

Submission by
YOUTH ADVOCACY CENTRE INC
to the
HEALTH AND COMMUNITY SERVICES COMMITTEE
of the
QUEENSLAND PARLIAMENT

Regarding the
CHILD PROTECTION REFORM AMENDMENT BILL 2014
PUBLIC GUARDIAN BILL 2014
FAMILY AND CHILD COMMISSION BILL 2014

APRIL 2014



The Youth Advocacy Centre Inc (YAC) has been operating for over 30 years and offers free, legal and social welfare services to young people generally 10 years to 18 years (inclusive) who live in or around Brisbane, particularly those who are involved in, or are at risk of involvement in, the youth justice and/or child protection systems. It provides support on a more limited basis to those under 10 and over 18 years of age and to young people outside of Brisbane via telephone, website and publications.

All services offered are voluntary and confidential. This means that YAC staff only work with a young person if they want to work with them and no contact is made with anyone else without the young person's permission (unless there is a risk of serious, immediate harm to the young person or someone else).

In any dealings with a young person, YAC is guided by the Convention on the Rights of the Child, in particular:

- the right of young people to be treated equally irrespective of “colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”;
- the right of a young person to have an opinion and to be heard in all matters affecting the young person; and
- the best interests principle to include consideration of the views of the young person.

Contact: Ms Janet Wight
Director
3356 1002
admin@yac.net.au

Introductory remarks

The Youth Advocacy Centre Inc (YAC) thanks the Committee for the opportunity to comment on the three Bills which seek to implement a number of the recommendations in the *Taking Responsibility: A Roadmap for Queensland Child Protection* report (the Report) of the 'Carmody Inquiry'.

This is the third inquiry into child protection matters in Queensland in 16 years. It is critical for the children and young people in this State that we finally achieve a system which protects them in the way which is in their best interests and ensures that they have the best possible start in life.

The information which is now available through neuro-scientific research and improvements in technology mean we now know a great deal more about the brain and how it develops and how critical the early years and then the period of adolescence is in a person's life. In summary:

- The human brain is undeveloped at birth – human interactions grow brain connections.
- Experiences can change the brain throughout life, but experiences in the first three years of life organise the brain as the brain undergoes a rapid growth of connections and networks during this time.
- Experiences make the decision about which neurones survive and how they connect with each other – they “wire” the brain with ongoing repetition (positive or negative) strengthening how the wiring is occurring.
- The developing brain is therefore directly influenced by early environmental enrichment and social experiences (positive or negative) and the type of experiences an infant has is crucial.
- The brain of the young person (adolescent) is remodelling (growing new connections and pruning out others) from the 'child' brain and transforming into the 'adult brain' – a process that takes until at least 24 years of age in healthy development.
- Remodelling of the young person's brain should develop the functions for a successful adult life which would include learning self-regulation (such as in pausing before acting) and developing empathy and morality (a concern for others/the greater good) and not simply acting on automatic fight/flight responses which are part of the “reptilian” part of the human brain.
- The re-modelling process will only happen positively if the young person has had appropriate experiences in the early years and then in adolescence so the brain develops in a “healthy” way.¹

It is accepted universally that parents and family have the responsibility for their children. The Explanatory Notes to the Child Protection Reform Amendment Bill 2014 state:

*Parents have the primary responsibility for caring for their children and protecting them from harm.*²

The United Nations Convention on the Rights of the Child notes³:

... the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

¹ Based on a presentation by Professor Elisabeth Hoehn at the Balanced Youth Justice Forum, Brisbane, 29 May 2013

² At page 3

³ In the Preamble

..... *the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.*

Parents' capability, capacity, parenting and parenting styles are therefore critical to the healthy development of a child from birth through adolescence to adulthood, giving the child the best opportunity to develop to their full potential.

In reality, life is not so straight forward. For a range of reasons, children suffer, or are at risk of suffering, harm which their parents or family are not able to protect them from – or may, in fact, be responsible for. Clearly, when the risk and harm which is or maybe suffered reaches a certain threshold, someone must step in to protect the child and again, realistically, that will have to be the child's broader community through its formal agencies and systems. When the family environment has a significant negative impact on a child's development, the child is at risk of a range of problems. For example, while most children in care do not commit offences, 70% of offenders aged 10-16 years are known to the child safety system. Homelessness is another significant risk. This is the client group which YAC staff work with.

It would, of course, be best if that crisis point was not reached. This emphasises the need for a comprehensive and coordinated early intervention and prevention system of services which can address the range of difficulties and issues which families or individual parents may face which inhibit their ability to raise their child appropriately. We already know of a variety of interventions which have been proven to be effective – to "work". For example, universal visits to families for the first two to three years after the birth of a child by a specialised nurse visitor where problems can be identified and acted upon early.

The legislative reforms are focussed on making the child protection system more 'manageable'. YAC supports the comments in the Report that *a vacuum in the family support services sector and in other secondary services related to child protection* has been a significant cause of pressure on the child protection system. It is true that there is a very large number of matters referred to the child safety system each year which are not yet at a sufficient level to be at the crisis point where the State must intervene. Being able to identify, and respond to, these children more quickly by reducing the number of notifications to Child Safety would be useful for those children.

However, there remains some concern about a large number of children within which would be potential future crises. A comprehensive and coordinated early intervention and prevention system is important in this space. YAC therefore also agrees that a *circuit-breaker of an injection of adequate funding (also referred to as 'hump funding')* is needed.

The legislative reforms will not in themselves achieve the outcomes which children need. YAC looks forward to *substantial social investment in the 2014–15 to the 2018–19 Child Safety budgets*. Success in addressing child safety matters is likely to have other positive impacts and reduce expenditure in other areas such as youth justice.

Comments in relation to the Bills

Overall

YAC has combined its comments on the three Bills in one document and would ask that the Committee consider its submission in relation to each Bill as they are considered by the Committee. A summary of YAC's response to the recommendations which underpin the legislative amendments is at Attachment A.

We would ask that consideration be given in future to longer consultation times on Bills. The timeframe for review of all the material and the drafting of this submission is difficult when the main focus of YAC is, of course, individual service delivery. However, these Bills directly impact upon our client group and it is therefore important that we participate in the discussion on their behalf.

We have not found the Explanatory Notes in the clause-by-clause sections particularly helpful in understanding the policy intent of the legislation and how the provisions are intended to work together. In the main, the Explanatory Notes simply re-iterate the clauses verbatim. We have taken the opportunity to read the transcript of the Public Hearing of the Committee when it was briefed on the Bills on 26 March 2014 and have reviewed relevant parts of the Report. It would have been helpful if some of this material had been included in the Explanatory Notes.

One note of general concern is the provision for a *Transitional Regulation-Making Power* in the Family and Child Commission Bill and the Public Guardian Bill. These provisions effectively provide that a subordinate piece of legislation has the power to amend a piece of primary legislation in a material particular (often referred to as a “Henry VIII” provision). It is generally considered that this is inappropriate and it has not been common practice to include such provisions in Bills. The most appropriate way to proceed is to allow sufficient time for drafting and proper review of Bills, preferably including external stakeholder consultation, which will minimise the likelihood of “unanticipated” impacts.

Child Protection Reform Amendment Bill

Clause 5 – Amendment of s 10

This amendment is unnecessary. The normal rules for reading and interpreting legislation mean that it has always been clear what the threshold is – harm requires “significant detriment”. Any information written for non-lawyers should have been able to reflect this appropriately.

Clause 6 – new sections in relation to mandatory reporting

New section 13B

The Explanatory Notes state that *enabling and promoting reporters’ responsibility to refer families to support services rather than requiring all reports to be made to Child Safety would also result in families engaging with services to get the help they need.*

It must be noted that simply because a person refers a family to a service does not mean that (a) the family will accept that they have a problem and/or (b) that they are prepared to do something about it. There is a real risk that this will not happen and nothing will change for the child. Advising a service provider for them to contact the parent/family may be problematic as the parent/family may be angry or embarrassed that essentially negative and personal information about them has been passed on to others without their consent and may not assist in encouraging them to engage.

The practical question remains: how can it be ensured that (at least the majority of) families take up the interventions suggested for them?

New section 13B

It is important that wording remains consistent with the current provisions in the CPA. For example, this new section refers to a child’s “psychological or emotional **state**” whereas in the context of the CPA, the term “wellbeing” would be more appropriate.

New sections 13E, 13F, 13G and 13H

The new provisions seem to indicate that neglect and emotional abuse are not viewed as being as significant as physical or sexual abuse (noting that the Report throughout talks about *abuse and neglect*). When forming a reasonable suspicion about harm under new section 13C, a person may consider *whether there are any detrimental effects on the child's body or the child's psychological or emotional state*, but mandatory reporting in new sections 13E, 13F, 13G and 13H only relates to **harm by physical or sexual abuse**. No mention is made of harm resulting from *emotional abuse or neglect*, nor is there any comment on this in the Explanatory Notes. We cannot identify in the Report anything which would indicate that this distinction was to be made.

Statistics indicate that the maltreatment types most commonly substantiated across Australia in 2011-12 were **emotional abuse** and **neglect** (this would be the same in other countries, such as the United Kingdom). In Queensland, neglect was the higher of the two⁴. The Snapshot for 2013 from the Commission for Children and Young People showed a rate of 24.6 per 1000 children subject to substantiated notifications: 40% was attributable to neglect; 36% to emotional abuse; 18.7% to physical abuse; and 4.9% to sexual abuse. Data quoted from the *Steering Committee for the Review of Government Service Provision 2013* (ROGS) in the Report mirrors this. **Neglect**⁵ can have serious short-term and long-term effects for children:

Brain development

During a baby's first year many of their neural pathways are forged and then strengthened by the kind of stimulus they receive from their environment. Poor attachment and low levels of interaction can alter how a child's brain develops emotional and verbal pathways. If a baby is malnourished then the neural cells themselves can become weak or damaged causing lowered brain function.

Neglect can severely alter the way a child's brain functions, leading to an increased risk of depression in later life as well as dissociative disorders and memory impairments. Changes to the brain caused by neglect have also been linked to the emergence of panic disorder, posttraumatic stress disorder and attention deficit and hyperactivity disorder⁶.

Health and welfare

Poor nutrition, poor hygiene and a lack of parental supervision can result in:

- Faltering growth.
- Medical conditions such as anaemia.
- Exacerbation of existing medical conditions due to failure to manage ongoing care of chronic conditions such as eczema or asthma.
- Incontinence.
- Skin conditions such as scabies or ringworm (more serious when infections are left untreated).
- Infections where injuries such as cuts or burns are left untreated.
- Dental problems caused by poor oral hygiene, an unhealthy diet or a lack of dental care.
- Injuries from accidents (including cuts, burns and breaks) caused by a lack of parental supervision.

⁴ Child abuse and neglect statistics at <http://www.aifs.gov.au/cfca/pubs/factsheets/a142086/>

⁵ Information taken from NSPCC (UK) website at: https://www.nspcc.org.uk/Inform/resourcesforprofessionals/neglect/effects_wda91912.html

⁶ Child Welfare Information Gateway (2009) Understanding the effects of maltreatment on brain development. Washington, D.C.: United States Department of Health and Human Services.

- Poor educational outcomes when parents have taken no interest in their child's education.

Emotional and social development

The emotional damage caused by an absence of love and care from parents or carers can alter many aspects of a child's life from how they behave and perform at school, to how they interact with other children and adults, to their future relationships as adults⁷.

Mental health and risky behaviour

Where neglect is chronic, the effects on a child's mental health can be dramatic. As children grow older, feelings of being unloved and unwanted can lead to running away, antisocial behaviour, self-harm and suicide. Or some young people seek out care and affection from other people, which can put them at risk of sexual abuse and exploitation.

Emotional abuse⁸ can also have serious long term consequences for a child when it is the only form of abuse. There are elements of emotional abuse in all aspects of child abuse and neglect. It can be categorised as:

Active emotional abuse - Someone intentionally tries to scare, demean or generally verbally abuse a child. It is known as "active" abuse as it requires a premeditated intention to harm that child⁹.

Passive emotional abuse - A parent or carer denies their child the love and care they need in order to be healthy and happy and it stems from a carer's lack of care, knowledge or understanding about a child's needs and includes:

- Emotional unavailability, where a parent or carer is not connected with the child and cannot give them the love that they deserve and need.
- Negative attitudes, such as having a low opinion of the child and not offering any praise or encouragement.
- Developmentally inappropriate interaction with the child, either expecting the child to perform tasks that they are not emotionally mature enough to do or speaking and acting around the child in an inappropriate way.
- Failure to recognise a child's individuality, this can mean an adult relying on a child to fulfil their own emotional needs and not recognising that the child has needs of their own.
- Failure to promote social adaptation; not encouraging a child to make friends and mix among their own social peers.¹⁰

Small children and those young people with limited capacity in particular will be as vulnerable in relation to emotional abuse and neglect as to physical or sexual abuse, and, according to the data, are more likely to suffer this form of harm.

⁷ Rees, G., Stein, M., Hicks, L. and Gorin, S. (2011) Adolescent neglect: research, policy and practice. London: Jessica Kingsley.

⁸ Information taken from NSPCC (UK) website at:

https://www.nspcc.org.uk/Inform/research/briefings/emotionalabuse_wda48215.html

⁹ Barlow, J. and Schrader McMillan, A. (2010) Safeguarding children from emotional maltreatment: what works. London: Jessica Kingsley.

¹⁰ Cawson, P., et al (2000) Child maltreatment in the United Kingdom: a study of the prevalence of child abuse and neglect. London: NSPCC.

Clause 22 – amendment of s22 CPA

It is noted that section 22 of the CPA relates to *protection from liability for notification of, or information given, about alleged harm or risk of harm*. This includes the situation of any person (including a member of the public) who contacts the department about with a concern about harm or risk of harm. The average person will not know the law in sufficient detail to understand that, aside from the general moral standard of not telling lies/fabricating stories about a person (being honest), they would need to meet a test of “reasonableness”. The layperson’s view of what is “minor”, for example, may be different to that of departmental staff. If the matter is not “reasonable” because it is “minor” or “one-off”, as described in the Explanatory Notes, then it will not take much time to establish. To remove a person’s protections when they may have thought they were doing the right thing (and honestly) seems somewhat harsh and mitigates against the mantra in the *National Framework for Protecting Australia’s Children 2009–2020* – “protecting children is everyone’s business”.

The addition of “reasonable” may be an appropriate test for mandatory reporters who will receive training as to their obligations.

Part 3 – Amendment of *Childrens Court Act 1992*

YAC notes that the Report states that the *original intention of the Childrens¹¹ Court was to promote specialised judicial decision-making for youth justice and child protection matters*. The Report notes “almost universal” support for an increase in the numbers of specialist magistrates. YAC completely concurs that it is quite analogous to having specialist Family Court judicial officers. There are unique issues in relation to young people and the court system and those working with them require specialist knowledge and skills. YAC fully supports the appointment of more specialist magistrates around the State for a child-specific jurisdiction covering both child protection **and** youth justice matters, particularly in light of the significant overlap between the client groups.

Given the support for the appointment of more specialist magistrates by the Report, it was extremely disappointing to recently receive advice that the **only** purpose-built Childrens Court building in Queensland (in Quay St, Brisbane) is to be closed and moved to Court 26 on Level 6 of the main Magistrates Courts building in the middle of George Street. This would seem to run quite counter to the discussion and recommendations in relation to specialist magistrates above.

The Quay St building was opened in 1984. While it is not perfect, it is far more appropriate for the client group appearing in it than Court 26 is likely to be. YAC provides the Duty Lawyer and court support service at the Brisbane Childrens Court¹² on Mondays and a court support service on Thursdays and staff attend on other days for our own clients, both defendants and child protection clients, as required. There is a plethora of practical issues which will affect the young people attending, their parents and legal practitioners, as well as Youth Justice and Child Safety staff - which may also impact on the efficiency of the court. It is disappointing that there was no stakeholder consultation before this decision was made. We note that the building has been refurbished in recent years to the tune of some \$5M and we understand that in the last few weeks around \$10,000 has been expended on some alterations to the office space in the building.

With respect to youth justice (again noting that 70% of young offenders are known to the child protection system) it is also possible that the situation may lead to further breaches of the UN

¹¹ It has never been clear why the legislation does not use the grammatically correct “Children’s Court”

¹² YAC has done this since the Children’s Duty Lawyer service commenced: it originally organised this service and ran the rosters before handing it over to Legal Aid Queensland.

Convention on the Rights of the Child. YAC has particular concerns about young people being held in the cells. There is no separate area for young people and they will easily be able to hear what is happening in that space even though it is not possible to see from one cell into another. We note that the cells are managed by Corrective Services staff and not Youth Justice staff, although we understand that it is intended that the latter will be on site.

We acknowledge that the Court staff and Registry are doing what they can to make the situation as workable as possible, but some matters will not be resolvable through no fault of theirs.

Public Guardian Bill

Abolition of the Commission for Children and Young People and Child Guardian

It is noted that the Public Guardian Bill transfers to the Public Guardian some key responsibilities currently with the Commission for Children and Young People and Child Guardian (the Commission) which is abolished as a result of the Bills.

YAC does not agree with the view expressed in the Report that the CCYPCG is no longer needed. YAC advocated for the establishment of the Commission and was involved in the Briton review. While issues around child protection were important at the time the Commission was established, the Commission developed a role for **all** Queensland children and young people. The Commission's strategic objectives as at June 2013 were:

- **All children and young people in Queensland**¹³ have their rights, interests, safety and wellbeing upheld and enhanced
- Children and young people who are disadvantaged or at risk of harm receive appropriate support and early intervention
- Effective child safety and youth justice systems that protect and support children and young people where statutory intervention is appropriate

In 2013 the Commission published its eleventh annual Snapshot report which *was established in response to the Forde Inquiry Implementation Monitoring Committee recommendation that the Commission 'produce an annual report on the circumstances of children in Queensland... (which) would assist the Commission in discharging its function of protecting and promoting the rights, interests and wellbeing of children.*

The Foreword stated:

The Commission has a legislated role **to promote and protect the rights, interests and wellbeing of children and young people living in Queensland**¹⁴. This role includes monitoring, researching and reporting on the health, safety and wellbeing of Queensland's children and young people. The Snapshot report supports this by bringing together national and state data from a wide variety of sources in topic areas including demographics, families, social and lifestyle issues, health, education and care, deaths, child protection and crime and justice.

We all want children and young people in Queensland to be the healthiest, happiest and safest they can be. We want them to learn and develop to the best of their ability, and be given every chance to succeed in life.

The Introduction noted:

The coverage of Snapshot diversifies each year as new data become available or important emerging issues are identified. For example, this year's report includes data

¹³ Our emphasis

¹⁴ Our emphasis

on the prevalence of homelessness among children and young people, as well as information pertaining to internet and mobile phone use by children and young people. The report is structured in chapters that focus on specific topic areas, summarise relevant data and discuss trends or issues evident in the data.

This also reflects the United Nations Convention on the Rights of the Child, to which Australia is a signatory. This broad responsibility for all Queensland's children and young people is not captured by the amendments in the Bills. The focus of the Public Guardian Bill is on children in need of care and protection and oversight of institutions which hold children such as detention centres and mental health facilities. The proposed Family and Child Commission also does not take on this broader role.

Currently young people are able to take complaints to a body which is child/youth oriented and has an understanding of how to work with and for young people. It is not correct that the Commission duplicates the role of other agencies such as the Ombudsman. These agencies do not have a history of working with young people and do not have youth-friendly information or systems. Unless they are mandated to ensure that children and young people are aware of them and how they will assist young people and they have processes which are readily usable by young people, these will not be accessible to young people. In YAC's view, even if young people have the support of a child advocate, the processes will remain difficult for young people to understand and access and so they are not likely to want to engage with them.

Combining of roles of Adult Guardian and Child Guardian

While superficially it would seem that these two roles can be combined into one position and agency, they are quite different and focus on two quite different groups of people.

Aspects of the Adult Guardian role seem to have more in common with the Department of Communities, Child Safety and Disability Services role under the *Child Protection Act 1999* with the Bill providing that the Public Guardian can investigate any allegation or complaint that an adult is being or has been neglected, exploited or abused; investigate complaints and allegations about actions by an attorney, a guardian or administrator; and can act as an attorney under a power of attorney.

It is to be hoped that it is possible for the office of the Public Guardian to be able to adequately fulfill its significant functions in both the adult and child areas. The challenge is likely to be whether the resources allocated are sufficient for the task and if not, where the priorities will be.

Clause 13 and Clause 73

Clause 13 sets out the functions of the Public Guardian which are noted as being "child advocate functions". These are therefore the functions which the "child advocacy officers" would undertake.

These functions are similar to the services which the Youth Advocacy Centre delivers as an agency which has a multi-disciplinary team. At YAC there is clear definition between workers with differing advocacy roles. The list in the Bill includes some functions which would be undertaken by lawyers and others which would be undertaken by youth workers or other social welfare staff.

The implication from the drafting seems to be that a particular child advocate would undertake all the functions for a particular young person. This is clearly not appropriate. Staff can only be providing support which they are trained to deliver. It would seem that prior to development of the legislation, the model of how the child advocate and child advocate hubs would work in practice has not been sufficiently considered or developed.

There is nothing to indicate what the role of the child advocate exactly is. The child advocate is bound under clause 54 *to seek, and take into account, the views and wishes of the child when performing the function or exercising the power*. However, it is not stated if the child advocate's role is more akin to that of the separate representative where the child advocate acts in what they perceive to be the child's best interests, or if they act as a true advocate by advocating the views and wishes of the child like a direct representative. What is the situation if the child does not want the child advocate to represent them? Confidentiality is not straightforward due to the information sharing provisions which are not consistent with the usual legal representative role. Privacy of correspondence between a community visitor and a child is not replicated for child advocates.

Child Advocates and Community Visitors

The situation is made more complicated by the community visitor role.

As YAC read the Report and relevant recommendation, the community visitor system under the CCYPCG Act was to be replaced:

Accordingly, the Commission proposes that **a child and youth advocacy program**, to operate under the Child Guardian (within the Public Guardian of Queensland), **replace the Community Visitor program**, providing advocacy and mediation to children in out-of-home care, including those in rural and remote areas, while maintaining a visiting program for highly vulnerable children and young people (page 417)

Recommendations 12.8 - That the role of Child Guardian— **operating from statewide 'advocacy hubs'** that are readily accessible to children and young people — **assume the responsibilities of the child protection community visitors and re-focus** on young people who are considered most vulnerable.

Table 15.6 *Proposed transfer of oversight functions notes:*

Children's Commission function – community visitors
New function – Office of Child Advocate, Child Advocacy hubs
Estimated staff – Child Advocate: up to 12 hubs with 7 staff

It would seem that, at a time when we are seeking to streamline systems and processes and avoid duplication with a view to having more resources available where they can make a difference, that having a community visitor system and a child advocate system is not particularly helpful.

The potential for duplication of effort between the Child Advocates and Community Visitors is not assisted by provisions such as:

Clause 13 (2)

The Public Guardian also has the following additional functions (**also child advocate functions**):

- (a) for a child under care staying at a visitable home or a child at a visitable site—providing **a program called the community visitor program** for the child to promote and protect the rights and interests of the child

Clause 56 - Functions of community visitor (child), etc.

- (1) A community visitor (child) has the following functions relating to a child under care staying at a visitable home or a child staying at a visitable site.....

- (2) **A community visitor (child) may perform any other child advocate function** directed by the public guardian.

The key distinction seems to be that the community visitor role is about attending **locations** (clause 55), while the child advocate has a role in relation to a **relevant child**. However both roles are tasked with *developing a trusting and supportive relationship with the child, so far as possible* and the community visitor responds to a particular child at the site and not all children there. This seems, therefore, to be an individual advocacy role which could be part of the child advocate's role?

A further difference between the two roles is that the community visitors are not to be employees of the Public Guardian and the child advocates are to be. The reason for this distinction is not made clear. It could mean that community visitors are to be perceived as more "independent" but since the child advocates are employed by the Public Guardian which is a totally separate entity to the Department responsible for Child Safety and under clause 15 the Public Guardian is not under the control of the Minister, this would not seem to add anything. A community visitor is, in any event, subject to the direction of the Public Guardian (clause 71).

This model of individual advocacy through two different mechanisms seems unnecessarily complex. The legislated functions, although described differently, would seem to allow a community visitor and child advocate officer to address some of the same or similar issues in relation to a specific young person.

One of the issues for children and young people is the number of people who intervene in their lives. The legislation seems to exacerbate rather than assist with this for children in care, particularly as the child will also have a Child Safety Officer. There is no discussion in the Bill or the Explanatory Notes of how the child advocates and community visitors should relate to and interact with each other and child safety officers – or indeed with separate representatives or direct representatives where there are any child protection-related court proceedings on foot. YAC would suggest that young people are very likely to be confused as to who does what, who is employed by or independent of the Department and when their interactions are confidential and when they are not. Such confusion will undermine the engagement of young people.

YAC could envisage a model comprising:

1. community visitors with a role with respect to "visitable sites" which is **systemically focussed**. That is, a community visitor would have wide powers of entry to institutions such as a detention centre to monitor what is happening in such closed institutions for all young people within them. Young people would have the ability to meet with the CV individually if they so wished to raise issues of concern or complaint **relevant to that institution** with the community visitor, irrespective of whether they are a child within the child protection system, which may then be followed up where they present a systemic problem or failure. This would support transparency of institutions which are not generally open to the public and avoid problems which have risen in the past in such places.
2. child advocates who would undertake individual advocacy for young people in out of home care as well as young people in care in "visitable sites", in relation to matters which are **not** about the institution and how it operates, with a particular focus on the most vulnerable young people. YAC would argue that young people in the youth justice system who are in care must be deemed to be within that "most vulnerable" cohort. Recent changes to the youth justice system now mean that this cohort will be very disadvantaged in terms of being able to develop to their full potential with significant long term implications for them and for the community generally.

Intervention when all is going well in a placement is not necessarily helpful to that placement or establishing a greater sense of “normality”. Focusing support on the most vulnerable young people is a more efficient use of limited resources. However, YAC would strongly advocate that even where all *seems* to be going well, there should be some form of regular, but unobtrusive and less frequent contact by child advocates with a child or young person, particularly at times of transition which are known to be times of greatest risk – starting school, moving to high school, for example. Not to have some form of ongoing contact may lead to not being aware if a child has become a vulnerable child – things can change.

Eligibility to be a child advocate or community visitor

The role of the child advocate will require people with specialist experience and skills if it is to be at all effective and the legislation should clearly articulate these. It will include proven ability to communicate and work with the cohort of children and young people who are the subject of the legislation and a significant understanding of child and youth development and the impacts which harm can have on that. It should also mandate ongoing training and upgrading of skills.

Similarly, any community visitor should have a similar skill set and, as such, YAC would propose that a person should **not** be able to be a Community visitor (adult) **and** a Community Visitor (child). The persons being visited have different characteristics and issues.

Clause 57 - Requirement to visit children under care in visitable homes

Clause 57(2)(d) states that a ground for deciding whether to direct a community visitor to attend a visitable home, is that *the chief executive (child safety) has a reasonable suspicion under the Child Protection Act, section 14 that the child is in need of protection*. Since the child is already a child under care (a child in the custody or guardianship of the chief executive (child safety) under the CPA or a care agreement under the CPA), does this envisage that the child is in need of protection because of a problem at the visitable home? If so, should that not be a matter for a “normal” investigation, substantiation and risk assessment? It is unclear why would a community visitor have a role in this situation and, once again, the Explanatory Notes provide no insight.

Family and Child Commission Bill

Whether the new Commission is able to produce useful and lasting outcomes for children and young people will be tested over time. YAC would welcome the opportunity to participate in any Advisory Committees due to its experience in working with young people and in the child protection system.

YAC welcomes the inclusion of clauses 41 and 42 which provide for a review of the Family and Child Commission Act and the Commission but suggest that they should be undertaken after 4 years. This allows for at least 3 full years of operation but means that a report will be received within 5 years of establishment.

Attachment A

Summary response by Youth Advocacy Centre to recommendations of Carmody Report and as implemented by the CPRA, PG and FCC Bills

Rec	Recommendation	YAC response to Recommendations and Bill provisions	Relevant Bill
4.1	Minister for the Communities, Child Safety and Disability Services propose that section 10 of the <i>Child Protection Act 1999</i> be amended to state that 'a child in need of protection is a child who has suffered significant harm, is suffering significant harm, or is at unacceptable	Unnecessary – normal statutory interpretation applies	CPRA
4.2	Department of the Premier and Cabinet and the Department of Communities, Child Safety and Disability Services lead a whole-of-government process to: <ul style="list-style-type: none"> review and consolidate all existing legislative reporting obligations in the <i>Child Protection Act 1999</i> develop a single 'standard' to govern reporting policies across core Queensland Government agencies 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 	Sensible to have provisions in one place and common understanding of how it is applied	CPRA
4.6	Minister for Communities, Child Safety and Disability Services propose amendments to the <i>Child Protection Act 1999</i> to: <ul style="list-style-type: none"> allow mandatory reporters to discharge their legal reporting obligations by referring a family to the community-based intake gateway, and afford them the same legal and confidentiality protections currently afforded to reporters provide that reporters only have protection from civil and criminal liability if in making their report they are acting not only honestly but also reasonably provide appropriate information sharing and confidentiality provisions 	Problematic: <ul style="list-style-type: none"> Referral will not ensure that families take up the help they need which means child's issues remain unaddressed "Reasonably" should only attach to mandatory reporters who will be trained in the area – not "reasonable" that a lay person making an honest referral may lose protection Information sharing arrangements are very broad 	CPRA
4.8	Department of Communities, Child Safety and Disability Services in its review of the <i>Child Protection Act 1999</i> consider amending section 14(1) to remove the reference to investigation and to replace it with 'risk assessment and harm substantiation'.	No issue	CPRA
12.3	Premier establish the Family and Child Council to: <ul style="list-style-type: none"> monitor, review and report on the performance of the child protection system in line with the <i>National Framework for Protecting Australia's Children 2009-2020</i> provide cross-sectoral leadership and advice for the protection and care of children and young people to drive achievement of the child protection system provide an authoritative view and advice on current research and child protection practice to support the delivery of services and the performance of Queensland's child protection system build the capacity of the non-government sector and the child protection workforce. <p>The council should have two chairpersons, one of whom is an Aboriginal person or Torres Strait Islander.</p>	The name change is not particularly useful since the function of the Family and Child Council is different to the Commissions in other states and territories. Overlooks the fact that there is already significant expertise in the child protection area Unclear how this agency can actually achieve the agenda which has been set for it: will need significant resources. Should be independent of the Premier although the Premier should be able to seek advice/information on particular matters from the Commission	FCC

12.7	Role of the Child Guardian be refocused on providing individual advocacy for children and young people in the child protection system. The role could be combined with the existing Adult Guardian to form the Public Guardian of Queensland, an independent statutory body reporting to the Attorney-General and Minister for Justice.	<ul style="list-style-type: none"> • Need to clarify the role of the child support advocate – is a mix of legal and social welfare supports • Questions around: <ul style="list-style-type: none"> ○ Confidentiality? ○ Best interests or on views of child? ○ Acknowledgement of the “Gillick competent” child? • While superficially may seem like a good idea, not sure this is so in practice – very different client groups with different needs and functions of PG different 	PG
12.8	Role of the Child Guardian—operating primarily from statewide ‘advocacy hubs’ that are readily accessible to children and young people—assume the responsibilities of the child protection community visitors and re-focus on young people who are considered most vulnerable.	<ul style="list-style-type: none"> • Not clear why the role of community visitor has been retained in the Bill for the individual young person in light of child advocate function? • Risk of overlap and confusion – especially for young people 	PG
12.9	Complaints about departmental actions or inactions, which are currently directed to the Children’s Commission, be investigated by the relevant department through its accredited complaints management process, with oversight by the Ombudsman.	Reason for the Commission’s role was that departments, the Ombudsman etc do not have child friendly systems and processes	CPRA
12.11	<p>The Department of Communities, Child Safety and Disability Services:</p> <ul style="list-style-type: none"> • establish a specialist investigation team to investigate cases where children in care have died or sustained serious injuries (and other cases requested by the Minister for Communities, Child Safety and Disability Services) • set the timeframe for such a child ‘being known’ to the department at one year • provide for reports of investigations to be reviewed by a multidisciplinary independent panel appointed for two years. 	No comment	CPRA
12.17	<p>Department of Communities, Child Safety and Disability Services progress and evaluate red-tape reduction reforms, including:</p> <ul style="list-style-type: none"> • transferring employment screening to the Queensland Police Service and streamlining it further • considering ceasing the licensing of care services • streamlining the carer certification process including a review of the legislative basis for determining that carers and care service personnel do not pose a risk to children. 	<p>YAC has always been of the view that employment screening was always a matter for the police department.</p> <p>No issues</p>	CPRA
13.3	<p>Attorney-General and Minister for Justice propose amendments to the <i>Childrens Court Act 1992</i> and the <i>Magistrates Act 1991</i> to clarify the respective roles of the President of the Childrens Court and the Chief Magistrate to:</p> <ul style="list-style-type: none"> • give the Chief Magistrate responsibility for the orderly and expeditious exercise of the jurisdiction of the Childrens Court when constituted by Childrens Court magistrates and magistrates and for issuing practice directions with respect to the procedures of the Childrens Court when constituted by magistrates, to the extent that any matter is not provided for by the Childrens Court Rules—this should be done in consultation with the President of the Childrens Court. 	No issues	CPRA

	<ul style="list-style-type: none">ensure that the powers and functions of the Chief Magistrate extend to the work of the Childrens Court magistrates and magistrates.		
13.8	Attorney-General and Minister for Justice, in consultation with the Chief Magistrate appoint existing magistrates as Childrens Court magistrates in key locations in Queensland (subject to rec 13.3).	YAC supports the increased specialisation around the State for children appearing in the Childrens Court jurisdiction for youth justice and child protection matters NB: disappointing in the context of this recommendation that the only specialist Childrens Court building in Quay St is to be closed. The proposed court in Ct 26, Level 6, 363 George St is not suitable	CPRA