



**Submission to the Health and Community Services Committee
examination of:**

- *Public Guardian Bill 2014*
- *Family and Child Commission Bill 2014*
- *Child Protection Reform Amendment Bill 2014*

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CONTENTS

Executive Summary-----	3
Introduction-----	5
Feedback on the Public Guardian Bill 2014-----	6
Feedback on the Family and Child Commission Bill 2014-----	9
Feedback on the Child Protection Reform Amendment Bill 2014-----	12
Conclusion-----	14
Works Cited-----	15

About CREATE Foundation

CREATE is the national consumer body representing the views of children and young people in care. To be an effective advocate, CREATE balances the engagement and connection with children and young people with the independent role we play to gain their views about what is important to them, and change the system for the better. CREATE believes that all children and young people with a care experience should have the opportunity to reach their full potential.

CREATE Foundation’s mission is to create a better life for children and young people in care.

CREATE does this through:

- **Connecting** children and young people with each other, CREATE and their community;
- **Empowering** children and young people to build self-confidence, self-esteem and skills that enable them to have a voice and be heard; and
- **Changing** the care system, in consultation with children and young people, through advocacy to improve policies, practices and services and increase community awareness

CREATE Foundation Limited was established in 1999 with the belief that a truly effective child protection system is one that listens to the views of the children and young people it seeks to protect and support. The importance of encouraging and facilitating the participation of children and young people in key decisions that affect their lives is a core principle of the organisation.

Executive Summary

This submission provides CREATE's comments on all three Bills before the Queensland Parliament Health and Community Services Committee.

CREATE requests that at the Committee's public hearing scheduled for 29 April, 2014, that two CREATE young consultants provide oral evidence so that the Committee can hear the views of young people who have experience of the child protection system in Queensland.

CREATE's recommended changes to the *Public Guardian Bill 2014*:

- Section 57(2) be amended to add two matters the Public Guardian should have regard to, (a) the emotional health of the child, particularly trauma experienced before being brought the child into care or trauma experienced whilst under care; and (b) a request from a child under care to retain their community visitor or to be visited by a community visitor.
- Amend Section 55 to add (3) The Public Guardian will work with relevant stakeholders to assess the ongoing needs of children in visitable homes with the aim of determining whether they should be allocated a community visitor.
- Amend Section 107 to add (3) A person appointed as both a community (child) and a community visitor (adult) must meet all of the eligibility requirements as defined in section 108 and section 109.

CREATE's recommended changes to the Family and Child Commission Bill 2014:

- Section 9(1)(a) be amended to establish the Family and Child Commission (FCC) as an *independent* oversight body.
- Sections 4 (a) and 9 (1) be amended to add the word 'rights' so that each section reads: "*the rights, safety, wellbeing and best interests of children and young people...*".
- Section 17 (H) from the *Commission for Children and Young and Child Guardian Act* be included as a new clause under Section 9(1) of the FCC Bill to add the function to the FCC, "to promote the establishment by service providers of appropriate and accessible mechanisms for the participation of children in matters that may affect them".
- Section 9(e) be amended to include a reference to **research with young adults who were formerly part of the child protection system**.
- Section 9(2) of the FCC Bill be amended to state, "However, It is not a function of the commission to investigate the circumstances of a particular child, young person, or family or to advocate on their behalf unless the examination of a particular case would assist with the exercising of the commission's functions as outlined at section 9(1). Alternatively, a clause could be added at 9(2)(i) where the commission requires information to assist with the exercising of the commission's functions at Section 9(1) the commission can seek information from the Public Guardian regarding individual cases relating to a child, young person or family.
- Section 23 of the *Commission for Children and Young People and Child Guardian Act* be retained in the FCC Bill; that "in performing the commissioner's functions, the commissioner must do the following—(a) consult with children in ways that promote their participation in decision making by the commissioner; (b) listen to, and seriously consider, the concerns, views and wishes of children."
- Section 9(c) be amended to include reference to workforce planning and development strategies that are **informed by and feature direct feedback from children and young people** about their experiences in out of home care.

CREATE's recommended changes to the *Child Protection Reform Amendment Bill 2014*:

- inclusion of an amendment to clarify current Queensland legislation (Child Protection Act) relating to support for young people transitioning from care to adulthood from 18 years of age to 25 years.

Introduction

The *Public Guardian Bill 2014*, *Family and Child Commission Bill 2014* and *Child Protection Reform Amendment Bill 2014*, all come before the Health and Community Services Committee (the Committee) as a result of the Queensland Government's acceptance of relevant recommendations of the final report of the Queensland Child Protection Commission of Inquiry (2013), *Taking Responsibility: A Roadmap for Queensland Child Protection*.

As the national peak consumer body for children and young people in out-of-home care (OOHC), CREATE has a keen interest in ensuring that legislation underpinning the redesign of services meets the needs of this cohort.

Since the commencement of the Commission of Inquiry on 1 July 2012, CREATE has sought to ensure that children and young people's experiences and views are heard throughout this process of reform. Initially CREATE worked to raise awareness amongst young people about the Commission of Inquiry via its membership network and sector partners throughout Queensland.

CREATE encouraged and supported interested young people to make their own submissions. CREATE also spoke with many young people for the purpose of informing the initial CREATE submission to the Commission of Inquiry. The Commissioner asked CREATE to assist in facilitating opportunities for the Commission of Inquiry to obtain information directly from children and young people with a care experience. As a result, CREATE organised a series of focus groups held in locations throughout Queensland. The results were published in the CREATE *Consultation Report for the Queensland Child Protection Commission of Inquiry*¹.

In March 2013, CREATE submitted a direct response to issues raised in the *Queensland Child Protection Commission of Inquiry: Discussion Paper February 2013* (the Discussion Paper).

CREATE identified some key issues in the Discussion Paper and then held group discussions with young people via its Youth Advisory Group (a regular meeting for children and young people with a care experience to connect with each other and discuss OOHC issues).

Following the release of *Taking Responsibility: A Roadmap for Queensland Child Protection*, and the Queensland Government's response in December 2013, CREATE undertook further work in consulting with children and young people about changes to OOHC in Queensland.

The following feedback presented by CREATE is informed by the opinions and experiences of the children and young people expressed at CREATE's Queensland Youth Advisory Group (YAG) events (both before and after the release of *Taking Responsibility: A Roadmap for Queensland Child Protection*).

¹ CREATE Foundation, (2013). *Consultation Report for the Queensland Child Protection Commission of Inquiry*, CREATE Foundation: Brisbane.

Feedback on Public Guardian Bill 2014

In March 2014, CREATE provided feedback to the Department of Justice and Attorney General regarding a *draft Public Guardian Bill*. CREATE's submission (available on request) focused on;

- the framework for defining vulnerable (now termed 'relevant') children;
- eligibility requirements for the Community Visitor and Child Advocacy Officer roles;
- the need for an undertaking by the Public Guardian to gain the trust of the children and young people it is providing services to;
- how children and young people are informed about the confidentiality of the information they provide to the Public Guardian; and
- how the new system will be rolled out and the need to ensure children and young people who are already in OOHC are not forgotten or left out of the transition phase.

CREATE acknowledges that there were some amendments made to the *draft Public Guardian Bill* as a result of this initial feedback. CREATE through this submission is providing feedback on areas of the Bill before the Parliament that is still in need of refinement to ensure it provides the best legislative framework for meeting the needs of children and young people in contact with Queensland's child protection system.

Decisions to visit children in visitable homes (section 57)

CREATE remains concerned that the direction in the *Public Guardian Bill 2014* (the PG Bill) relating to which children should be visited does not give full consideration to either the child's views and wishes nor the status of their ongoing emotional health as a result of their experience in care and prior to entering care.

CREATE acknowledges that the PG Bill does allow for a child to request a visit from the Public Guardian, however, CREATE stresses that as a significant decision is being made about the child, the child should have input into the decision as to whether they receive visits. In CREATE's discussions with young people both during and following the Queensland Child Protection Commission of Inquiry, considerable anxiety was expressed about the changes to the community visitor scheme of the Commission for Children, Young People and the Child Guardian (CCYPCG), particularly about those children and young people who currently have a positive, productive connection with their community visitor and who may lose this connection as a result of a refocusing of the visiting program. Comments from young people included:

Young people should have input into assessing their need. This should be done in consultation with their carers, CSOs and any other support people that are involved in the young person's life.

The young people and those most involved in their lives must be consulted before Community Visitor support is withdrawn. It should be ensured that young people have adequate support in place for this to happen. Communication between these parties is vital.

Whether or not a young person wants a Community Visitor should be taken into account when determining whether support will continue under the new program.

Section 7(d) outlines the Public Guardian's principal that *the child's emotional, moral, social and intellectual development is important and must be taken into account.*

There is research evidence in Australia showing that children and young people who have experienced abuse are more vulnerable to further abuse (Irenyi, et al, 2006), which would tend to

show that a universal community visitor program and the independent contact it provides to *all* children in the child protection system had a preventative role. In targeting community visitors to a smaller number of 'relevant' children, CREATE suggests that consideration also be given to the emotional health of the child and any known trauma already suffered, when the Public Guardian considers whether to assign a community visitor.

CREATE proposes that Section 57 (2) be amended to add two matters the Public Guardian should have regard to:

- the emotional health of the child, particularly trauma experienced before being brought into care or trauma experienced whilst under care; and
- a request from a child under care to retain their community visitor or to be visited by a community visitor (Queensland Child Protection Commission of Inquiry, 2013a).

The need for ongoing assessments re: visits to children in visitable homes

Young people CREATE has consulted have raised questions about how assessments for determining which children will be visited will be carried out and whether how regularly such assessments will be undertaken. One recent participant at a CREATE Youth Advisory Group meeting highlighted the issue;

I think there should be a way to check in with a child that isn't visited to see how they are going and whether they're situation has changed and they might need a community visitor. The cases should be revised on a regular basis because we all know that kids in care often have changed circumstances over the years. I am in a totally different space now being 16 than I was when I was 10.

Whilst Section 57 details a framework for deciding which children in visitable homes should be visited and Section 55 (2) of the draft Bill states that "*the public guardian may allocate 1 or more community visitors (child) for a visitable location*", there appears to CREATE to be no other direction about the manner and frequency in which the Public Guardian should make these decisions.

It is commonly accepted that children change as they develop; children and young people in the child protection system are no different, in fact data shows that they are much more likely to experience instability and change throughout their childhood development. The Queensland Child Protection Commission of Inquiry (2013a, p. 108), notes that in 2011, 35 percent of those children who had spent five years or more in care had experienced 6 or more placements. To ensure that children and young people do not fall between the cracks of the system, CREATE believes it is crucial that the Public Guardian has a robust and clear method of reviewing and reassessing the needs of children and young people in care.

A member of CREATE's Youth Advisory Group suggested the following:

Monitoring must be done if a young person has their contact with their Community Visitor ceased [i.e. if a young person no longer receives support upon implementation of changes recommended by the Inquiry]. They should be visited at least once a year... You cannot expect all young people to be proactive in seeking out support. An annual check-in would provide young people with an opportunity for support and review that they might otherwise not initiate (despite possibly needing help).

CREATE proposes that a third clause be added to section 55:

3) The Public Guardian will work with relevant stakeholders to assess the ongoing needs of children in visitable homes with the aim of determining whether they should be allocated a community visitor.

Eligibility requirements for Community Visitor role

To clarify that the eligibility requirements for both the child and adult community visitors are met, CREATE recommends that Section 107 have the following added:

(3) A person appointed as both a community visitor (child) and a community visitor (adult) must meet all of the eligibility requirements as defined in section 108 and section 109.

Feedback on the Family and Child Commission Bill 2014

Independence from Government

CREATE recognises that the Family and Child Commission (FCC) is not independent of government as it is established under the direction of the Premier. CREATE suggests that it is important to ensure that the Family and Child Commission gives 'frank and fearless' advice to the Queensland government and the child protection sector more broadly. Without such ability to objectively evaluate the system without fear or favour, the FCC's ability to perform its functions is weakened. CREATE suggests that the Government establish the FCC as independent from Government and providing oversight of the child protection system. To incorporate this independence CREATE recommends section 9(1)(a) be amended to, "to provide *independent* oversight of the child protection system".

FCC's Functions

The FCC will play a crucial role in achieving the roadmap for reform of the child protection system (QCPCI, 2013b). Therefore the organisation needs to be child and young person focused in its approach and place appropriate importance on obtaining information from the children, young people and families impacted by the workings of Queensland's child protection system.

Section 74 and Schedule 1 of the *Child Protection Act 1999* describes the charter of rights that apply to every child and young person who is subject to the custody or guardianship of the chief executive; CREATE feels a recognition of these rights in the FCC Bill 2014 is crucial to effective child focused oversight of the child protection system.

CREATE proposes that children's rights be at the core of the FCC when it is established, and so recommends that Sections 4 and 9 be amended to have the word 'rights' inserted so that each section reads: *the rights, safety, wellbeing and best interests of children and young people....*

CREATE further proposes that Section 17 (H) from the *Commission for Children and Young and Child Guardian Act* be included as a new clause under Section 9(1) of the FCC Bill to add the function to the FCC, "to promote the establishment by service providers of appropriate and accessible mechanisms for the participation of children in matters that may affect them". This clause will give the FCC a clearer mandate to improve the child protection system by including children and young people's participation in services. "Research reveals that being heard and included in decisions that affect them allows children and young people to feel respected and to develop a greater understanding of the impact of intervention and action in and on their lives" (QCPCI, 2013b, p. 412).

CREATE continues to receive a high level of positive feedback from staff in the child protection system about the benefits of training where children and young people share their experiences of the child protection system. CREATE proposes that Section 9(c) of the FCC Bill be strengthened by including a reference to workforce planning and development strategies that are **informed by and feature direct feedback from children and young people** about their experiences in out of home care.

The QCPCI (2013b, p. 430) notes the need for more research and evaluation of the "long term outcomes of children and young people in the child protection system, how they fare once they leave care and what contributes to positive outcomes". CREATE proposes that the FCC Bill section 9(e) be amended to include a reference to **research with young adults who were formerly part of the child protection system**. It is essential that the voices of children and young people who

experience the child protection system inform any improvements, developments and reviews of the system.

CREATE acknowledges that under the Bills before the Parliament, it will now be the Public Guardian and the Queensland Ombudsman who investigate particular cases of individual children and young people within the child protection system. CREATE is of the view that the proposed FCC in its oversight role must have the ability to look at particular cases that highlight either the success or failure of various systemic processes. CREATE propose that Section 9(2) of the FCC Bill be amended to state, "However, It is not a function of the commission to investigate the circumstances of a particular child, young person, or family or to advocate on their behalf unless the examination of a particular case would assist with the exercising of the commission's functions as outlined at section 9(1). Alternatively, a clause could be added at 9(2)(i) where the commission requires information to assist with the exercising of the commission's functions at Section 9(1) the commission can seek information from the Public Guardian regarding individual cases relating to a child, young person or family.

Section 23(a), which states that the commission must "engage with, and take account of, the views of children, young people and their families", is lacking in clarity and strength. If the FCC is to meaningfully and effectively engage with children and young people then CREATE's view is that section 23 of the *Commission for Children and Young People and Child Guardian Act* should be retained in the FCC Bill, that "in performing the commissioner's functions, the commissioner must do the following—(a) consult with children in ways that promote their participation in decision making by the commissioner; (b) listen to, and seriously consider, the concerns, views and wishes of children." The QCPCI (2013b, p. 412) notes that "ultimately, children's voices guide the frameworks for achieving results and making progress, and will help shape policy and programs aimed at individual outcomes". Children and young people are often excluded from participation in public policy making and it is essential that their concerns, views and wishes, along with those of their families, drive the focus of the proposed FCC. This will only happen if participation is open and effective.

QFCC Draft Bill Explanatory Notes

CREATE is concerned by the following sentence in page 4 of the explanatory notes for the FCC Bill: "Participation by consumers, carers, families and support persons is an essential component of effective support services to children and young people." This statement is confusing as it is difficult to understand which stakeholder group the term 'consumer' refers to? If the term 'consumer' is referring to children and young people in care then it implies that a 'choice' is made by children and young people to enter the care system. It is CREATE's view that children and young people are in care not through choice or any fault of their own. While CREATE absolutely supports the intent to increase participation of children and young people in policy and program development, it is appropriate to refer to 'children and young people' rather than 'consumers' in the context of any material associated with the current child protection reforms.

Definition of a young person and need for further legislative reform

CREATE recognises the positive step being made with the introduction of a definition for young person in the Dictionary section of the FCC Bill (p. 39) as a "person at least 18 years and no older than 21 years". This is a positive step in the changing culture in the Queensland child protection system to recognise that although their legal status may change at the age of 18 young people transitioning from the child protection system are still developing into adults and there exists a moral obligation to better support young people who transition from care at 18, at least until they are 21 years of age. CREATE would like to see international examples of support until 25 years of

age implemented but CREATE we acknowledges recognising support to 21 years of age as a step towards a comprehensive system of support in this area.

Please see further comments on extending support to at least 21 years of age for young people leaving care in the following submission.

Feedback on the Child Protection Reform Amendment Bill 2014

Support service funding

CREATE acknowledges the government's positive intention to address the findings of the Queensland Child Protection Commission of Inquiry (QCPCI) in relation to the increasing numbers of children and young people placed in out-of-home care in Queensland. In particular, the intention to increase support for children, young people and families before entering the tertiary child protection system is a very positive move. However, CREATE is concerned that there has not been any detail on the need for 'hump' funding as identified to fund this period of time where improved primary and secondary interventions are needed to divert families from the tertiary system (QCPCI 2013b, p. 521).

CREATE believes that timely, effective and appropriate community support services are an essential factor to increase a parent's capacity to learn the skills necessary to parent effectively, which includes reducing social exclusion due to poverty, ill health or other problems. Support services may not be valued by every parent, they should be tailored to each family's individual situation and families should be involved in determining the support services that are appropriate for them.

The proposed changes to allow for a 'dual track' system within child protection, whereby families are supported to address issues of concern for children's safety will require increased funding for community services as well as evaluation and monitoring to ensure that services are able to meet the needs of families to ensure children's safety.

Transition to independence

CREATE would also like to propose that a priority for the Child Protection Reform Amendment Bill (the CPRA Bill) should be to bring Queensland into line with other states and territories regarding the age at which support provided to young people transitioning from the statutory child protection system should be made. "Queensland is the only state where legislation, policy and practice are unclear as to how long the state must continue to deliver support once young people leave the care system at 18 years of age" (QCPCI 2013b, p. 304).

CREATE believes that legislative change is required to extend to support for young people transitioning from care to adulthood from 18 years of age to 25 years. This would, among other things, provide the necessary legislative authority to enhance accountability for services, improve outcomes, and reduce costs and duplication. Domestic and international examples could be considered to create a legislative framework that would facilitate a more coordinated and comprehensive response to the needs of young people transitioning from care. It would also provide a further impetus for a whole of government approach to the issue, with the aim to increasing efficiencies and improving outcomes.

- A Bill has recently been passed in Missouri (USA) where young people over the age of 18 but under 21 can elect to re-enter care if they are struggling with being out of care. The decision can also be made by other relevant persons if it is in the young person's best interests. Therefore, in some cases the age of majority can be effectively extended until the age of 21 in Missouri.
- A longitudinal study (the Midwest study) involving 732 young people from three states (Illinois, Iowa and Wisconsin) in the United States of America questioned whether and to what degree remaining in foster care until the age of 21 would significantly increase

educational engagement to the university level.² That study found that young people residing in jurisdictions that provided statutory care until the age of 21 were more likely to enrol and start their degrees compared with young people from jurisdictions that ended statutory care at 18. However they also found that once statutory care ended (at 21), the likelihood of those young people completing their degree reduced. That research revealed that a lack of support and housing increased the need for money; and the need to work was the reason most often given as to why former college students, in reaching the age of majority, had dropped out of college.³ It may be that the young people who were able to stay on in their final placement also finished their degrees.

- Research in England found that young people with a care experience at university continued to experience financial problems.⁴ Jackson et al found that many of the students with a care experience did not know about scholarships or funding opportunities and that many of them continued to experience housing issues.⁵ Of great concern is that many of the young students were experiencing difficulty with the coursework. The cause of this was attributed to gaps in their schooling and having never established a homework routine or that they needed paid work and had difficulty managing their time.⁶
- Missouri has recently also passed a Bill providing that all young people in care from the age of 15 are to receive assistance to increase their educational engagement post care. This includes receiving help to apply to university or technical colleges and to access financial support to access the courses.⁷ A whole of government approach in Australia could make the same provisions.

Feedback from young people to CREATE on this issue included the following comment;

I think they should change the law to say support should be provided until 21 because it is set in stone. It has a better chance of making all departments to be on same the page. I think it's important it's written law so some people can't escape their responsibilities, so we can tell all children the same thing around Australia – it's about security, giving the department a reason to work harder on it in the long term.

The Queensland Child Protection Commission of Inquiry concluded, given there had been a government election commitment (not yet announced) and the support from submissions and research for a higher age limit; support should be available until at least 21 years of age (QCPCIB, p306).

The Commission further noted that “apart from the legal obligation, there are strong arguments for providing support for young people transitioning from care. The highest cost-saving is found in the reduced use of mental health services, family support services and justice services. These costs arise because young people leaving care are at greater risk of experiencing poor life outcomes. It is important to invest, not just for the benefit of current generations, but to ensure young people

² Dworsky, A., & Courtney, M. (2010). *Does extending foster care beyond the age of 18 promote postsecondary educational attainment?* University of Chicago, Chapin Hall.

³ Ibid.

⁴ Jackson, S., Ajayi, S., & Quigley M. (2011). *Case study on the impact of IOE research into 'Going to University from Care'*. London: Institute of Education, University of London.

⁵ Ibid.

⁶ Jackson, above n 30.

⁷ See: http://www.senate.mo.gov/13info/BTS_Web/Bill.aspx?SessionType=R&BillID=17428987

leaving care can become able parents, and therefore prevent the intergenerational cycle of abuse and neglect" (QCPCIB, p312).

Mandatory reporting

CREATE acknowledges the positive intentions to address findings of the QCPCI (2103b, p 83) in relation to strain created by mandatory reporting processes. However, CREATE is concerned that the proposal under sections 13 E (2) and 13F (2) of the CPRA Bill to reduce mandatory reporting requirements to reasonable suspicion a child is child in need of protection caused by physical and sexual abuse. Mandatory reporters may be in caring relationships with families and this may hamper their ability to make decisions that could facilitate early access to support for families and children. Research shows that the extent of abuse and neglect experienced prior to coming into care is a significant factor in the life outcomes for children and young people with a care experience (Irenyi, et al, 2006).

Conclusion

Since the commencement of the Commission of Inquiry on 1 July, 2012 CREATE has sought to ensure that children and young people's experience and views are heard throughout the process of reform. CREATE agrees that Queensland's child protection system required change to better address the needs of children and young people and their families, and welcomes the Queensland Government's initiative to seek improvement. However, CREATE is concerned that in doing so, positive elements of the 'old' have been overlooked and the people that should be at the core of these changes have also been somewhat sidelined, in the process of streamlining to achieve a more effective and efficient system.

In summary and in addition to the proposed changes to the Bills before the Committee in this submission, CREATE feels there following key issues should be acknowledged at this stage of child protection reform in Queensland;

- Though systems such as Adult Guardian, Ombudsman and the Queensland Civil Administrative Tribunal are not new, with their additional responsibilities being introduced they are new institutions for many children and young people and there is a need to consider how they will be accessible, relevant and young people friendly;
- For the principles in the legislation to be achieved and adhered, the introduction of the new system needs to be accompanied by an injection of funding, and;
- Transition from the old to the new should be handled with care and there is a need to be wary of not allowing children and young people fall between the cracks; children and young people should be valued and included as active participants in the journey, not simply passive service recipients that are being catered to or for.

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