RYAN HADDRICK
BARRISTER-AT-LAW

JOHN JERRARD CHAMBERS
Level 32, 239 George Street, Brisbane, Q, 4000
Tel: (07) 3210 6115 Fax: (07) 3220 3200
[redacted]

Submission No. 005
Received 18 March 2016

Ms Deborah Jeffrey
Research Director
Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee
Parliament House
George Street
BRISBANE Q 4000

Via email: hcdsdfvpc@parliament.qld.gov.au

17 March 2016

Dear Ms Jeffrey

DIRECTOR OF CHILD PROTECTION LITIGATION BILL 2016

I refer to the above-mentioned Bill, and provide these submissions to the Legislative Assembly's Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (the Committee).

I appreciate the opportunity to provide these short submissions.

By way of background, I am a barrister in private practice at the Queensland Bar and I was one of the counsel assisting the Queensland Child Protection Commission of Inquiry (the QCPCI) in 2012-13. In particular, I was the counsel assisting who had responsibility for assisting the Commissioner in relation to the recommendations regarding:

- the amalgamation of the then Child Guardian and Adult Guardian, into the Public Guardian of Queensland;
- the establishment of the Office of the Child and Family Official Solicitor;
- the reconstitution of the entity now known as the Queensland Family and Child Commission; and
- the establishment of the statutory office of the "Director of Child Protection" (named in the Bill as the "Director of Child Protection Litigation").

I do not make this submission on behalf of the now former Commission, or the former Commissioner – rather I make this submission as a member of the private Bar who has an ongoing interest in what comes of the work of the QCPCI.

Submission No. 005
Received 18 March 2016

I wish to draw an aspect of the drafting of the Bill to the Committee's attention. My concern relates to the drafting of clause 9 of the Bill, which sets out the proposed functions and powers of the Director of Child Protection Litigation (the Director).

Clause 9 is comprised of two subclauses. Subclause 9(1) sets out the Director's "main functions". The subsection expressly describes those main functions are "to do the following under the *Child Protection Act 1999*"; that is, the functions described at subclause 9(1) (a), (b) and (c), must all find their ultimate source "under the *Child Protection Act 1999*".

My concern is that this may limit the role of the Director to functions pursuant to the *Child Protection Act 1999*.

During the course of the QCPCI, the Inquiry examined a significant amount of material in relation to the occasional need for the State to take action to protect children in circumstances where the provisions of the *Child Protection Act* ought not apply. Specifically, as the Final Report of the QCPCI shows, the Inquiry contemplated that the State would, on rare occasions, need to make an application to the Supreme Court of Queensland for the invocation of that Court's parens patriae jurisdiction to obtain orders for the protection of a child in circumstances where the *Child Protection Act* does not provide the desired order.

As the Committee would be aware, the QCPCI considered the issue as to whether or not there needed to be a framework for the introduction of secure care in the State of Queensland. That is, whether or not there ought to be a system (or an option available) in Queensland for the provision for care of children where the child is not at liberty to depart from a care facility. Recommendation 8.3 of the Inquiry's Report recommends:

> **Recommendation 8.9**
> **That, if and when the Queensland Government's finances permit, the Department of Communities, Child Safety and Disability Services develop a model for providing therapeutic secure care as a last resort for children who present a significant risk of serious harm to themselves or others. The model should include, as a minimum, the requirement that the department apply for an order from the Supreme Court to compel a child to be admitted to the service.**

In formulating this recommendation, the QCPCI has anticipated the need for the development of preferable institutional arrangements for the provision of therapeutic secure care, including the need for curial supervision of such orders. The Report stated (at page 276) that:

> **The Commission proposes that the department be tasked to develop plans for the introduction of a model of therapeutic secure-care service for children as a last resort for children who present a significant risk of serious harm to themselves or others. The model should include, as a minimum, the requirement that the department apply for an order from the Supreme Court to compel a child to be admitted to the service.**

There is a linkage between the provision of secure-care (that is, care provided outside the framework of the existing options available within the *Child Protection Act 1999*) and the functions of the Director.

In order for the Director to have the sufficient flexibility to make an application tailored to the precise protection, care and welfare needs of each child, and so that the Director has the proper statutory basis for the making of an application to the Supreme Court for a secure care order, the functions of the Director, as set out in clause 9 of the Bill, ought to be slightly expanded.

Whilst clause 8 of the Bill sets out that the Director represents the State, and has the status, privileges and immunities of the State, this does not, in my opinion, make it sufficiently clear that the Director has the function (and power) to prepare and apply for an order from the

Submission No. 005
Received 18 March 2016

Supreme Court that a child be cared for in an environment that does not fall within the options available under the *Child Protection Act*.

It is my suggestion that the Committee consider recommending that the Bill be amended to include a new subclause (or a new placitum to an existing subclause) to the effect that the Director has the function to:

> **institute and conduct an application or proceeding, for an order or other relief, in any court of competent jurisdiction in relation to the safety, wellbeing, care or protection of:**
>
> **(a) any child within the State; or**
>
> **(b) any child who has one or more parent, guardian, or caregiver who is domiciled in, or is usually a resident of the State.**

The addition of some words along the lines of those above (properly drafted by parliamentary counsel, of course) would have the effect of putting it beyond doubt that the Director has a statutory basis for engaging in the function of making an application to the Supreme Court for orders that give effect to the secure care of a child – on the rare occasions when it is warranted.

Additionally, there may be circumstances (other than proposed secure care) where it would be in the public interest for the Director to be able to institute a proceeding where the care, protection and welfare of a child are in jeopardy. There ought to be a well-organised unit of public administration which is focused upon protecting that child and able to approach the relevant court; and which has a clear statutory authority to do so.

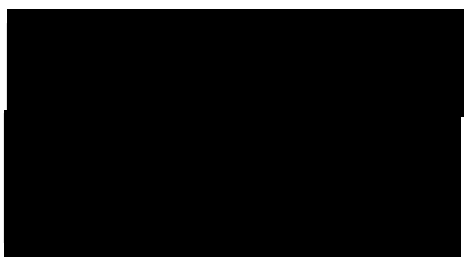
Whilst subclause 9(2)(b) of the Bill describes the Director as having the function of:

> **representing the State in legal proceedings under the *Adoption Act 2009* and the *Child Protection Act 1999* or other proceedings relating to the safety, wellbeing or protection of a child other than proceedings mentioned in subsection (1).**

the use of the words "representing the State" leaves some room for ambiguity as to whether the Director has the function and power to make applications invoking the exercise of the Supreme Court's parens patriae jurisdiction. This ambiguity can easily be cleared up by making it clear that the Director has a function (and therefore a power) to make such applications.

If there is the potential for the Director to consider making applications for orders that provide for the secure care of a child, it is desirable that the power of the Director to do so be unmistakably expressed in the Bill.

Yours sincerely,



Ryan Haddrick
Chambers