their age and maturity
- Children and young people are entitled to pursue grievances, and to have them dealt with in accordance with heir age and maturity
- Children and young people are entitled to information and assistance enabling them to effectively exercise these entitlements commensurate with their age and ability\(^ {35}\)

**Part 1, division 2** of the Bill sets out the object, underlying principles and scope of the proposed Act. The object of the proposed Act is to establish the Commission for Children and Young People to promote the rights, interests and wellbeing of children in Queensland: **clause 5**.

**Clause 6** of the Bill lists the principles underlying the proposed Act and stipulates that the Act must be administered in accordance with them. These principles, which are enunciated in **clause 6(1)**, affirm that the best interests of the child is the paramount focus of the legislation:

- every child is a valued member of society
- in decisions involving a child, the best interests of the child are the paramount concern; and the child’s views and wishes should be taken into account in a way that has regard to the child’s age and maturity;
- every child is entitled:
  - to be treated in a way that respects the child’s dignity and privacy
  - to be cared for in a way that protects the child from harm and promotes the child’s wellbeing
  - to express the child’s concerns and grievances and to have them dealt with in a way that is fair and timely and promotes the child’s participation

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\(^{34}\) *The Briton Report*, p 15. See also Articles 5, 9 and 18 of the United Nations Convention on the Rights of the Child.

\(^{35}\) *The Briton Report*, pp 6, 14-16: Recommendation 3.
• to receive information and help to enable the child to exercise the child’s entitlements
• to have access to services necessary to meet the child’s needs.

Notably, clause 6(1)(d) declares that the family has primary responsibility for the upbringing and development of its children and should be supported in that role.

5.3 INDEPENDENCE AND ACCOUNTABILITY

In the context of the independence of the Commission, the Briton Report noted that:

The national and international debate about “children’s rights commissions” and like bodies centres on their role as an [sic] strong, articulate and independent voice for children, and returns over and over to the need for their independence to be secure in both actuality and perception. Similarly the submissions were overwhelmingly supportive of the view that the Commission must be, and seen to be, independent of government and free of political interference.36

The Briton Report advocated that the present situation, whereby the Commission is linked with the Department of Families, Youth and Community Care Queensland, should be changed to minimise the potential for conflicts of interests. This would be best achieved, according to the Briton Report, if the Commission were to report not to the Minister, or any other Minister with portfolio responsibilities for direct service provision to children and young people, but to the Premier.

The Briton Report therefore advocated in favour of “decoupling” the Commission from the Department, and allocating responsibility for the Act’s administration to the Premier. The Forde Inquiry made a similar recommendation.

This Government has adopted that view. In her second reading speech on the Bill, the Hon. Anna Bligh, Minister for Families, Youth and Community Care and Minister for Disability Services, indicated that the proposed Commission will be transferred from the Department of Families, Youth and Community Care to the Department of Premier and Cabinet. It is envisaged that this move will achieve greater independence and administrative support for the proposed Commission.37

36 The Briton Report, pp 17,18.

It should also be noted that the Commission became a statutory body for purposes of the *Financial Administration and Audit Act 1997* on 23 March 2000.\(^{38}\)

### 5.4 Functions of the Commissioner

A comparative summary of the current functions of the Commissioner and those proposed under the Briton Report is contained in Appendix B.

The functions of the proposed Commissioner for Children and Young People are listed in clause 15 of the Bill and include:

- to receive, seek to resolve, monitor and investigate complaints about services provided to certain children by service providers
- to monitor and review the way in which service providers respond to complaints about services provided by them to certain children
- to advocate for children and, in advocating for children, to seek help from advocacy entities, service providers and other entities
- to promote the establishment by service providers of appropriate and accessible mechanisms for the participation of children in matters that may affect them
- to monitor and review laws, policies and practices that relate to the delivery of services to children, or otherwise impact on children
- to promote laws, policies and practices that uphold the principles underlying the proposed Act
- to encourage, facilitate and support the development and coordination of advocacy and other support services for children
- to promote awareness among children about advocacy entities, complaints agencies and other relevant entities
- to promote an understanding of, and informed public discussion about, the rights, interests and wellbeing of children
- to conduct, coordinate, sponsor, participate in and promote research about the rights, interests and wellbeing of children
- to conduct independent inspections of visitable sites
- to screen persons employed, or proposed to be employed, in certain child-related employment

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\(^{38}\) Queensland, Minister for Families, Youth and Community Care and Minister for Disability Services, 2000-2001 State Budget - Ministerial Portfolio Statement - Children’s Commission, p 3-1. This was a recommendation of the Briton Report, p 6
• to screen persons carrying on, or proposing to carry on, certain child-related businesses
• to report on, and make recommendations about, matters relating to the commissioner’s functions.

5.5 ADVOCACY

The Children’s Commission acts as an independent advocate for children in care. The Children’s Commissioner and Children’s Services Appeals Tribunal Act 1996 (Qld) gives the Commission broad systemic and preventative functions in terms of monitoring and reviewing the adequacy and standards of children’s services. It also provides for individual redress confined to the investigation of complaints about the delivery of children’s services. The Forde Inquiry expressed some concern that the Act lacks clarity in defining and enshrining advocacy in the Commission’s functions. The Briton Report also noted the absence in the Act of “general advocacy” functions for the Commission.

The Bill broadens the Commission’s mandate as an advocate for all Queensland children under 18 years of age. According to the Explanatory Notes, the Bill recognises that some categories of children are particularly vulnerable and require additional services. For example, the community visitor program provides support to children with a mental illness who are receiving treatment in an authorised mental health service, or children in out-of-home residential facilities and juvenile detention centres. (The community visitor program is discussed in Section 5.7 below). The Bill also provides the Commission with expanded powers to investigate complaints relating to, and in the interests of children, who are subject to certain orders or interventions (The complaints handling function of the Commission is discussed in Section 5.8 below).

The advocacy function is broadly expressed in the Bill as: to advocate for children and, in advocating for children, to seek help from advocacy entities, service providers and other entities: clause 15(c). This function is amplified in how the


40 The Forde Inquiry, pp 264, 265.

41 The Briton Report, p 22.

42 Explanatory Notes, pp 1, 2.
Commission conducts its other functions, such as the community visitor program and complaints handling.

**Clause 18(e)** stipulates that, in carrying out its advocacy and other functions, the Commission must give priority to the needs of children:

- Who are in, or may enter, out-of-home care or detention
- For whom there is no appropriate person to act on their behalf
- Who are not able to protect their rights, interests or well being
- Who are disadvantaged because of a disability, geographic isolation, homelessness or poverty.\(^{43}\)

Any child or young person is entitled to express their concerns or grievances to the Commission. **Clause 18(a)-(d)** expressly states that the Commissioner must:

- Consult with children and young people in a way that promotes their participation in decision-making by the Commissioner (for example, the establishment of youth advisory committees)
- Listen to, and seriously consider, the concerns, views and wishes of children and young people
- Adopt work practices that ensure the Commission is accessible to children and young people, and
- Be sensitive to the ethnic or cultural identity and values of children and young people, including Aboriginal Islander and Torres Strait Islander children.\(^{44}\)

### 5.6 ADVISORY COMMITTEES

The review team also advocated the inclusion of provisions in the proposed Act to require the Commission, as part of its functions, to take advice and inform itself through consultation with children and young people in addition to their representative organisations. The review team canvassed whether the proposed Act should establish a formal consultative framework to assist the Commission in the exercise of its functions, but concluded that such an approach was not warranted and tended to be inflexible. It preferred the view that the proposed Act should enable the Commission to establish appropriate consultative mechanisms at his or her discretion.

\(^{43}\) Responding to Children and Young People in Need - Commission for Children and Young People Bill 2000: Information Paper, pp 2, 3.

\(^{44}\) Responding to Children and Young People in Need - Commission for Children and Young People Bill 2000: Information Paper, p 3.
her own discretion. The Briton Report recommended that the proposed Act provide for the appointment of advisory groups.45

This concept of flexibility is imported in the provisions of the Bill which provide for the appointment of advisory committees. **Clause 90** of the Bill provides that the Commissioner may establish expert, youth or other advisory committees. An advisory committee’s function is to provide advice to the Commissioner on relevant matters: **clause 92(1)**. The Bill expressly excludes advice on the day-to-day management of the Commission as any part of that function: **clause 92(2)**. The Commissioner has the discretion to dissolve an advisory committee at any time: **clause 93**.

### 5.7 COMMUNITY VISITORS

Official visitors are appointed by the Children’s Commissioner to gauge standards of service delivery in “residential facilities” provided or funded by the State. The *Children’s Commissioner and Children’s Services Appeals Tribunal Act 1996* (Qld) presently empowers an official visitor to enter and inspect a residential facility, confer alone with a resident or staff member of the facility, inspect any document relating to the facility’s operation and provide advice and reports to the Children’s Commissioner about the conduct of the facility.46

#### 5.7.1 The Coverage Of The Community Visitor Program

Both the Forde Inquiry and the Briton Review examined the operation of the current official visitor program and concluded that a number of factors detracted from its effectiveness.

The Forde Inquiry expressed the concern that presently there is limited opportunity for children and young people in residential care facilities to access an official visitor. The Forde Inquiry noted that, due to limited numbers, the official visitors were restricted in their capacity to visit all the residential facilities in Queensland.47

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46 *The Children’s Commissioner and Children’s Services Appeals Tribunal Act 1996* (Qld), s 36.
47 The Forde Inquiry noted that there were only two full-time visitors responsible for visiting more than 100 residential facilities in Queensland, many of which were in remote and regional areas. In January 1999, the two official visitors had assessed 56 residential care facilities, but none north of Mackay: *The Forde Inquiry*, p 265; In the 1998-1999 financial year, official visitors conducted 85 visits to Alternative Care Intervention Services or Supported Accommodation Services: Children’s Commission of Queensland, *Annual Report 1998-1999*, p 5.
This resulted in their visits being carried out in an ad hoc fashion and with varying frequency. Notably, the present Act is silent as to the regularity of such visits.

In the view of the Forde Inquiry, the infrequency of visits from official visitors also did not foster the development of a rapport or acceptance from children and young children in care. The Forde Inquiry reasoned that a fundamental role of the official visitors is the development of trusting relationships so that they are better able to identify problem areas for children and young people and advocate on their behalf.

The Forde Inquiry also noted that the current role of the official visitor appears to be focussed on the inspection of residential care facilities and the determination of whether or not these facilities are providing an adequate standard of care. The Forde Inquiry acknowledged that there was merit in official visitors performing a monitoring role, but preferred that the monitoring role should complement the advocacy and problem resolution roles.

The Forde Inquiry also commented that it would be appropriate for the Commission to extend its program to cover all children in residential facilities – those not subject to statutory care orders as well as young people in detention.

The Briton Report noted that the present definition of a “residential facility” as “a place where residential accommodation is provided by the State, or funded by the State, for children who are in the care of the Chief Executive or entity” raised some anomalies. The Briton Report suggested that the definition appears to encompass places such as institutions and group homes, but not private homes. Conversely, the definition may cover private foster homes whilst excluding non-government funded facilities and long-stay and respite facilities where children and young people are placed “informally”.

The Briton Report recommended that private homes be generally exempt from the community visitor program, unless more than a specified number of unrelated children and young people are placed in the same foster home and a complaint


49 *The Forde Inquiry*, p 265. The Forde Inquiry noted that the State Ombudsman provided another avenue of independent advocacy for children in Queensland. The Forde Inquiry expressed the view, however, that this avenue may be of only limited effect because the Ombudsman’s function was limited to investigating complaints of systems abuse in government-run institutions: *The Forde Inquiry*, p 265.


51 *The Briton Report*, p 37. The Briton Report also noted that children and young people with disabilities may be included in the categories of children and young people subject to informal placement: *The Briton Report*, p 37.
made in relation to a child in care and placed in a private home cannot be reasonably and practicably resolved with internal grievance processes.52

The Briton Report also noted that children or young people who reside in institutions or who are incarcerated in youth detention centres may have a limited ability to access advocacy services than other children or young people who come within the current boundaries of the community visitor program. The Briton Report, like the Forde Inquiry, recommended the expansion of the community visitor program to cover children and young people who live in residential facilities but who are not subject to statutory care orders.53

Official visitors are renamed as “community visitors” under the Bill.

Clause 64 of the Bill provides for an expanded community visitor program which incorporate visits to children and young people:

- In government and non-government funded residential facilities. These facilities include those for children and young people with a disability.54
- Receiving treatment at authorised mental health services
- In juvenile detention centres55

The Bill also stipulates that these sites must be visited regularly and frequently: clause 65.

The Minister for Families, Youth and Community Care and Disability Services, the Hon Anna Bligh MLA, recently announced new funding of $250,000 to expand the community visitor program.56 Under the updated program, a number of community visitors will be placed in 19 locations across Queensland.57 It is anticipated that the provision of a state-wide community visitor program, with locally based community visitors, will significantly increase the services provided

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52 The Briton Report, p 37
53 The Briton Report, p 38.
55 Second Reading Speech, p 5.
56 Queensland, Minister for Families, Youth and Community Care and Minister for Disability Services, 2000-2001 State Budget - Ministerial Portfolio Statement - Children’s Commission, p 3-1.
57 Hon Anna Bligh, MLA, Minister for Families, Youth and Community Care, Estimates Committee A – Families Youth and Community Care and Disability Services, Hansard, 1 August 2000, p 68.
to vulnerable children and enhance their access to existing services thus lowering their risk of harm.\footnote{Queensland, Minister for Families, Youth and Community Care and Minister for Disability Services, 2000-2001 State Budget - Ministerial Portfolio Statement - Children’s Commission, p 3-1.}

### 5.7.2 The Functions And Powers Of Community Visitors

The Bill incorporates a number of recommendations made by the Forde Inquiry and the Briton Report in respect of the functions and powers of official visitors. Notably, the Bill specifically provides that community visitors will be required to provide support to children and young people at these facilities and advocate on their behalf, by giving voice to, and facilitating the resolution of their concerns and grievances.\footnote{The Forde Inquiry, p 266: Recommendation 31. Second Reading Speech, p 5.}

The recommendations made in the Briton Report about community visitors emphasised the desirability of giving community visitors a broader role, in addition to expanded powers. The review team suggested changes to the advocacy and grievance resolution functions of community visitors and an increase in their powers to access relevant documents and procure cooperation from the staff of residential services.\footnote{The Briton Report, pp 39, 40.}

Both the Forde Inquiry and the Briton Report recommended that community visitors be authorised to access confidential information held at residential facilities about the children and young people who reside there, subject to the same rules of confidentiality as other Commission and departmental staff.\footnote{The Forde Inquiry, p 267: Recommendation 33; The Briton Report, p 40: Recommendation 37.}

The Briton Report noted that in New South Wales and Victoria, community visitors are empowered to access otherwise confidential information about the children and young people they visit. The review team noted that, without these powers:

> community visitors are deprived of a fundamental source of information about whether or not complaints raised with them by children and young people have foundation, and about the quality of care being provided them. They offer a window, too, on more systematic concerns which a visitor may then need to monitor.\footnote{The Briton Report, p 40.}
Division 3 of the Bill prescribes the proposed functions and powers of community visitors. Under the Bill, a community visitor may enter and inspect the facilities - under the authority of a warrant if a person in charge of a facility does not consent to the entry; talk to a child or young person who wishes to speak to the visitor and access or request the production of documents held at facilities which relate to the residents or operations of the facilities. Staff of facilities must comply with the requirements of the community visitor except in certain circumstances. According to the Explanatory Notes, the powers proposed under the Bill are consistent with the intent of the Forde Inquiry recommendations for independent monitoring of the care given to children in residential facilities.

5.8 PROCEDURES FOR INVESTIGATING AND HANDLING COMPLAINTS

Part 3 of the Children’s Commissioner and Children’s Services Tribunal Act 1996 (Qld) contains provisions relating to the Commissioner’s function of receiving, assessing and investigating complaints about the delivery of children’s services and alleged offences involving children.

At present, where a complaint is about the delivery of children’s services, the Commissioner must assess the complaint to decide if further investigation is warranted. Where a complaint is about an alleged offence involving a child, the Commissioner must immediately refer the complaint to the police and any other appropriate entity. The Commissioner can also be requested, by the police or any other entity to whom the complaint was referred, to make an assessment of the complaint. The Commissioner can, by written notice, require a complainant to give further particulars of the complaint.

The Commissioner must conduct an investigation to obtain more information if he or she decides that further investigation is warranted. After completing the investigation, the Commissioner must provide a report about it to the Minister and

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63 See for example, Commission for Children and Young People Bill 2000, cls. 68(1), 69, 70, 71, 72, 73, 74, 75, 76, 77.

64 Explanatory Notes, p 9.

65 Children’s Commissioner and Children’s Services Appeals Tribunal Act 1996 (Qld), s 8(d).

66 Children’s Commissioner and Children’s Services Appeals Tribunal Act 1996 (Qld), s 20.

67 Children’s Commissioner and Children’s Services Appeals Tribunal Act 1996 (Qld), s 21.

68 Children’s Commissioner and Children’s Services Appeals Tribunal Act 1996 (Qld), s24.
the service provider or other entity. There is also provision for the tabling of a further report about the matter in Parliament, where the service provider or entity has failed to take action as a result of the report.

The Commissioner can only decide that a complaint does not warrant further investigation on specific grounds. These grounds include that: the complaint is frivolous or made in bad faith; the complaint is the subject of a legal proceeding; the complaint can be resolved in another way satisfactory to the complainant or the complainant failed to provide sufficient particulars as required.

The Briton Report reviewed the complaints handling function of the Commissioner and concluded that there were problems with how that function was provided for under the Children’s Commissioner and Children’s Services Appeals Tribunal Act 1996 (Qld). The review team noted that:

- The Act does not provide sufficient detail about the jurisdiction of the Commissioner to receive complaints. In the view of the review team, this has resulted in a jurisdiction which is “extraordinarily open-ended and not child-focussed”.
- The Act provides no mandate to the Commissioner to initiate an investigation in the absence of a complaint. This reflects an approach which is “entirely reactive”.
- The Act provides no encouragement for complaint resolution at a local level.
- The Act duplicates the functions of existing complaints agencies.
- The Act gives a limited jurisdiction to the Commissioner to decline complaints. The review team perceived this as a potential difficulty if the jurisdiction of the Commissioner was broadened in the new Act. The review team advocated that the Commissioner should be given a wider discretion not to accept complaints.

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69 Children’s Commissioner and Children’s Services Appeals Tribunal Act 1996 (Qld), s25.

70 Children’s Commissioner and Children’s Services Appeals Tribunal Act 1996 (Qld), s26.

71 Children’s Commissioner and Children’s Services Appeals Tribunal Act 1996 (Qld), s23(2).

72 The Briton Report, p 25.


74 The Briton Report, pp 26, 27.

75 The Briton Report, p 27.

76 The Briton Report, pp 27, 28.
• The Act does not give the Commissioner authority to pro-actively intervene to resolve complaints, listen to, or negotiate and advocate on behalf of children and young people. At present, the Commissioner can only investigate, report and recommend.\textsuperscript{77}

• The Act does not give the Commissioner adequate powers of investigation. The Commissioner has limited powers to require service providers who are subject to an investigation to cooperate in the conduct of the investigation. This power does not appear to extend to the production of documents and other information necessary to the investigation of complaints, especially where confidentiality provisions in other legislation prevent disclosure.\textsuperscript{78}

The Briton Report made a series of recommendations about the complaints function of the Commissioner. (These recommendations are summarised and compared with the current complaints handling framework of the Commission in \textbf{Appendix C}).

The Forde Inquiry also recommended that the Children’s Commission be given the authority to investigate and resolve complaints about the provision of services to children and young people.\textsuperscript{79}

The Bill differs from the current Act in the context of its complaint handling procedures in a number of aspects. These changes generally mirror a number of the relevant recommendations made by the Forde Inquiry and in the Briton Report.

The Bill empowers the proposed new Commission for Children and Young People to investigate and resolve complaints about the delivery of all government and non-government services to children who are subject to orders under the \textit{Juvenile Justice Act 1992} (Qld) or the \textit{Bail Act 1980} (Qld), or subject to orders or intervention under the \textit{Child Protection Act 1999} (Qld): \textbf{clause 32}. Complaints about alleged offences involving children, which are included in the current Act, are not within the ambit of the Bill. Notably, the Briton Report concluded that it would be inappropriate for the Commission to continue to have a role in the investigation of alleged offences involving children.\textsuperscript{80}

\textsuperscript{77} \textit{The Briton Report}, pp 29-31.

\textsuperscript{78} \textit{The Briton Report}, pp 31, 32.


\textsuperscript{80} The review team suggested that the role of the Commission under the current Act is to be available as another, and perhaps more sympathetic way by which offences involving children can be brought to attention when complainants for one reason or another haven’t been able or prepared to do so themselves: \textit{The Briton Report}, p 24.
A complaint may relate to a service being provided in a way contrary to the rights, interests or well-being of a child or young person, or to the failure to provide a service as required: clause 33(1).

The child, or any person acting on their behalf and in their interests, may lodge a complaint: clause 33(2). In certain circumstances, complaints may also be initiated in the name of the Commissioner: clause 37.

Notably, the complaints handling function proposed for the Commission under the Bill does not duplicate the functions of existing complaints bodies such as the Ombudsman, Health Rights Commission and Anti-Discrimination Commission.81 The Commission must liaise with existing complaints entities about the handling of complaints which concern children who are clients of the Department of Families, Youth and Community Care: clause 39. The Commissioner is empowered to resolve the complaint in an appropriate manner: clause 39(1)(c).

Clause 40 details a range of situations where the Commissioner must not handle the complaint. If the Commissioner decides not to handle the complaint, he or she must give written notice of that decision and the reason for it as soon as practicable.

The Bill empowers the Commissioner to investigate complaints. Before investigating the complaint, the Commissioner must give a written notice with details of the complaint to the service provider to which the complaint relates: clause 42. Clause 45 provides that the Commissioner, by written notice, can require an adult to provide or produce information that is required for the purpose of conducting the investigation. The person must comply with the notice, unless he or she has a reasonable excuse for not complying. The Bill provides a number of defences for failing to comply with a notice for information, including legal claims of privilege (clause 48) and the claim of unjustifiable exercise of power (clause 49). There is provision for a person to make an application to a Supreme Court judge to decide such claims: clause 51.

The Commissioner, upon written notice, may also access a child to whom a complaint relates or who is a witness to a matter being investigated: clause 43.

The Commissioner must provide a report on the outcome of all investigations to the relevant departmental chief executive or non-government service provider, and if the Commissioner considers it appropriate, to the Minister responsible for the matter: clause 58(1). The report may recommend that a service provider take stated action within a specified time that is reasonable in the circumstances: clause 58(2). Where the Commissioner is not satisfied that the service provider has taken the stated action within the time specified, the Commissioner may give a report to the

81 Information Paper: Responding to children and young people in need, p 4.
Minister with the Commissioner’s comments: clause 58(3). The Commissioner can also request the Minister table the report in Parliament. The Minister cannot require the Commissioner to change the contents of the report before it is tabled, other than by including the Minister’s comments: clause 61. The Commissioner can also give the Minister a second report about the matter that includes sensitive and confidential information which the Commissioner believes should not be publicly disclosed on specified grounds: clause 62.

In New South Wales, the Commission for Children and Young People Act 1996 (NSW) does not provide for the function of dealing directly with the complaints or concerns of particular children.

5.9 INQUIRIES

One of the present functions of the Commissioner is to inquire into any matter relating to children’s services. Such an inquiry can only be made at the Minister’s request. The Children’s Commissioner and Children’s Services Appeals Tribunal Act 1996 (Qld), however, does not provide the Commissioner with a range of associated powers or accountabilities.

The Strategic Review of the Queensland Ombudsman, noted that:

*It is pointless to continue to play a purely reactive role, constantly reviewing complaints of a similar nature year in and year out. A pro-active approach is required… More frequent use should be made of ‘own motion’ investigations. The Office should constantly identify areas where complaints are clearly stemming from basic systemic causes in sufficient numbers to warrant a research program conducted with the cooperation of the agencies concerned to identify the cause, propose new approaches, and change the pattern of administration…*

The review team canvassed the range of arguments for and against this issue. It noted that the Commission may be unable to achieve its mandate to function as an effective voice for children, or act in a preventative capacity, without the power to initiate and conduct inquiries to establish any underlying systemic causes raised by individual complaints. The review team, however, also recognised that concerns about processes of accountability inevitably arise with such “open ended and wide ranging powers” which may include powers to compel the production of documents and other evidence. The review team suggested that the establishment of

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82 Children’s Commissioner and Children’s Services Appeals Tribunal 1996 Act (Qld), s 8 (l).

83 Queensland, Strategic Review of the Queensland Ombudsman, pp (ix) and 14.
such inquiries within specific terms of reference and time frames approved by the Minister may counter these concerns.\textsuperscript{84}

In the view of the review team, the rationale for such inquiries is "compelling".\textsuperscript{85} It noted that, if its recommendations\textsuperscript{86} to strengthen the Commission’s monitoring, review and research powers were adopted, the inquiries power would be rarely invoked except where there is a need to rely on special powers to compel the production of evidence. The review team also concluded that requiring Ministerial approval in these circumstances is not unreasonable.\textsuperscript{87}

The Briton Report recommended that:

- The Minister be empowered, at the Commission’s request or on the Minister’s own initiative to require the Commission to conduct inquiries into specified matters affecting children and young people or the provision of services to children and young people
- The Commission be enabled to conduct hearings for the purposes of an inquiry, and to require people to attend and otherwise produce documents and give evidence for purposes of an inquiry
- The Commission be required to report the findings and recommendations of any inquiry to the Minister; that the Minister be given the opportunity to comment on a draft report, but not the power to require changes; and that the Minister be required to table the final report in the Parliament.

There are no separate “inquiry” powers as such provided under the Bill. The Bill provides the Commission with powers to investigate complaints that relate to the provision of certain services to children. The Bill also enables the Commissioner to ask the Minister to table a report in Parliament (See the discussion of the complaints handling function of the Commission in Section 5.8 above). It should be noted, however, that the \textit{Commissions of Inquiry Act 1950} (Qld) provides for the facilitation of a commission of inquiry issued by the Governor by and with the advice of the Executive Council.

Part 4 of the \textit{Commission for Children and Young People Act 1998} (NSW) allows the Commission to conduct a special inquiry into a specified issue affecting children. The special inquiry may be initiated by the Commission or the Minister, but only with the Minister’s approval. It also empowers the Commission to conduct public hearings and to require people to attend and produce documentary or other

\textsuperscript{84} The Briton Report, p 34.

\textsuperscript{85} The Briton Report, p 35.

\textsuperscript{86} The Briton Report, p 22: Recommendations 13, 15.

\textsuperscript{87} The Briton Report, p 35.
evidence. The Commission must make a special report about the results of the special inquiry, and give a draft of this report to the Minister. Before the report is tabled in parliament, the Minister may comment about it but may not require changes to it.

5.10 EMPLOYMENT SCREENING

One of the new functions proposed for the Commission is the conduct of employment screening for those categories of child-related employment which are not already regulated by existing legislation. Employment screening in this context involves an assessment of a person’s suitability to work with children based on whether the person has a criminal history and what that criminal history is.

The impetus for the inclusion of employment screening in the Bill arises from comparative developments in New South Wales and the United Kingdom and growing community concerns about the safety of children who are placed in the care of others. As the Explanatory Notes state:

_Employment screening for child-related employment is not a new legislative concept, but rather an expanding concept, which seeks to extend scrutiny beyond public sector employees working with children, to employees in equivalent non-government child-related fields._

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88 The Departments of Police and Families Youth and Community Care and the Children’s Commission currently conduct criminal history checks on all their employees. The Board of Teacher Registration conducts checks on persons wishing to register as teachers in Queensland. The Department of Families Youth and Community Care also conducts checks on persons applying to work in child care centres, family day care schemes, as foster carers and persons applying to adopt children: _Employment screening for child-related employment - Commission for Children and Young People Bill 2000: Information Paper_, p 2.

89 _Explanatory Notes_, p 9.

90 _Explanatory Notes_, p 2.

At a conceptual level, employment screening involves the juxtaposition of the competing rights of children to be protected from harm or the likely risk of harm with the right of an adult employee to employment and privacy. In this respect, the Explanatory Notes state that:

The rights of adults working or seeking to work in child-related employment are not mutually exclusive of the rights of children who receive the services, or partake in the activities, being provided by these adults...Significant safeguards accompany the significant powers of the commissioner. The Bill does not seek to impose an overall restraint of trade or employment for the persons not deemed suitable for child-related employment. In all the categories of employment regulated by the Bill, equivalent services may be provided to adult clients - for example, in the fields of counselling or other social support services, sport, religious instruction, recreation services, coaching or tutoring.92

The Scrutiny of Legislation Committee in its report on the Bill observed that the Bill imposes very significant restrictions on the capacity of people to work in the certain child-related employment or certain child-related employment.93 The rationale for these restrictions is provided in the Explanatory Notes:

Employment screening is considered an essential component of any child protection strategy for child-related employment. Employment screening diminishes children’s risk of harm and enhances their wellbeing by ensuring that only suitable persons are employed in child-related employment.

The Bill subjects persons working in child-related employment to a similar level of scrutiny to that which currently applies to teachers, staff of the Department of Families, Youth and Community Care, child care workers, foster carers, and persons wishing to adopt children. Persons working with children tend to be subjected to a greater degree of scrutiny than for other forms of employment. Many community organisations, which provide services to, and activities directed at, children have already embraced criminal history checks as a necessary probity check for ascertaining suitability to work with children. Media coverage in recent times has constantly highlighted the need for vigilance and greater regulation in relation to people working in this field94.

Part 6 of the Bill relates to employment screening for child related employment. The purpose of Part 6 is to help ensure that only suitable persons are employed in certain child-related employment or carry on certain child-related businesses: clause 95. One way of seeking to ensure this is by conducting a criminal history check on persons working with, or seeking to work with children.

92 Explanatory Notes, p 11.


94 Explanatory Notes, pp 9, 10.
Clause 96 of the Bill also explains that, of paramount importance in the conduct of employment screening, is a child’s entitlement to be cared for in a way that protects the child from harm and promotes the child’s wellbeing.

The employment screening provisions in the Bill apply only to the employment of persons in a “regulated employment” or carrying on a “regulated business”, in the categories are specified in schedule 1, part 1 of the Bill: clause 97.

Briefly stated, the “regulated employment” categories are:

- Residential facilities providing accommodation for children
- Schools and school boarding facilities
- Community groups (ie churches, clubs and associations)\(^{95}\) which provide services directed mainly towards children or which conduct activities mainly involving children.
- Child counselling and support services
- Private teaching, coaching or tutoring on a commercial basis\(^{96}\)

The categories of persons subject to employment screening within these categories are listed in Appendix D.

In each of the employment categories listed above, the requirement for employment screening generally covers all paid employees and volunteers aged 18 or over: clause 99, 97(2). An exception arises in the categories of school or community based employment, where a volunteer is a parent of a child who is enrolled at a school or who currently receives the services of or participates in the activities of a community group: schedule 1, part 1: clauses 3(b), 4(2).

“Regulated businesses” comprise the categories of child counselling and support services and private teaching, coaching or tutoring on a commercial basis. Within these categories, certain people are subject to employment screening. Notably, registered health practitioners are excepted from screening under the counselling and support services category: schedule 1, part 1, clauses: 8, 9.

An employer who proposes to start employing, or continue employing, an employee in a regulated business is responsible for ensuring that the employee undertake a criminal history check with the Commission: clause 100. The Bill does not require

\(^{95}\) The Bill provides a comprehensive example of the circumstances in which work for a community group (such as a sporting club) is regulated employment in Schedule 1, cl 4

persons working in child-related employment on a “one-off”, sporadic or infrequent basis to undergo a criminal history check: clause 105.97

The employer is the person who engages another person in child-related employment. The engagement of an employee could occur through entering into a contract of employment or entering into a series of agreements to carry out separate work assignments or giving the person permission to undertake the work that is carried out in the course of the employment or voluntary work.98 A person who proposes to carry on, or continue to carry on, a child-related business must also make an application to the Commissioner for a suitability notice: clause 101.

The Bill expressly declares that the employment screening provisions apply to a person despite the provisions of the Criminal Law (Rehabilitation of Offenders) Act 1986 (Qld): clause 98. The Commission may therefore access charges and convictions for offences recorded against a person committed at any time in Queensland or elsewhere.99 The ability to access information about charges in a person’s criminal history may be relevant in making decisions about their suitability to work with children. Occasions may arise, for example, in cases involving sexual offences against children, where convictions may be difficult to obtain because a child is too young to give evidence or withstand the experience of an adversarial court proceeding.100

If there is no criminal record against the name of the person, the Commissioner must issue a suitability notice declaring the person to be suitable for child-related employment (a “positive notice”): Clause 102(1)(a), (2). Conversely, if the Commissioner decides the person is unsuitable for child-related employment, the Commissioner must issue a “negative notice”: clause 102(1)(b). Clause 102(3) – (5) prescribes how the Commissioner must decide an application where he or she becomes aware of any convictions or charges of the person for any offence. If the Commissioner proposes to issue a negative notice the Commissioner must invite submissions from the person affected and is obliged to consider any submission received from the person prior to deciding the application: clause 103.


99 The definition of “criminal history” in Schedule 4 of the Commission for Children and Young People Bill 2000 is defined as including a charge of an offence in any form and convictions whether or not a conviction is recorded.

100 Explanatory Notes, p 10.
A positive notice remains valid for 2 years from the date of issue unless it is
cancelled earlier, and is portable across child-related employment. A negative
notice remains current until it is cancelled or upon a successful review to the
Children’s Services Tribunal: clause 104.

Clauses 118 - 120 provide that a person can apply to the Commissioner to cancel a
suitability notice and substitute another notice. This could occur for example where
the decision on the application was based on incomplete or wrong information, or if
the person’s criminal history has changed since the previous notice was issued. 101

A person who has been assessed as not suitable for child related employment may
apply to the proposed Children’s Services Tribunal to have the decision reviewed:
clause 121.

At any time before a suitability notice about a preferred applicant is issued, the
applicant can withdraw his or her consent to the issue of the notice by providing the
Commissioner with written notice: clause 123. The Commissioner must then
inform the employer that consent has been withdrawn and the employer must not
appoint or engage that person for child-related employment: subclauses 123(4)(b),
107(2)(a).

The Commissioner cannot use information obtained in relation to employment
screening in any other context: clauses 126. An employer must only be informed as
to whether a preferred applicant or employee is suitable or not suitable for child
related employment.

Part 6, Division 3 of the Bill creates a series of obligations and offences relating to
suitability notices. Within the parameters of the scheme, there is a prohibition, in
defined circumstances, on the employment of a past or present employee who does
not have a current positive notice unless the employer has applied for a suitability
notice: clauses 105, 106. More generally, an employer is prohibited from engaging
or continuing to employ an employee, if the employer is aware that an employee
has been convicted of a serious offence and the employer has not received a
suitability notice for that person: clause 107. Clause 108 also bars a person, who
has been issued with a current negative notice, from applying for, commencing or
continuing in, child-related employment. Similarly, a person is prohibited from
carrying on a regulated business unless he or she has a current positive notice:
clause 109.

Persons employed or engaged in child related employment must disclose changes in
their criminal history to their employers who then must apply to the Commissioner

101 Employment screening for child-related employment - Commission for Children and Young
for a new suitability notice about the employee: clauses 112, 113. An employee is only required to disclose that a change has occurred in his or her criminal history. Information about the change itself, however, need not be disclosed: clause 112(4)(a).

The Bill provides that it is an offence to provide false or misleading information or documents for the purposes of the criminal history check: clauses 115, 116.

Clause 164 stipulates that the operation of Part 6 of the proposed new Act, which contains the employment screening provisions, must be reviewed within two years of its commencement. The Minister must table a report on the outcome of the review in the Legislative Assembly within 3 years of the commencement of those provisions.

It should also be noted that Part 7 of the Queensland Bill proposes a scheme for the conduct of criminal history checks of the Commission’s staff. In this respect, the Bill adopts nearly all of the provisions of Part 4 of the Family Services Act 1987 (Qld) for the employment screening of persons who are, or are seeking to be, members of the Commission’s staff.102

In 1999, the New South Wales Commission for Children and Young People commenced a comprehensive employment screening program for persons working in government and non-government child-related employment. The New South Wales program, which is provided for under the Commission for Children and Young People Act 1998 (NSW), differs from that proposed in Queensland in a number of aspects. Notably, mandatory employment screening applies to preferred applicants for employment that primarily involves direct, unsupervised contact with children, but does not appear to extend to volunteers. There is also no provision for the screening of workers in other occupations relating to vulnerable people, such as disabled people.

The Child Protection (Prohibited Employment) Act 1998 (NSW) prohibits persons convicted of a serious sex offence from applying for, undertaking or continuing in, child related employment.103 An employer cannot engage or continue to employ a prohibited person in child-related employment.104 A person can apply to the Industrial Relations Commission or the Administrative Decisions Tribunal, for a

102 Explanatory Notes, p 2.

103 Child Protection (Prohibited Employment) Act 1998 (NSW), s 5 (definitions of “prohibited person”, “serious sex offence”), s 6

declaration that he or she is exempt from the application of the provisions of the Act in respect of a specified offence.105

In 1999, the United Kingdom established a scheme under the Protection of Children Act 1999 (UK) which allows the Secretary of State to ban persons from working with children in social care employment (for example, as teachers or child care workers). The scheme builds on systems already in place and on existing legislation.106 The United Kingdom requires employers in these fields to conduct criminal history checks and allows them to check names of applicants against lists of persons deemed unsuitable to work with children. Those who come to notice, either when working with children or by the commission of an offence against a child, are identified as posing a risk to children, and may, after a proper process, be subject to a statutory ban on working with children in the future. There is a review process available under the Act for those subject to a ban. Criminal sanctions are applicable if people who are disqualified from working with children breach their ban or if someone offers the opportunity to work with children to a person they know is banned from such work.


106 See Education Reform Act 1988 (UK), Education Act 1996 (UK) and Protection of Children Act 1999 (UK) which provide for lists to be kept by the Secretary of State or National Assembly for Wales of individuals banned from working with children in organisations in the area of healthcare, social services and education.
6 OTHER LEGISLATIVE MODELS

Statutory bodies or persons that act to provide for the protection and promotion of the interests and rights of children have been established in a number of Australian jurisdictions. South Australia was the first State to introduce such an office. This Legislation Bulletin reviews the current position in South Australia, New South Wales and Tasmania.

6.1 SOUTH AUSTRALIA

South Australia established a Children’s Interests Bureau in 1983. The functions of the Bureau include:

- To monitor, review and evaluate departmental services to children
- To increase public awareness of the rights of children, and of matters relating to the welfare of children, and
- To carry out research or inquire into matters affecting the welfare of children as directed by the Bureau or the Minister.

The Bureau has neither clear investigative powers nor any individual redress or complaints function as such. It has interpreted its inquiry function broadly and has represented the rights and interests of children in areas including child welfare, education, health and access to justice.

When it was first established, the Bureau was principally responsible for monitoring and evaluating the policies of the child welfare department. However, it also had a broader mandate to increase public awareness of the rights and welfare of children (such as child witnesses, the rights of children in State care and employment of children). In 1988, the Bureau assumed the additional responsibilities of advising on the rights and interests of children under State

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107 The Children’s Interest Board is currently established under s 26(1) of the Family and Community Services Act 1972 (SA).

108 Family and Community Services Act 1972 (SA), s 26(3).

guardianship and children who may be in need of care and protection.\textsuperscript{110} The Bureau was subsequently integrated into a division of the department. This move, according to some commentators, illustrates the need for independence, resourcing and an appropriate statutory base for such bodies.\textsuperscript{111}

6.2 New South Wales

In August 1997, the Royal Commission into the New South Wales Police Service, which was convened to counter paedophilia and protect children from abuse, recommended the creation of a Children’s Commission in that State as a focal point for coordinating the effort to protect children.\textsuperscript{112} The Royal Commission also recommended the inclusion of employment screening of people working in child-related employment as part of the responsibilities of the proposed Children’s Commission.\textsuperscript{113}

In response to the Royal Commission recommendations, the New South Wales Government released a Green Paper in December 1997 to obtain the views of interested organisations, agencies and individuals on the creation of a Children’s Commission and the role and functions it should fulfil.\textsuperscript{114} The Green Paper suggested a number of ways to configure the investigation and review functions of the Commission.

The NSW Commission was created by the \textit{Commission for Children and Young People Act 1998} (NSW). The Commission is not limited to child protection and like matters but has a broad mandate to consider the circumstances of children generally. It does not, however, have an individual redress function. Its functions are to:

- promote the participation of children in the making of decisions that affect their lives appropriate to their age and maturity


\textsuperscript{113} Royal Commission into the New South Wales Police Service, p 1301, para 20.31.

promote and monitor the overall safety, welfare and well-being of children in the community and to monitor trends in complaints relating to children
make recommendations to government and non-government agencies on legislation, policies, practices and services affecting children
promote the provision of information and advice to children
conduct, promote and monitor training, public awareness and research activities
conduct special inquiries, with the Minister’s consent, into issues affecting children; and
conduct employment screening for child-related employment.

6.3 TASMANIA

A Commissioner for Children was established in Tasmania by virtue of Part 9 of the Children, Young Persons and Their Families Act 1997 (Tas). The Commissioner is empowered to investigate decisions or recommendations made or acts done or omitted under the legislation when requested by the Minister to do so, to encourage the development of departmental policies and services to provide for the health, welfare, care, protection and development of children, to increase public awareness of such matters, to inquire generally into and report on any matter including any enactment practice or procedure relating to those issues on its own initiative or when requested to do so by the Minister, and to advise the Minister on these matters. The Act also provides for the Commissioner to establish a Children’s Consultative Council, a Children’s Advisory Council and such other committees as the Commissioner considers appropriate.

7 CONCLUSION

The ultimate measure of the value of bodies like the Commission is in their capacity to influence children’s lives for the better. The Commissioner for Children and Young People Bill 2000 underlies and augments the mandate of the current Children’s Commission to protect and promote the wellbeing of all children and young people in Queensland.

APPENDIX A – RECOMMENDATIONS OF THE REVIEW  
(THE BRITON REPORT)


Recommendations

Scope and coverage:
1 that the Act’s scope and coverage be extended, and the Commission’s mandate be broadened to include any services to children provided by any government, non-government, or commercial service provider;

Objects, purposes and principles:
2 that the Parliament acknowledge in a preamble to the Act the Commonwealth’s ratification of the Convention on the Rights of the Child and express its support for the principles of the Convention, noting and affirming that:

• the family is the fundamental group of society and the natural environment for the growth and well being of all its members and particularly children, and should be afforded the necessary protection and assistance to fully assume its responsibilities within the community;

• parents, and where appropriate legal or customary guardians, have the primary responsibility for the upbringing and development of their children, consistent with the child’s best interests, and for providing them with direction and guidance in the exercise of their rights under the Convention, consistent with their evolving capacities;

3 that the body of the Act set out and affirm the Parliament’s support for the following principles:

• the best interests of the child and young person should be a paramount consideration in all actions concerning them, without discrimination of any kind;

• children and young people are entitled to protection from all forms of abuse, exploitation and neglect, and to such protection and care as is necessary for their well being;

• children and young people are entitled to express their views freely without fear of recrimination in all matters which affect them, and their views should be given due weight in accordance with their age and maturity;

• children and young people are entitled to pursue grievances, and to have them dealt with in ways which are accessible to them fair, timely and effective; and

• children and young people are entitled to information and assistance enabling them to effectively exercise these entitlements.
4 that the Commissioner’s functions be amended to include promoting policies, practices and procedures that uphold the principles enshrined in the Act;

5 that the Act be given the long title *An Act to promote and protect the rights, interests and well being of children and young people in Queensland, and to promote their participation in decision making which affects them*;

6 that the Act set out principles governing the exercise by the Commission of any function, power, duty or discretion given under the Act, requiring that it:
   • act independently in the best interests of children and young people, fairly and without pre-judgment;
   • listen to, and take the views of children and young people seriously;
   • consult widely with, and promote a culture of collaboration and cooperation with children and young people, advocacy organisations, service providers, investigative and complaints agencies and others;
   • ensure that children and young people participate in its decision making; and adopt ‘child and young person friendly’ work practices which encourage and facilitate its accessibility;
   • give priority to the needs of children and young people who are at greatest risk, having particular regard to the circumstances of children and young people who are in or at risk of entering care or detention, who have no one else to act on their behalf, who are least likely or able to protect their own interests and well being, or who are disadvantaged because of disability, cultural or linguistic difference, poverty, homelessness or geographic isolation;

Name:

7 that the Commission(ER)’s name be changed to become the Commission(ER) for Children and Young People, and that the Act be renamed accordingly;

8 that the Commission not be named as either the Children’s Commission or the Commission for Children and Young People unless its mandate extends as previously recommended to all (or at least most) children;

Independence and accountability:

9 that the Act be amended to declare the Commission to be a statutory body for purposes of the *Financial Administration and Audit Act 1997*, as provided for in Schedule 3 of the *Child Protection Bill 1998*;

10 that consideration be given to ‘decoupling’ the Commission from the Department, and to allocating responsibility for the Act’s administration to the Premier;

11 that the Commission’s functions include:
   • developing and modelling mechanisms for participation by children and young people in decision making about matters which concern them; and
   • establishing advisory groups of, and otherwise consulting widely with children and young people, children’s advocacy organisations, service providers, investigative and complaints agencies and others about the directions and work of the Commission;
12 that the Act provide for the appointment of advisory groups accordingly;

**Systemic and preventative functions:**

13 that the Commission’s functions be broadened to include:

- monitoring and reviewing services, programs, policies, practices and laws which impact on children and young people, and making recommendations as appropriate;
- promoting an understanding and acceptance of, and informed public discussion about the rights, interests and well being of children and young people in Queensland;
- undertaking, and encouraging and cooperating with children’s advocacy organisations, service providers, investigative and complaints agencies, and others in undertaking access and awareness campaigns directed to children and young people; and
- encouraging, facilitating, and supporting the development and coordination of community advocacy services for children and young people;

14 that the Commission’s function to monitor the way agencies handle complaints be strengthened to be monitoring and reviewing procedures for handling complaints by children and young people, and monitoring trends in complaints made by or on behalf of children and young people, and making recommendations as appropriate;

15 that the Commission’s research function be strengthened to be conducting, promoting, coordinating, sponsoring, and cooperating in research relating to the rights, interests and well being of children and young people;

16 that the Commission’s other systemic and preventative functions be rationalised as outlined in Attachment 2;

**Complaints:**

17 that the Commission’s complaints jurisdiction be limited to complaints about the delivery of children’s services;

18 that “complaints about the delivery of children’s services” be defined to mean complaints made by, on behalf of, or in the interests of a particular child or young person, or particular children and young people, that a service is being provided, or has been varied or withheld in a way contrary to their rights, interests or well being;

19 that the Commission be authorised to initiate a complaint in its own name if in the course of carrying out its functions it comes upon circumstances which would warrant a complaint being made by or on behalf of a particular child or young person, or particular children and young people, but it has not received a complaint;

20 that the Commission may take up a complaint about the delivery of children’s services only if:

- the complaint appears to raise issues of public interest or systemic significance; or
- a particular child’s or young person’s rights, interests or well-being, or the rights, interests, or well being of a particular group of children and young
people will be seriously affected if no action is taken; and no other avenue of complaint or source of assistance is reasonably or practically available;

21 that the Commission's function of "receiving, assessing and investigating complaints about the delivery of children's services" be replaced by the function of receiving, assessing and seeking to resolve complaints about the delivery of children's services;

22 that the Commission be given the function of acting for and making representations on behalf of particular children and young people, and seeking assistance in their interests from any government department, government or non-government service provider, complaints agency, or other organisation or institution;

23 that the Commission be given the function in certain exceptional circumstances of initiating legal proceedings on behalf of a child or young person, or with the leave of the court hearing the proceeding, intervening in a proceeding that involves a child or young person;

24 that the Act ensure that the Commission has a right to all information reasonably necessary to investigate a complaint and to determine what action should be taken to resolve it, and that this right overrides any restriction, in an Act or the common law, about the disclosure or confidentiality of the information; but that the Commission be bound by those restrictions once information so obtained comes into its possession;

25 that the Commission be authorised, but not required, to provide the Minister with reports about complaints made by or on behalf of particular children and young people, but that if a report is provided, the Minister be required to table it, provided that:
   • any party adversely named in the report has had proper opportunity to respond; and
   • the Minister has had the opportunity to comment on a draft report and require further consultation before the final report is submitted;

Inquiries:

26 that the Minister be empowered, at the Commission's request or on the Minister's own initiative, to require the Commission to conduct inquiries into specified matters affecting children and young people or the provision of services to children and young people;

27 that the Commission be enabled to conduct hearings for the purposes of an inquiry, and to require people to attend and otherwise to produce documents and give evidence for purposes of an inquiry;

28 that the Commission be required to report the findings and recommendations of any inquiry to the Minister; that the Minister be given the opportunity to comment on a draft report, but not the power to require changes; and that the Minister be required to table the final report in the Parliament;

Whistleblower protection:

29 that there be a presumption that complainants be identified, but that the Commission be given a discretion to:
• preserve a complainant’s anonymity if it is in the complainant’s interests or a child or young person’s best interests to do so, and
• accept an anonymous complaint in the public interest;

30 that it be made an offence to victimise, or threaten to victimise anyone in the belief that they have made or may make a complaint or assisted or propose to assist the Commission in dealing with a complaint or conducting an inquiry for purposes of the Act;

31 that anyone who provides information to the Commission in good faith be given protection from any liability for giving the information;

Official Visitors:
32 that the title official visitor be changed to ‘community visitor’;

33 that private homes be generally exempt from the community visitor program, but be included if:
• more than a specified number of unrelated children and young people, say four or more, are placed in the same foster home; and
• a private home is providing accommodation for a child in care and a complaint has been made which hasn’t been or can’t reasonably and practicably be resolved by internal grievance processes;

34 that the community visitor program be extended to cover children and young people who live in residential facilities but who aren’t subject to statutory care orders;

35 that the role and purpose of community visitors be to develop trusting relationships with children and young people in residential facilities to facilitate their ability to advocate on the child’s or young person’s behalf as necessary;

36 that community visitors be authorised to facilitate ‘on site’ resolution of complaints, and to refer serious matters to the Commission in accordance with formal protocols and guidelines;

37 that community visitors be authorised to access otherwise confidential information held at residential facilities about the children and young people who reside there, subject to the same overarching principles and confidentiality requirements as other Commission staff;

38 that the Act oblige the management and staff of residential facilities to cooperate with community visitors in the exercise of their functions;

39 that consideration be given to ‘harmonising’ the legislative and administrative frameworks applying to community visitor and like programs under the Children’s Commission and juvenile justice Acts and envisaged adult guardianship and mental health legislation;

The Children’s Services Appeals Tribunal:
40 that the government give consideration to identifying other significant decisions made in the course of service provision to children and young people which ought be subject to ‘merits review’ by a Children’s Services Appeals Tribunal;
that the Tribunal be constituted entirely separately to the Commission, and be headed by a President who reports to the Minister for Justice and Attorney General, assisted by a Registrar and such other staff as may be required;

that the President be given a duty to ensure that Tribunal members and staff receive appropriate training; authority to singly exercise the Tribunal's pre-hearing powers and perform its pre-hearing functions, and to delegate those powers and functions to other members; power to issue guidelines on Tribunal procedures; responsibility for liaising with the Department and the Commissioner; and any other duties subject to separate recommendations;

that each tribunal include at least one legal member, but not necessarily as Chairperson;

that the Commissioner be given 'as of right standing' to appeal any reviewable decision;

that the Commissioner be notified of every appeal;

that the Tribunal be under a general duty to notify any person who has a genuine concern in the subject matter of appeal;

that the Tribunal be obliged to consider whether, and authorised to determine that, a child or young person should be separately represented;

that the President be under a duty to recruit, train and maintain a list of persons suitably qualified for appointment as separate representatives;

that the Tribunal be under a duty to ensure that it has all relevant material before it, and that it be given the powers necessary to perform this duty;

that as soon as practicable (and in any case within 28 days) after being notified that an appeal has been lodged, the decision maker be required to provide the Tribunal with a statement of reasons for the decision under appeal, and copies of all relevant documents;

that the Tribunal be given power to order a further statement of reasons if the Tribunal considers the statement supplied to be inadequate;

that the Tribunal be empowered to examine the Department's file; and to require that documents be produced within a specified period of time;

that the Tribunal be given the power to serve a notice on a person requiring them to lodge documents with the Tribunal within the time specified in the notice;

that the Tribunal be authorised to employ persons to perform investigations and provide it with reports;

that the Act provide that the purposes of preliminary conferences are to:
  • narrow and define the issues between the parties;
  • identify information which the parties should supply to the Tribunal;
  • provide information directly to children and young people about Tribunal practice, procedure and evidentiary requirements;
  • identify cases where children and young people should be separately represented;
• determine whether the parties should be legally represented; and
• explore opportunities for resolution, including by mediation and early neutral evaluation;

56 that evidence of anything said or done at a preliminary conference be inadmissible at a subsequent hearing except with the consent of the parties; and that the parties be given the right to object to a member who conducted a preliminary conference participating in the hearing;

57 that the Tribunal be under a duty to seek an amicable resolution to an appeal;

58 that the Tribunal be given the power, with the consent of the parties, to refer appeals to confidential mediation and / or neutral evaluation, at any stage of the proceedings;

59 that the Tribunal be required to ensure procedural fairness rather than natural justice;

60 that the Tribunal be given the power to limit a party’s right to have access to a document through a confidentiality order;

61 that Tribunal hearings be open, but that no reporting of proceedings be allowed and that the Tribunal be given powers (in addition to its powers to make confidentiality orders) to direct who may or may not be present and that some or all of a hearing will take place in private;

62 that the Tribunal be given explicit power to examine and cross examine witnesses itself;

63 that the Tribunal be under a special duty to explain its procedures to children and young people who are parties or witnesses to appeals, and to ensure that they are treated fairly and not harassed or intimidated;

64 that the Tribunal be required to develop procedural guidelines for dealing with expert witnesses;

65 that the Tribunal be under a duty to provide written reasons for decisions, and a duty, as far as reasonably possible, to make its reasons for decisions plain, clear and intelligible to the parties.

Qualifications for appointment to positions under the Act:

66 that the qualifications for appointment to positions under the Act be strengthened to include a commitment to the objectives of the legislation and a demonstrated capacity to communicate and work effectively with children and young people.
**APPENDIX B– ATTACHMENT 2 OF THE REVIEW**  
*(THE BRITON REPORT)*

**THE COMMISSION’S CURRENT AND RECOMMENDED FUNCTIONS, AT A GLANCE**


Please note that the statements of principle included in the description of the Commission’s current functions (eg, that it must work collaboratively with service providers in monitoring and reviewing the way in which they provide services, and that parents and guardians of children have primary responsibility for bringing up their children) are *not* included in the descriptions of its functions under the recommended amendments. Instead they are *added to, highlighted and strengthened* by their inclusion in stand alone ‘objects, purposes and principles’ clauses.

<table>
<thead>
<tr>
<th>the Commission's current functions</th>
<th>the Commission's recommended functions</th>
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<tbody>
<tr>
<td>(a) monitoring and reviewing, in collaboration with entities that deliver children’s services, the provision of the services and suggesting ways of improving the services’ quality, adequacy and effectiveness; and</td>
<td>(a) promoting policies, practices and procedures that uphold the principles enshrined in the Act; and</td>
</tr>
<tr>
<td>(b) promoting practices and procedures that uphold the principle that parents and legal guardians of children have the primary responsibility for the upbringing and development of their children; and</td>
<td>(b) monitoring and reviewing services, programs, policies, practices and laws which impact on children and young people, and making recommendations as appropriate; and</td>
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<tr>
<td>(c) advising the Minister about developing and reviewing standards for child care and foster homes; and</td>
<td>(c) developing and modelling mechanisms for consulting with children and young people about matters which concern them; and</td>
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<tr>
<td>(d) receiving, and as appropriate, assessing and investigating complaints about the delivery of children’s services and alleged offences involving children; and</td>
<td>(d) establishing advisory groups of, and otherwise consulting widely with children and young people, children’s advocacy organisations, service providers, investigative and complaints agencies and others about the directions and work of the Commission;</td>
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<tr>
<td>(e) monitoring, in cooperation with other entities, the procedures developed and implemented by the entities for handling complaints about the delivery of children’s services and alleged offences involving children; and</td>
<td>(e) monitoring and reviewing procedures for handling complaints by children, and monitoring trends in complaints made by or on behalf of children, and making recommendations as appropriate; and</td>
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<tr>
<td>(f) cooperating with the Queensland Police Service and the Australian Bureau of Criminal Intelligence in the investigation of allegations about offences involving children, including, for example, sexual abuse of children, child pornography and child sex tourism; and</td>
<td>(f) promoting an understanding and acceptance of, and informed public discussion about the rights, interests and well being of children and young people in Queensland; and</td>
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<tr>
<td>(g) cooperating with the Queensland Police Service and the Australian Bureau of</td>
<td>(g) undertaking, encouraging and cooperating with children’s advocacy, service providers, investigative and complaints agencies, and</td>
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Criminal Intelligence and other relevant entities in their endeavours to eradicate sexual abuse of children, child pornography and child sex tourism: and
(h) implementing and maintaining a program of official visitors to residential facilities; and
(i) conferring and cooperating with other relevant entities including, for example, the Queensland Police Service, the CJC and the Ombudsman about a matter relating to any of the Commission’s other functions; and
(j) liaising with the Ombudsman about the exercise by the Commissioner and the Ombudsman of their respective functions in relation to complaints about the delivery of children’s services; and
(k) establishing tribunals to hear appeals of reviewable decisions; and
(l) at the Minister’s request, inquiring into any matter relating to children’s services; and
(m) conducting research and inquiring into matter relating to any of the Commissioner’s other functions; and
(n) doing anything else —
   (i) incidental, complementary or helpful to the Commissioner’s other functions; or
   (ii) likely to enhance the effective and efficient performance of the Commissioner’s other functions.

others in undertaking access and awareness campaigns directed to children and young people; and
(h) encouraging, facilitating, and supporting the development and coordination of community advocacy services for children and young people; and
(i) developing and modelling mechanisms for, and consulting with children and young people about matters which concern them and the work of the Commission; and
(j) cooperating with the police, law enforcement agencies, and other relevant bodies in their endeavours to eradicate sexual and other abuse of children; and
(k) conducting, promoting, coordinating, sponsoring, and cooperating in research relating to the rights, interests and needs of children and young people; and
(l) receiving, assessing and seeking to resolve complaints about the delivery of children’s services; and
(m) acting for and making representations on behalf of particular children and young people, and seeking assistance in their interests from any government department, government or nongovernment service provider, complaints agency or other organisation or institution;
(n) in certain exceptional circumstances, initiating legal proceedings on behalf of a child or young person, or with the leave of the court hearing the proceeding, intervening in a proceeding that involves a child or young person; and
(o) conducting inquiries into specified matters affecting children and young people, or the provision of services to children and young people; and
(p) implementing and maintaining a program of community visitors to residential facilities.
APPENDIX C– ATTACHMENT 3 OF THE REVIEW
( THE BRITON REPORT)


CURRENT AND RECOMMENDED COMPLAINTS HANDLING FRAMEWORK

<table>
<thead>
<tr>
<th>The Commission’s current complaints handling framework</th>
<th>The Commission’s recommended complaints handling framework</th>
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<tbody>
<tr>
<td>“a person may make a complaint about the delivery the delivery of children’s services”</td>
<td>a person may make a complaint that a service is being provided, or has been varied or withheld, in a way contrary to the rights, best interests or well being of a particular child or young person, or particular children and young people</td>
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<td>and</td>
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<tr>
<td>“the Commissioner must ... assess the complaint to decide whether the complaint warrants further investigation by the Commissioner or other entity”</td>
<td>the Commissioner may take up the complaint but only if it appears to raise issues of public interest or systemic significance, or the particular child(ren)’s or young person’s / people’s rights, interests or well being will be gravely affected if no action is taken and no other avenue of complaint or source of assistance is reasonably and practically available</td>
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<tr>
<td>“the Commissioner must ... decide to investigate the complaint further or, if the ... complaint raises issues that are appropriate for investigation by another entity, refer the complaint to the other entity; or decide the matter does not warrant further investigation”</td>
<td>the Commissioner must seek to resolve the complaint in the best interests of the child(ren) and young person / people concerned and may investigate to determine what action should be taken to resolve the complaint and may act for and make representations on behalf of the child(ren) or young person / people concerned, or seek assistance in their best interests from any government department, government or non-government service provider, complaints agency, or other organisation or institution</td>
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<td>but</td>
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<td>“the Commissioner may make a decision that a complaint does not warrant further investigation only if ... [it] “is frivolous, vexatious, or not made in good faith, ... is under investigation by another entity or has been or is the subject of a legal proceeding, ... [or] can be dealt with in another way that is satisfactory to the complainant”</td>
<td>the Commission may prepare a report about the complaint, may provide a copy to the Minister and the service provider or other entity and may recommend that the report be tabled but only if the Minister has been provided with an advance draft, and been given the opportunity to comment and the Minister must then table the report</td>
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<tr>
<td>“the Commissioner must conduct an investigation ... and decide what further action should be taken and may recommend that the service provider or other entity take stated action”</td>
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<td>↓</td>
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<tr>
<td>“the Commissioner must prepare a report about it ... and give a copy to the Minister and the service provider or other entity”</td>
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<tr>
<td>and</td>
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<td>“if the Commissioner is satisfied no action is taken by the service provider or entity within a reasonable time, ... may recommend to the Minister that a further report ... be tabled in the Legislative Assembly”</td>
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</tbody>
</table>
## APPENDIX D – CATEGORIES OF PERSONS SUBJECT TO EMPLOYMENT SCREENING,
(SEE SCHEDULE 1, PART 1 OF THE BILL)


<table>
<thead>
<tr>
<th>Category of Employment</th>
<th>Categories of Persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Facilities providing accommodation for children</td>
<td>All paid employees and volunteers whose usual duties of employment are carried out, or at least likely to be carried out, inside the residential facility</td>
</tr>
<tr>
<td>School boarding facilities</td>
<td>All paid employees and volunteers (excluding registered teachers) whose usual duties of employment are carried out, or at least likely to be carried out, inside a boarding facility at the school.</td>
</tr>
<tr>
<td>Schools</td>
<td>All paid employees (excluding registered teachers) and all volunteers (excluding parents of a child enrolled at the school) whose usual duties of employment include, or are likely to include:</td>
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<td></td>
<td>(a) Providing services at a school that are directed mainly towards children; or</td>
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<td></td>
<td>(b) Conducting activities at a school that mainly involve children.</td>
</tr>
<tr>
<td>Community Groups</td>
<td>All paid employees and volunteers (excluding parents of a child who receives the services of, or participates in the activities of, the community group) whose usual duties of employment include, or are likely to include, providing services or activities mainly directed towards children.</td>
</tr>
<tr>
<td>Counselling and support services</td>
<td>Paid employees and volunteers (excluding registered health practitioners) whose usual duties of employment include, or are likely to include, providing counselling or a similar support service to a child in a situation where:</td>
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<tr>
<td></td>
<td>(a) The employee is physically present with the child while no other person is present; or</td>
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<td></td>
<td>(b) The employee is not physically present with the child (ie over the internet or telephone)</td>
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<tr>
<td>Private teaching, coaching or tutoring on a commercial basis</td>
<td>Paid employees (excluding a registered teacher) whose usual duties of employment include, or are likely to include, the teaching, coaching or tutoring of a child, individually, on a commercial basis and volunteers who assist them.</td>
</tr>
</tbody>
</table>

* “volunteers” who are under 18 years of age are not subject to screening in any of the employment categories above: **clause 98(2)**
This Publication:


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