



Law Society House, 179 Ann Street, Brisbane Qld 4000, Australia
GPO Box 1785, Brisbane Qld 4001 | ABN 33 423 389 441
P 07 3842 5943 | F 07 3221 9329 | president@qls.com.au | qls.com.au

Office of the President

Our ref: 337/24

14 April 2014

Research Director
Health and Community Services Committee
Parliament House
George Street
BRISBANE QLD 4000

By Post and Email

Dear Research Director

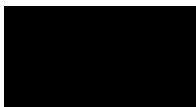
Inquiry into the *Public Guardian Bill 2014*, *Child Protection Reform Amendment Bill 2014* and the *Family and Child Commission Bill 2014*

Thank you for the opportunity to provide comment on the *Public Guardian Bill 2014*, *Child Protection Reform Amendment Bill 2014* and the *Family and Child Commission Bill 2014*. This submission has been prepared with the assistance of our Children's Law, Elder Law, Succession Law and Family Law Committees. The Society was a major stakeholder during the Queensland Child Protection Commission of Inquiry, and we are pleased to provide our feedback and analysis as the implementation of the Inquiry's Final Report continues.

We request clarification from the Minister as to the timeline for legislative amendments resulting from the Inquiry's final recommendations. We consider that providing stakeholders with the details as to when amendments are to progress will enable stakeholders to prepare for the raft of impending legislative reform.

Please note that in the time available to the Society and the commitments of our committee members, it is not suggested that this submission represents an exhaustive review of the Bills. It is therefore possible that there are issues relating to unintended drafting consequences or fundamental legislative principles which we have not identified. We provide comment on each of the Bills below. Please contact our policy solicitors for further inquiries.

Yours faithfully



Ian Brown
President



Submission

Inquiry into the **Public Guardian Bill 2014, Child Protection Reform Amendment Bill 2014 and the Family and Child Commission Bill 2014**

Queensland Parliamentary Health and Community Services Committee

*A Submission of the
Queensland Law Society*

14 April 2014

Table of Contents

Public Guardian Bill 2014	3
1. Clause 17 – definitions for ch 3.....	3
Recommendation 1	3
2. Clause 22: right to information	3
Recommendation 2	4
3. Clause 7 - Principles for relevant children and children staying at visitable sites.....	4
Recommendation 3	5
4. Clause 8: Relationship with Guardianship and Administration Act 2000 and Powers of Attorney Act 1998.....	5
Recommendation 4	6
5. Clause 13- Functions—relevant child, etc.....	6
Recommendation 5	7
6. Clause 126: Meaning of reviewable decision	8
Recommendation 6	9
7. Clause 52(2)-(5): when a child stops being a relevant child	9
Recommendation 7	9
8. Clause 53: who is a parent	9
Recommendation 8	9
9. Chapter 4, Part 4: Information exchange	9
Recommendation 9	10
10. Clause 88: Making information available to prescribed entities	11
Recommendation 10	11
11. Clause 110: Eligibility for appointment as child advocacy officer.....	11
Recommendation 11	12
Child Protection Reform Amendment Bill 2014	13
Amendments to the Child Protection Act 1999	13
1. Clause 5: who is a child in need of protection (s10)	13
Recommendation 12	13
2. Clause 6: Informing the chief executive about harm or risk of harm to children.....	13
Recommendation 13	14
3. Clause 6: Mandatory reporting by persons engaged in particular work	14
Recommendation 14	15
4. Clause 7: investigation of alleged harm	15
Recommendation 15	15
5. Clause 29: Purpose- Child death and other case reviews	15
Recommendation 16	16
Amendments to the Childrens Court Act 1992 and Magistrates Act 1991	16
6. Division of role between the President and Chief Magistrate	16
Family and Child Commission Bill 2014	17
1. Clause 4: Object	17
2. Clause 9: Commission’s functions	17

Inquiry into the *Public Guardian Bill 2014, Child Protection Reform Amendment Bill 2014 and the Family and Child Commission Bill 2014*

	Recommendation 17	17
3.	Clause 11: Appointment of commissioners	17
4.	Clause 13: Term of office.....	18
	Recommendation 18	18
5.	Clause 15: Vacancy in office.....	18
	Recommendation 19	18
6.	Clause 22: Ministerial direction	18
	Recommendation 20	19
7.	Part 4: Advisory councils	19
	Recommendation 21	19
8.	Clauses 41 and 42: Annual report and review of commission	19
	Recommendation 22	19

Inquiry into the *Public Guardian Bill 2014, Child Protection Reform Amendment Bill 2014 and the Family and Child Commission Bill 2014*

Public Guardian Bill 2014

The adult branch

1. Clause 17 – definitions for ch 3

We note that clause 17 defines power of attorney as:

- (a) a general power of attorney made under the Powers of Attorney Act; or
- (b) an enduring power of attorney; or
- (c) a power of attorney made otherwise than under the Powers of Attorney Act, whether before or after its commencement.

We further note Chapter 2 Public Guardian, clause 12(2) defines power of attorney as:

- (a) a general power of attorney made under the Powers of Attorney Act; or
- (b) an enduring power of attorney; or
- (c) a power of attorney made otherwise than under the Powers of Attorney Act, whether before or after its commencement; or
- (d) a similar document under the law of another jurisdiction.

For consistency we recommend that subsection clause12(2)(d) be included in clause 17.

Recommendation 1

That clause12(2)(d) be included in clause 17.

2. Clause 22: right to information

We note that clause 22, which is based on s183 of the *Guardianship and Administration Act 2000* sets out that the Public Guardian may, by written notice given to a person who has custody or control of the information, require the person to:

- give information to the Public Guardian, and
- to either give the Public Guardian:
 - the original or
 - to inspect the document and/or
 - take a copy of the document.

We further note that this section incurs a maximum penalty of 100 penalty units overrides:

- (a) any restriction, in an Act or the common law, about the disclosure or confidentiality of information; and
- (b) any claim of confidentiality or privilege, including a claim based on legal professional privilege.

We are concerned that legal practitioners acting for the adult, attorney or an interested party of the adult are compelled to produce information and original documents that are subject to confidentiality and legal professional privilege. We also note that clause 22 appears to be

Inquiry into the *Public Guardian Bill 2014, Child Protection Reform Amendment Bill 2014 and the Family and Child Commission Bill 2014*

inconsistent with s210A of the *Guardianship and Administration Act 2000* and clause 85(6) of the *Public Guardian Bill*.

We recommend that clause 22(5) be removed and clause 22(4) be revised to include legal professional privilege as an example of reasonable excuse.

Recommendation 2

That clause 22(5) be removed and clause 22(4) be revised to include legal professional privilege as an example of reasonable excuse.

The children branch – relevant children and children staying at visitable sites

The Society is concerned with the removal of the systemic role of the Commission for Children and Young People and Child Guardian (CCYPCG) and the combination with the existing Adult Guardian. We consider that, if the role is to be refocused on providing individual advocacy, the new Public Guardian should still retain the ability to investigate and report on the systemic issues that they come across through their individual advocacy.

We highlight that the Australian Law Reform Commission Report, “*Seen and heard: priority for children in the legal process*” published in 1997, stated the importance of both individual and systemic advocacy for children:

5.31 Children require both systemic advocacy and advocacy as individuals. Children as a group are helped to take an active role in matters affecting all children through broad-based, systemic advocacy. Advocacy of individual children remains necessary and important. However, scrutiny and monitoring of government services and programs, lobbying of government on behalf of all children and dealing with complaints to ensure accountability have all become important advocacy functions.¹

Particularly with regard to the ever increasing rates of vulnerable children in our communities (such as those coming into contact with the child protection system and the criminal justice system), the Public Guardian may be well placed to report on systemic issues resulting from individual advocacy.

Given that the government has adopted the relevant recommendations from the Commission of Inquiry, we provide our feedback on the technical aspects of the Bill.

3. Clause 7 - Principles for relevant children and children staying at visitable sites

Clause 7 of the Bill states:

¹ Part 5, Why do children need advocacy? Found here: <http://www.alrc.gov.au/publications/5-responding-children-%E2%80%94-advocacy-and-action/why-do-children-need-advocacy>

Inquiry into the *Public Guardian Bill 2014, Child Protection Reform Amendment Bill 2014 and the Family and Child Commission Bill 2014*

- (1) The main principle to be applied by persons performing functions or exercising powers under this Act in relation to a relevant child or a child staying at a visitable site is that the best interests of the child are paramount.
- (2) The persons must also apply the following general principles when performing functions or exercising powers under this Act in relation to the child—
- (a) the child's family has primary responsibility for the child's upbringing and development and should be supported in that role;
 - (b) the child is a valued member of society;
 - (c) the child is—
 - (i) to be treated in a way that respects the child's dignity and privacy; and
 - (ii) to be cared for in a way that protects the child from harm, promotes the child's wellbeing and allows the child to reach his or her full potential;
 - (d) the child's emotional, moral, social and intellectual development is important and must be taken into account;
 - (e) the child is entitled to be heard, even if others may not agree with the views expressed by the child;
 - (f) the child should be able to exercise his or her rights and participate in decisions that affect his or her life;
 - (g) the child should be able to access available services necessary to meet his or her needs;
 - (h) an ongoing relationship between the child and the child's family is important for the child's welfare and wellbeing and must be taken into account;
 - (i) an ongoing connection with the child's culture, traditions, language and community is important for the child's welfare and wellbeing and must be taken into account.

We note one of the fundamental tenets underpinning the principles and objectives of the child protection system is the Charter of Rights for a child in care. To that end we consider that clause 7 should have reference to:

- s74 and Schedule 1 of the *Child Protection Act 1999* (CPA) dealing with the Charter of rights; and
- s 5 - 5E principles of CPA which provide the guiding principles for the administration of the Act. We highlight in particular the importance of ensuring specific additional principles are articulated in relation to Aboriginal and Torres Strait Islander children (contained in s5C).

Recommendation 3

That clause 7 be revised to include a reference to s74, Schedule 1 and s5 – 5E of the CPA.

4. Clause 8: Relationship with Guardianship and Administration Act 2000 and Powers of Attorney Act 1998

Clause 8 of the Bill provides that the bill be read in conjunction with *the Guardianship and Administration Act 2000* (GAA) and *Powers of Attorney Act 1998* (PAA). We suggest a similar provision is required in relation to the CPA.

Inquiry into the *Public Guardian Bill 2014, Child Protection Reform Amendment Bill 2014 and the Family and Child Commission Bill 2014*

Recommendation 4

That clause 8 be revised to include a reference that the bill be read in conjunction with the CPA.

5. Clause 13- Functions—relevant child, etc.

We note that clause 13 refers to roles traditionally undertaken by a direct legal representative of a child or a separate representative, for example, supporting the child and participating in court ordered conferences or mediations or providing advice and information about the matters the child is concerned with.

The Explanatory Notes state:

The Bill allows the Public Guardian to support a child in all legal proceedings and to support a child and participate in family group meetings, conferences or mediation. It also provides the Public Guardian with the statutory right to intervene in any legal proceedings in the Childrens Court or tribunal in relation to a child protection matter, so that the Public Guardian may effectively advocate for children in child protection proceedings and address the Commission's finding that the views and wishes of children are not always heard in proceedings. The statutory right of intervention will allow the Public Guardian to communicate the child's wishes, appear, make submissions and lead and test evidence in the proceedings as required to advocate for and to provide support to a child. To facilitate this role, the Public Guardian will have the required access to court and tribunal files in relation to the matter.²

We are unsure whether this clause is to enable the Public Guardian to act as litigation guardian for young people to conduct legal proceedings. For example, would the role include acting for young people in matters such as civil litigation, or making applications for financial assistance under the Victims of Crime Assistance Act 2009?

We suggest that the Public Guardian's role should be to ensure that children they support are properly legally represented in proceedings (directly, separately, or both depending on the child's circumstances). We can foresee significant difficulties for the Public Guardian in providing such legal services itself and express significant concern with the drafting of the bill as it currently stands.

We seek clarification as to how the clauses are intended to operate. For example:

- There may be significant problems with these sections in practice as they appear to combine non-legal support and advocacy with legal representation. There is a lack of clarity regarding:
 - Whether the lawyer represents the child or the Public Guardian?
 - Whether, when the Public Guardian is exercising its right of intervention in proceedings and related matters, the guardian acts on direct instructions from the child, in their best interests, or in another role?
 - What would occur if the child wishes to pursue a course that the Public Guardian doesn't agree with?

² Explanatory notes, page 4

Inquiry into the *Public Guardian Bill 2014, Child Protection Reform Amendment Bill 2014 and the Family and Child Commission Bill 2014*

- Whether the Public Guardian can disclose information against the child's wishes.
- Is it intended that the child is to have autonomy to choose their legal counsel?
- Is it intended that the role of the Public Guardian be to provide both a legal representative and a support person for a child, if they attend a family group meeting, conference, mediation, or court proceeding?
- Is it intended that child advocates acting under clause 13 who appear in legal proceedings be legally qualified?
- There are concerns around client confidentiality for young people who are provided with advocacy via Public Guardian in relation to both models of representation of young people, but particularly in respect of young people who may be directly represented. This concern arises particularly in light of information exchange provisions contained in the bill, which give broad powers to the Public Guardian, pursuant to clause 88, to provide information about the child to prescribed entities
- How will the Public Guardian determine which circumstances require it to provide a lawyer, support person or both on behalf of the child? For example, would involvement be triggered by the child's request or in response to information received through the community visitors program or from elsewhere?

We consider that all these issues must be addressed to ensure that the framework for the guardian's role is clear to all parties. As currently drafted, the Society is unsure of the legal basis of the guardian's role.

We suggest that an issue for consideration are the relevant provisions of the UK model where the child's guardian is a participant in their own right in legal proceedings, and the independent lawyer acting in the child's best interests (akin to being a separate representative) is able to be informed about, but we understand not bound by, the information and views of the guardian.

Recommendation 5

The functions and role of the Public Guardian be considered further to provide clarification on model of legal representation to be undertaken by the Public Guardian.

Issue unaddressed in the Bill relating to legal proceedings

Resulting from the concerns we have stated above regarding the legal basis for intervention in legal proceedings by the Public Guardian is the issue of conflict of interest.

The Society notes that there will be conflict situations where the Public Guardian is acting for both a child, in the capacity of child advocate, and a parent, in the capacity of adult guardian. The Society considers that this is an issue which must be resolved. For example, it raises questions about whether information obtained by the Public Guardian pursuant to clause 85 in pursuit of its child advocacy function will also be available in discharging an adult function. We particularly note the practical effect it would have, in terms of what is in the interests of the parent as opposed to what is either in the interests of the child or consistent with their views. The Bill should be amended to provide clear guidelines as to what must happen should such a situation occur (which we note is likely).

Inquiry into the *Public Guardian Bill 2014, Child Protection Reform Amendment Bill 2014 and the Family and Child Commission Bill 2014*

Recommendation 6

The issue of conflict of interest where the Public Guardian represents both a child and a parent be investigated and addressed in the Bill.

6. Clause 126: Meaning of reviewable decision

Section 369 of the *Commission for Children and Young People and Child Guardian Act 2000* deals with the meaning of reviewable decision, and includes at s369(1)(a):

if, under the Child Protection Act 1999, section 14(1), the chief executive (child safety) is required to take action under section 14(1)(a) or (b), a decision by the chief executive about the action.

Reference to this circumstance has been omitted from the meaning of reviewable decision in clause 126 of the Bill.

During the Child Protection Inquiry, the Society noted that the CCYPCG is the only body that has the standing to review a decision by the Department in relation to actions required under s14(1) of the CPA. We consider that this right of review is vital and the Public Guardian must continue to have powers of review in this regard. There are a number of instances where it is appropriate for such a review to occur. For example, our members practising in the youth justice system report involvement of young people who are homeless, or otherwise at considerable risk of harm, but who are unsupported by the Department as action has not been taken under s14 of the CPA.

Young people are not able to independently seek review by QCAT of any decisions made under s14. Currently the only mechanism available to young people to review a decision of the Department not to take action in relation to these circumstances is to commence an application for judicial review. The Society's view is that this is not an accessible or practical review mechanism for such vulnerable young people, and no specific grants of Legal Aid are available for such applications. We also note that other parties, such as parents or any separate representative, do not have standing to seek review of decisions of this nature either.

The Bill as it stands will exclude the Public Guardian, and therefore any party, from being able to act in these matters.

The Society suggests that the Parliamentary Committee recommend amendments to the Bill to ensure that:

- The circumstance highlighted in s369(1)(a) of the CCYPCG Act be replicated in clause 126 of the Bill: "if, under the Child Protection Act 1999, section 14(1), the chief executive (child safety) is required to take action under section 14(1)(a) or (b), a decision by the chief executive about the action"; and
- The definition in clause 52(1) of "when is a child a relevant child" be amended to ensure that a child in this circumstance falls within the scope of the Bill.

The Society also suggests that consideration should be given to the right to review decisions of this nature, and determine if other people, such as the child or young person, their parents,

Inquiry into the *Public Guardian Bill 2014, Child Protection Reform Amendment Bill 2014 and the Family and Child Commission Bill 2014*

and or any separate representative appointed, should also have standing to seek a review of decisions of this nature.

Recommendation 6

That the Bill be amended to ensure:

- The circumstance highlighted in s369(1)(a) of the CCYPCG Act be replicated in clause 126 of the Bill: “if, under the Child Protection Act 1999, section 14(1), the chief executive (child safety) is required to take action under section 14(1)(a) or (b), a decision by the chief executive about the action”; and
- The definition in clause 52(1) of “when is a child a relevant child” be amended to ensure that a child in this circumstance falls within the scope of the Bill.

7. Clause 52(2)-(5): when a child stops being a relevant child

The Society is supportive of clauses 52(3) and (4) as these sections will provide the office of the Public Guardian the ability to continue to monitor the child if they are not subject to an order or if they turn 18.

Subclause (5) refers to notice requirements by the Public Guardian. We consider parties would be provided with more certainty if the legislation specified the timeframes the Public Guardian has to issue these notices.

We also consider there should be a notice requirement on either the Public Guardian or the chief executive (child safety) to provide notice to a child under clause 52(2), again subject to timeframes.

Recommendation 7

To provide timeframes for the notice requirements in clauses 52(5).

To provide a notice requirement with a time frame in clause 52(2).

8. Clause 53: who is a parent

We suggest that the bill should adopt the definition of parent used in the CPA to avoid inconsistency between the Acts.

Recommendation 8

That the bills adopt the definition of parent used in the CPA.

9. Chapter 4, Part 4: Information exchange

The Society notes the change which will see the Public Guardian be granted access to a wide range of information. The Explanatory Notes state that the purpose is to:

Inquiry into the *Public Guardian Bill 2014, Child Protection Reform Amendment Bill 2014 and the Family and Child Commission Bill 2014*

*authorise and facilitate appropriate exchange of information, including confidential information, about a child and a child's circumstances between a prescribed entity and the Public Guardian to help the Public Guardian perform child advocate functions in relation to relevant children. The intention is to establish a framework to assist prescribed entities to work cooperatively with the Public Guardian to promote and protect the rights and interests of relevant children.*³

We consider that further information must be provided by the Department as to the framework which is envisaged. The powers granted under this part are wide and ensuring that sufficient safeguards are legislatively enshrined can only be achieved if the framework is clearly set out.

This change will mean that both the department under the *Child Protection Act 1999* and the Public Guardian under this Bill are granted wide powers to exchange information. We query whether it is necessary for both organisations to have such wide powers. In our view, the powers under the *Child Protection Act 1999* are sufficient.

The Society notes that an exception legal professional privilege has been included in the Bill as an exception to the information exchange provisions, which we consider is a fundamental protection (particularly noting that Legal Aid Queensland is a prescribed entity in the Bill).

We suggest that the Committee consider additional protection in relation to information held by the separate representative for a child (which appears to be specifically encompassed by clause 85(4) in relation to separate representatives employed by Legal Aid). We note in this regard section 68LA of the Family Law Act, which reads in part:

Disclosure of information

(6) Subject to subsection (7), the independent children's lawyer:

(a) is not under an obligation to disclose to the court; and

(b) cannot be required to disclose to the court;

any information that the child communicates to the independent children's lawyer.

(7) The independent children's lawyer may disclose to the court any information that the child communicates to the independent children's lawyer if the independent children's lawyer considers the disclosure to be in the best interests of the child.

(8) Subsection (7) applies even if the disclosure is made against the wishes of the child.

Recommendation 9

The framework for information exchange be set out more fulsomely, and consideration be given to whether these powers are required in light of the significant information exchange powers outlined in the *Child Protection Act 1999*.

³ Explanatory Notes, page 30

Inquiry into the *Public Guardian Bill 2014, Child Protection Reform Amendment Bill 2014 and the Family and Child Commission Bill 2014*

An additional protection be provided in the Bill with regard to information held by the separate representative for a child.

10. Clause 88: Making information available to prescribed entities

We are concerned that this is a very broad power and would be more properly guided if an editor's note set out the types of circumstances in relation to which it would be in the child's best interest to disclose confidential information about a child to a prescribed entity. Additionally, guidance about consideration of the child's views and wishes about sharing of their personal information under this power, particularly in circumstances where the child objects, would be useful.

Without clarification of the model the Public Guardian will use for representation and advocacy on behalf of the child, it is difficult to offer a more informed response. However, particularly if the model of advocacy would be likely to encourage a child to believe they have a confidential relationship with their advocate, or that the advocate is acting on the child's instructions, we would have serious concerns about the unrestricted implementation of this clause.

Recommendation 10

That the clause include an editor's note and set out the limited circumstances where the clause applies.

11. Clause 110: Eligibility for appointment as child advocacy officer

It is apparent that the child advocacy officer would need to have the requisite skills and experience working with children and young people in order to appropriately carry out this role.

The Society considers that the eligibility for appointment should be further articulated and specifically make reference to "an ability to communicate effectively with a broad range of people but in particular with children and young people."

The Society also considers that the child advocacy officer must have an understanding of child development and the importance of children being consulted about and taking part in making decisions about their life (having regard to the child's age or ability to understand) in line with paragraph (d) in the Charter of Rights for a Child in Care contained in Schedule 1, CPA.

This would act as a useful reminder of the responsibilities that officers have when working with children in care.

Noting the importance of the role that the officers will have, specialist training should be provided.

We also consider that standards for the conduct of officers should be articulated in the Bill. These could include:

- Impartiality and competency;
- Maintaining a focus on the safety, wellbeing and best interests of the child;
- Upholding the rights of the child;

Inquiry into the *Public Guardian Bill 2014, Child Protection Reform Amendment Bill 2014 and the Family and Child Commission Bill 2014*

- Treating children with respect in a safe environment;
- Ensuring that any matters are dealt with in a timely manner.

If the officers will be performing functions including undertaking legal advocacy, there should be an appropriate minimum requirement in terms of legal qualifications and ongoing training.

The bill provides that adult guardians must be appointed by order of QCAT, however the Public Guardian effectively self-appoints in relation to young people. It is difficult to comment on how this might affect a young person's rights when the extent of the role of the child advocate is not clear (particularly in relation to legal proceedings).

We consider that there should be an ability for the Court or QCAT to request the intervention of, or information from, the Public Guardian if this is considered appropriate.

Recommendation 11

That clause 110 be revised as per the commentary stated above:

- Amend the clause to state:
“A person is eligible for appointment as a child advocacy officer only if the person is a member of the Public Guardian's staff and the Public Guardian considers the person has the knowledge, experience or skills needed to perform the functions of a child advocacy officer, **including an ability to communicate effectively with a broad range of people but in particular with children and young people.**” *[wording in bold added]*
- Amend the clause to state that a child advocacy officer must have an understanding of child development and the importance of children being consulted about and taking part in making decisions about their life (having regard to the child's age or ability to understand) in line with paragraph (d) in the Charter of Rights for a Child in Care contained in Schedule 1 of the CPA.
- Provide for standards for the conduct of officers in the Bill.

Inquiry into the *Public Guardian Bill 2014, Child Protection Reform Amendment Bill 2014 and the Family and Child Commission Bill 2014*

Child Protection Reform Amendment Bill 2014

Amendments to the Child Protection Act 1999

1. Clause 5: who is a child in need of protection (s10)

The threshold for intervention is proposed to be raised from “harm” to “significant harm”. The Society notes that this imports a level of judgment onto potential reporters of harm as to whether or not the harm is “significant” enough or not to provide the information to the Department. This will be an issue requiring guidance and training to ensure compliance and that cases are appropriately being referred.

We note that recommendation 4.2 of the Child Protection Inquiry report states that the Department of the Premier and Cabinet and the Department of Communities, Child Safety and Disability Services lead a whole-of-government process to: *“provide support through joint training in the understanding of key threshold definitions to help professionals decide when they should report significant harm to Child Safety Services and encourage a shared understanding across government.”*⁴

This will also be important with regard to proposed s13B, which will allow a relevant person to take other appropriate action if he or she considers the child is likely to become a child in need of protection if no preventative support is given.

We suggest that additional legislative guidance as to the interpretation of this amendment may also be required, given that “harm” is already defined in the CPA as being “any detrimental effect of a significant nature...”, and the amendment therefore appears to impose a requirement of additional significance.

Recommendation 12

That the Department outline the guidance and training that will be provided to mandatory reporters to ensure compliance with the new threshold of “significant harm” and other thresholds.

2. Clause 6: Informing the chief executive about harm or risk of harm to children

The test contained in proposed s13C regarding considerations when forming a reasonable suspicion about harm to a child states:

(2) The matters that the person may consider include—

⁴ Recommendation 4.2, Queensland Child Protection Commission of Inquiry Report, June 2013

Inquiry into the *Public Guardian Bill 2014, Child Protection Reform Amendment Bill 2014 and the Family and Child Commission Bill 2014*

- (a) whether there are detrimental effects on the child's body or the child's psychological or emotional state—
 - (i) that are evident to the person; or
 - (ii) that the person considers are likely to become evident in the future; and
 - (b) in relation to any detrimental effects mentioned in paragraph (a)—
 - (i) their nature and severity; and
 - (ii) the likelihood that they will continue; and
 - (c) the child's age.
- (3) The person's consideration may be informed by an observation of the child, other knowledge about the child or any other relevant knowledge, training or experience that the person may have.

The Society considers that the reference to a child's psychological or emotional "state" should be changed to "wellbeing." This will ensure consistency with the *Child Protection Act 1999*, and in particular the paramount principle in s5A that "the safety, **wellbeing** and best interests of a child are paramount." Alternatively, guidance may be required as to the differing meaning intended by the use of a different term.

Recommendation 13

That proposed s13C be amended to refer to "wellbeing" in lieu of "state".

3. Clause 6: Mandatory reporting by persons engaged in particular work

Proposed s13E(1)(e) states that a relevant person in relation to mandatory reporting includes:

- (e) a person engaged to perform a child advocate function under the Public Guardian Act 2014.

We have noted our concern with the lack of clarity on the legal basis for the role of the child advocate in the Public Guardian Bill 2014. We again highlight the importance of clarifying this role, particularly noting that these officers are to become mandatory reporters under this Bill.

We support the intent of the Bill in providing a single legislative source for the obligations of all mandatory notifiers. We note that the effect of ss 13E and 13F as currently drafted is that notification by relevant persons is only mandatory in relation to significant (risk of) harm caused by physical or sexual abuse. It would appear that a relevant person can voluntarily notify under s13A in relation to significant (risk of) harm suspected to arise from other causes but is not mandated to do so. However, we question whether the lack of consistency with the definitions contained in ss 9 and 10 of the Act may cause difficulty in practical implementation, in the absence of clear and detailed guidance. We note the views of some of our members that significant harm can be caused to children by other forms of abuse and neglect, and there is a resulting concern about excluding mandatory notifier obligations on the basis of the suspected cause of the harm, rather than, for example, the impact of the harm on the child's wellbeing. If this is the legislative intent, we consider that monitoring the effect that this change will have on identifying and intervening early to protect children from harm will be important.

Inquiry into the *Public Guardian Bill 2014, Child Protection Reform Amendment Bill 2014 and the Family and Child Commission Bill 2014*

Recommendation 14

That the legal basis for the child advocate in the Public Guardian Bill 2014 be clarified, noting that this function is included as a mandatory reporter under proposed s13E.

That consideration be given to more closely aligning the thresholds in ss13E and 13F with the definitions of harm and child in need of protection in found in ss9 and 10, CPA.

4. Clause 7: investigation of alleged harm

Section 14(1)(a) of the CPA in its current form reads: “have an authorised officer investigate the allegation and **assess the child’s need of protection.**”

The proposed amendments to s14 (1)(a) are to insert the following words in bold: “Have an authorised officer investigate the allegation, **assess whether the alleged harm or risk of harm can be substantiated and, if it can, assess the child’s protective needs.**” The title of s14 is also proposed to be changed to “substantiation of alleged harm” rather than investigation.

Recommendation 4.8 of the Child Protection Inquiry Report proposed ‘to remove the reference to investigation and to replace it with ‘risk assessment and harm substantiation.’⁵

The Society notes that the proposed wording may run the risk that the focus will be whether the alleged harm/or risk of harm can be substantiated (or proved), as opposed to the real intent behind the proposed amendment which appears to focus on undertaking a conscious risk assessment.

Recommendation 15

Consideration of recommendation 4.8 of the Child Protection Inquiry Report and the proposed changes to the wording of s14(1).

5. Clause 29: Purpose- Child death and other case reviews

The Society commends the change which will see both child deaths and serious physical injury to children being subject to review.

The Society notes that the Bill limits the requirement to undertake a review to children ‘known’ to the department in the 12 months prior to the incident (new s246A). This will replace the current time limit of 3 years. This could reduce the number of incidents reviewed and key learnings from deaths or serious injury falling outside this remit may not be reviewed.

⁵ Recommendation 4.8, Queensland Child Protection Commission of Inquiry Final Report, June 2013

Inquiry into the *Public Guardian Bill 2014, Child Protection Reform Amendment Bill 2014 and the Family and Child Commission Bill 2014*

Recommendation 16

The Parliamentary Committee investigate the impact the limitation of 12 months will have on the number of incidents to be reviewed and monitored.

Amendments to the Childrens Court Act 1992 and Magistrates Act 1991

6. Division of role between the President and Chief Magistrate

The Society notes that the clarification of the roles of the Chief Magistrate and President of the Childrens Court of Queensland may result in enhanced clarity in relation to matters such as issuing Practice Directions.

Inquiry into the *Public Guardian Bill 2014, Child Protection Reform Amendment Bill 2014 and the Family and Child Commission Bill 2014*

Family and Child Commission Bill 2014

1. Clause 4: Object

The Society is supportive of the creation of the Family and Child Commission and the Objects stated in clause 4 of the Bill.

2. Clause 9: Commission's functions

The Society supports the stated functions of the Commission as set out in clause 9 of the Bill. With regard to clause 9(d), we suggest that a provision be added to allow the Commission to undertake research relevant to the youth justice system. In our view, the Commission should have the ability to undertake this research due to the number of children involved in both the child protection and youth justice systems.

Recommendation 12.3 of the Child Protection Inquiry Report stated that the Family and Child Commission should:

*monitor, review and report on the performance of the child protection system in line with the National Framework for Protecting Australia's Children 2009–2020.*⁶

Pursuant to the initial 3-year action in the Framework under the head of ensuring that "Indigenous children receive culturally appropriate protection services and care", one of the strategies is to "strengthen the application of, and compliance with, the Aboriginal and Torres Strait Islander Child Placement Principle."⁷ We consider this highlights the importance of ensuring the Family and Child Commission is specifically tasked with monitoring compliance with the child placement principle.

Recommendation 17

That clause 9(d) be amended to include research relevant to the youth justice system.

That clause 9 be amended to explicitly include monitoring compliance with s83, CPA (child placement principle)

3. Clause 11: Appointment of commissioners

With regard to the appointment of commissioners, the Society agrees that Governor in Council be involved in this process.⁸ The Society commends the Government for requiring that one of the two commissioners be an Aboriginal person or Torres Strait Islander.⁹

⁶ Queensland Child Protection Commission of Inquiry Final Report, June 2013

⁷ Protecting Children is Everyone's Business National Framework For Protecting Australia's Children 2009–2020, Council of Australian Government, 2009, page 30

⁸ Clause 11(2)

⁹ Clause 11(5) and Explanatory Notes, page 2

Inquiry into the *Public Guardian Bill 2014, Child Protection Reform Amendment Bill 2014 and the Family and Child Commission Bill 2014*

4. Clause 13: Term of office

The Society considers that this clause should be amended to allow for a commissioner to be eligible for reappointment for a further term.

Recommendation 18

That clause 13 be amended to allow a commissioner to be eligible for reappointment for a further term.

5. Clause 15: Vacancy in office

Clause 15(3) states:

- (3) The Minister may recommend the commissioner's removal only if the Minister is satisfied the commissioner—
- (a) has been guilty of misconduct; or
 - (b) is incapable of performing his or her duties; or
 - (c) has neglected his or her duties or performed them incompetently.

The Society supports the intent of this clause and understands that it might act as a useful method of removing ineffective commissioners. However, the Society is concerned with some aspects of this clause. First, we note that the clause is broad and hope that this does not lead to the inappropriate removal of commissioners.

Secondly, we suggest that clause 3(a) be amended to read:

- (a) has been **found** guilty of misconduct that could warrant dismissal from the public service if the commissioner were a public service officer

Thirdly, we consider that a subclause should be added to allow for the removal of a commissioner if he or she is convicted of an indictable offence, whether in Queensland or elsewhere.

Recommendation 19

That clause 15(3)(a) be amended for a commissioner being found guilty, and that a further subclause be added to allow for the removal of a commissioner if he or she is convicted of an indictable offence, whether in Queensland or elsewhere.

6. Clause 22: Ministerial direction

Clause 22 deals with ministerial direction and states:

- (1) A commissioner is subject to the directions of the Minister in performing the commissioner's functions under this Act.

Inquiry into the *Public Guardian Bill 2014, Child Protection Reform Amendment Bill 2014 and the Family and Child Commission Bill 2014*

- (2) The commissioner must comply with a direction given by the Minister.

The Society is concerned that clause 22 is overly prescriptive. With respect to clause 22(2), we suggest that it be amended to read:

- (2) The commissioner must **make all reasonable efforts** to comply with a direction given by the Minister.

Recommendation 20

That clause 22 be amended to enable the commissioner to make all reasonable efforts for compliance.

7. Part 4: Advisory councils

The Society supports the formation of advisory councils, as contemplated by clause 30. We note that the principal commissioner has broad powers in relation to these advisory councils. The principal commissioner has the ability to decide the membership, function and dissolution of these advisory boards and as such, we respectfully suggest that some parameters be set in place.

Recommendation 21

Parameters be put in place for the principal commissioner.

8. Clauses 41 and 42: Annual report and review of commission

The Society suggests that the Minister should arrange an independent review of the performance by the commission of its functions and also a review of the legislation within 3 years, as opposed to 5 years.

Recommendation 22

Review should take place within 3 years, as opposed to 5 years.