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Office of the President

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Committee Secretary
Health, Communities, Disability Services and
Domestic and Family Violence Prevention Committee
Parliament House
George Street
BRISBANE Qld 4000

By email: hcdsdfpc@parliament.qld.gov.au

Dear Committee Secretary

Child Protection Reform Amendment Bill 2017

Thank you for the opportunity to provide comments on the Child Protection Reform Amendment Bill 2017. The Queensland Law Society appreciates being consulted on this important legislation.

The Queensland Law Society (QLS) is the peak professional body for the State's legal practitioners. We represent and promote nearly 12,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. The QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled with the assistance of the QLS Children's Law Committee who have substantial expertise in this area.

QLS strongly supports reforms that result in the improvement of outcomes for children and young people in out-of-home care.

We make comment on specific sections of the proposed Bill below. Unless otherwise indicated, references to sections below are references to proposed amendments of sections in the *Child Protection Act 1999*:

Section 51VB

We support the inclusion of this section to provide for a permanent guardian or a child to request the review of a case plan at any time, when a child is subject to a permanent care order. Under this section, the chief executive may decide not to review the plan if there has been no significant change in circumstances or it is otherwise deemed inappropriate. Written

notice of that decision must be provided. We respectfully submit that there should be a timeframe for the chief executive to provide this notice of a decision not to review a case plan, to ensure that case planning concerns raised by a child, or their permanent guardian, are dealt with in a timely way.

Section 62

In our view, this proposed amendment to this provision of the Bill is too complex and should be simplified.

It appears that the aim of the provision is that, if a previous out-of-home care order has been made for a child, the default position for any further order should only allow for a maximum period of 2 years of continuous period of care, including any previous interim and/or short term orders. If our interpretation is correct, we suggest the wording of this provision should be reviewed to better reflect this intent, allowing the provision to be clearly understood including by lay users of the courts.

In addition, we believe there should be a requirement that the applicant is to include a calculation of the continuous care period to be considered by the court under this section, at that point in time.

To balance this provision, it would be prudent to include a substantive requirement that Child Safety demonstrate that reasonable attempts have been made to support the child being reunited with the parents by supporting parents in addressing child protection concerns. This is consistent with recommendation 13.20 of the Queensland Child Protection Commission of Inquiry, which we understand has bipartisan support. Such an addition to section 59 would create equal motivation from parents and Child Safety to work together to address the child protection concerns within the two year period, ensuring the principles set out in sections 5B(b), 5B(c) and 5B(f) are fairly balanced with the permanency principles.

We further note that adequate resourcing should be provided to ensure the case work of Child Safety, including any necessary reports or programs, can be completed in a timely manner.

Section 65

We respectfully suggest that the scope of the proposed amendment inserting section 65(5A) – (5D) would benefit from further consideration. We suggest that this proposed amendment should not unnecessarily limit the ability of the court to appropriately consider all relevant evidence in respect of applications to vary or revoke a long-term guardianship order generally, and rather should apply only to decisions about varying a long-term guardianship order to:

- grant guardianship to a suitable person instead of the chief executive; or
- make a permanent care order in its place.

Further, we note that the proposed amendment inserting section 65(5B) provides that sections 59(1)(a) and (e), 6(a), (7) and (8) do not apply to an application to vary or revoke a long-term guardianship order for a child. In our view, this amendment should not include section 59(8), which requires the court to have regard to the child's need for emotional security and stability before making a further order granting custody or short-term guardianship. We concede that

excluding the application of section 59(8) may be more appropriate if this amendment related only to decisions about varying a long-term guardianship order to grant guardianship to a suitable person instead of the chief executive, or to make a permanent care order in its place.

Section 65AA

In our submission, the restriction that action under section 65AA must be taken by the litigation director in response to a referral from the chief executive, provides less certainty to people affected by these orders regarding the availability of the court's assistance in circumstances where the order may no longer be appropriate. In particular, it is concerning that children have no scope similar to the litigation director under the proposed section 65AA, to apply to vary or revoke a permanent care order. We recommend that section 65AA provide that both the litigation director and a child may apply to revoke a permanent care order.

We further propose that consideration be given to providing that the Office of the Public Guardian may also refer matters for consideration by the litigation director, consistent with their role proposed in section 74A supporting children who are concerned that the child's permanent guardian is not meeting their obligations,

Generally, we submit that revocation should be available if it is the wish of the child or permanent guardian that the order be revoked, or if there has been a breakdown in the relationship, consistent with proposed section 80A.

We suggest that it would be preferable if the basis for applying to vary or revoke a permanent care order is consistent as between proposed section 65AA(2) and the proposed amendment to section 15 of the *Director of Child Protection Litigation Act 2016*. In our view, the preferable approach would be to adopt the matters that the chief executive must be satisfied of under the proposed amendment in section 65AA(2).

Recourse to the court regarding final orders generally

We note that when final orders are not able to be reviewed by the court, or may only be reviewed in limited circumstances, this may increase the vulnerability of children who are subject to these orders. We raise this issue for consideration of the Committee particularly in relation to the following instances:

- A parent may not apply to vary or revoke a permanent care order;
- A parent may not apply to vary a long-term guardianship order to the chief executive to instead grant long-term guardianship to a suitable person;
- family members, such as grandparents, have no standing to make an application to the court for variation or revocation of orders, although if a party to the proceeding brings such an application they may be able to seek leave of the court to be a s113 non-party under the Act for the purpose of that proceeding.

We suggest that consideration be given to whether it may be appropriate in some of these instances for there to be an ability to seek leave of the court to make such applications, if the existence of exceptional circumstances relevant to promoting the child's safety, wellbeing and best interests can be demonstrated by the applicant.

Consistent with our comments above, we again note that a child is not able to apply to vary a permanent care order.

Section 74A

We support this provision, which places new obligations on the chief executive in relation to children subject to permanent care orders and long-term guardianship orders. However, we propose that the requirement should be that the chief executive ensures that these children remain aware of these matters throughout their time in care, particularly in respect of the Charter of Rights for a child, the obligations of the child's long-term guardian or permanent guardian, the role of the public guardian and other entities that can help the child, and the child's right to contact the chief executive if the child has any questions or concerns.

Section 79A

This provision sets out obligations of long-term guardians and permanent guardians. In relation to the obligation to ensure the child is provided with appropriate help in the transition from being a child in care to independence, in our view, this should provision should explicitly include ensuring the child is aware of the chief executive's obligations under section 75 (regarding transition to independence).

Sections 80B – E

Consistent with our view outlined above, we submit that proposed section 65AA should include a mechanism that allows a child to apply to revoke or vary their permanent care order in the event that a child makes a complaint pursuant to proposed section 80B and is not satisfied that the complaint has been adequately dealt with under the following provisions.

Section 159C

We are concerned that there do not appear to be legislative framework to support the enforcement of the proposed guidelines.

Sections 159M and 159N

We have concerns about the information sharing regime set out in these provisions, which will apply to community legal centres working with children or their parents.

Section 189B

The Society acknowledges the importance of research and evaluation in supporting improvements to child protection policy and practice and support efforts to undertake this research. In the course of conducting this research, however, we suggest that the chief

executive should not be permitted to authorise researchers to make direct contact with children as part of this process pursuant to subsection (3).

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Acting Advocacy Manager, Binari De Saram [redacted]

Yours faithfully

[redacted]

Christine Smyth
President