



# Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd

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9<sup>th</sup> April 2014

Dear Colleague,

**Re: The Child Protection Reform Amendment Bill 2014; and the Family and Child  
Commission Bill 2014; and the Public Guardian Bill 2014**

We welcome and appreciate the opportunity to make a submission in relation to the above matters.

**Preliminary Consideration: Our Background to Comment**

The Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd (“ATSILS”) provides legal services to Aboriginal and Torres Strait Islander peoples throughout mainland Queensland. Our primary role is to provide criminal, civil and family law representation. We are also funded by the Commonwealth to perform a State-wide role in the key areas of: Law and Social Justice Reform; Community Legal Education and Monitoring Indigenous Australian Deaths in Custody. As an organisation which, for over four decades, has practiced at the coalface of the justice arena, we believe we are well placed to provide meaningful comment. Not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences. We trust that our submission is of assistance.

## **SUBMISSIONS REGARDING THE CHILD PROTECTION REFORM AMENDMENT BILL 2014**

### **Introduction**

The 'Queensland Government's response to the Queensland Child Protection Commission of Inquiry Final Report' sets out various stages of implementation. In accepting recommendations 13.4, 13.13, 13.14, 13.19, 13.21, 13.23, 13.25 and 13.28, the Queensland Government has responded by saying 'this will be completed by early 2014'. However the Bill does not appear to implement these particular recommendations. In that regard, a timeline of the expected changes would be of assistance. We have a particular interest in encouraging in an expedient manner that these **recommendations: 13.13, 13.14, 13.19, 13.21, 13.25 and 13.28 be implemented.**

As to the bill itself:

### **CLAUSE 6 OF THE BILL**

**13F Mandatory reporting relating to children in departmental or licensed care services**

- (1) This section applies to a person (a *relevant person*) who is any of the following—
- a. an authorised officer;
  - b. a public service employee employed in the department;
  - c. a person employed in a departmental care service or licensed care service.

**13G Report to the chief executive**

- (1) This section applies to a report that a relevant person is required to give under section 13E or 13F.  
.....
- (3) The person is not required to give a report about a matter if—
- a. giving the report might tend to incriminate the person; or
  - b. the person knows, or reasonably supposes, that the chief executive is aware of the matter.

Clause 6 makes various amendments to section 13 of the Child Protection Act 1999 ("the Act"). We would ask the Committee to consider two particular aspects in this regard:

1. Section 13F - this mandatory reporting requirement does not appear to apply to foster or kin carers. This is of concern because it exposes the child to potential risk of abuse whilst in the care of a foster or kin carer. Perhaps the most obvious example would be if a child was being abused by a close relative of the foster or kin carer.

2. Section 13G(3) – we see as being amenable to manipulation – for example, by merely claiming they believed the Chief Executive was already aware of the matter. At the very least we would recommend that the words “or reasonably supposes” be omitted.

## CLAUSE 7 OF THE BILL

### **Clause 7      Amendment of s 14 (Investigation of alleged harm)**

c. Section 14, heading, ‘Investigation’—

*omit, insert—*

#### **Substantiation**

d. Section 14(1)(a)—

*omit, insert—*

- a. 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; or

e. Section 14(1), editor’s note—

*omit.*

The Queensland Child Protection Commission of inquiry recommendation 4.8 proposed:

The Department of Communities, Child Safety and Disability Services in its review of the Act consider amending section 14 (1) to remove the reference to investigation and to replace it with ‘risk assessment and harm substantiation’

The Queensland Government response was to accept this recommendation to be introduced in early 2014.

ATSILS’s concern is that the purpose of amending section 14(1)(a) was to have a definition which focused on managing risk, and the amendment as it appears in the Bill is open to being interpreted as whether an alleged harm can be substantiated as opposed to managing risk.

## CLAUSE 71 OF THE BILL

### **368      QCAT’s principal registrar to give statistical information to chief executive**

(1) QCAT’s principal registrar must, from time to time, give the chief executive statistical information about—

- a. the number and types of child-related employment decisions for which applications were made to QCAT for review; and
- b. QCAT’s decisions on the applications.

We note that clause 71 of the Bill replaces section 368 of the *Commission for Children and Young People and Child Guardian Act 2000*. We kindly seek clarification on whether QCAT's Principal Registrar must provide statistical information at the request of the Chief Executive, or whenever the Principal Registrar chooses to do so. Will regulations be introduced which specify the frequency of these requests?

### **SUBMISSIONS REGARDING THE FAMILY AND CHILD COMMISSION BILL 2014**

#### **SECTION 9 OF THE FAMILY AND CHILD COMMISSION BILL 2014**

Section 9 of the Family and Child Commission Bill 2014 sets out the functions of the Family and Child Commission and makes reference to 'oversight of the child protection system' at section 9 (1) (a). Section 23(1)(b) provides that the Commissioners must, in performing their functions, 'ensure the interests of Aboriginal people and Torres Strait Islanders are adequately and appropriately represented'.

Sections 17 and 18 of the Commission for Children and Young People and *Child Guardian Act* provides that the Commissioners have the function of monitoring and auditing the child safety department, service providers that affect children in the child safety system, and the handling of individual cases of children in the child safety system by the child safety department. They also have the function of monitoring compliance by the chief executive (child safety) with the *Child Protection Act 1999*. The Family and Child Commission Bill 2014 does not appear to grant the Commissioners these auditing and reporting functions, and therefore it is not clear whether the Government intends on removing these functions from the Commissioners, or whether this matter will be addressed in regulations to be introduced at a later stage.

The explanatory notes to the Family and Child Commission Bill state that the Queensland Family Child Commission is to take into account the particular views and needs of Aboriginal and Torres Strait Islander communities, and will be required to report on the outcomes in reducing overrepresentation and improving outcomes for Aboriginal and Torres Strait Islander families, children and young people. ATSILS additionally has a specific interest in the **timely** audit and dissemination of statistical information in relation to matters such as the Aboriginal and Torres Strait Islander child placement principle and cultural support planning.

We note the Queensland Child Commission of Inquiry recommended the establishment of the Family and Child Council to, amongst other things, 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*. However there is no onus under the National Framework for States to provide annual reports on compliance with child placement principles. This is particularly concerning given the Family and Child Commission will only be required to review its functions and performances (as soon as practicable) after the end of 5 years.

### **SUBMISSION REGARDING THE PUBLIC GUARDIAN BILL 2014**

#### **CHAPTER 4 OF THE PUBLIC GUARDIAN BILL 2014**

##### **108 Eligibility for appointment as community visitor (adult)**

- (1) A person is eligible for appointment as a community visitor (adult) only if the public guardian considers the person has knowledge, experience or skills needed to perform the functions of a community visitor (adult).
- (2) In appointing persons as community visitors (adult), the public guardian must take into account the desirability of community visitors (adult)—
  - a. having a range of knowledge, experience or skills relevant to the exercise of the functions of community visitors (adult); and
  - b. reflecting the social and cultural diversity of the general community.

##### **42 Requirement to regularly visit visitable site**

- (1) A community visitor (adult) for a visitable site must regularly visit the visitable site to perform the visitor's functions.
- (2) The public guardian may decide priorities for visiting particular visitable sites that affect the frequency of visits to a visitable site by a community visitor (adult).

We note that Chapter 4 of the Public Guardian Bill 2014 does not make provision for the Aboriginal and Torres Strait Islander children overrepresented in the Child Protection System. It is ATSILS' position that, given the over representation of Aboriginal and Torres Strait Islander children in the Child Protection System, special provision must be made for the appointment of Aboriginal and Torres Strait Islander staff to community visitor and advocate roles.

The community visitor program (child) provides for regular visits to visitable sites but states that the public guardian may direct a community visitor to visit a child in a visitable home

and to decide the regularity and frequency of such visits. It is our view that regular visits are important especially for very young children who are unable to articulate their concerns or wishes.

#### **CHILD PROTECTION COMMISSIONER**

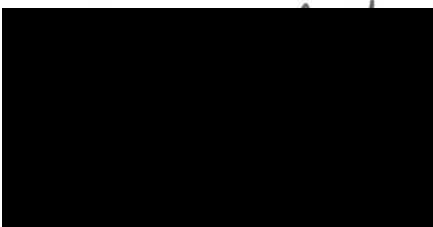
##### **11 Appointment of commissioners**

- (1) There are to be 2 commissioners for the commission.
- (2) Each commissioner is appointed by the Governor in Council on the recommendation of the Minister.
- (3) One of the commissioners is to be appointed as the principal commissioner.
- (4) The Minister may recommend a person for appointment only if the Minister is satisfied the person is appropriately qualified to exercise the commission's functions effectively and efficiently.
- (5) Also, at least 1 person recommended by the Minister for appointment as a commissioner must be an Aboriginal person or a Torres Strait Islander.

If it were felt by the Department or the Minister to be of assistance, our organisation (perhaps in concert with other community-based organisations) would be only too happy to provide cultural input into the appointment of Commissioners.

I close by once again thanking the Committee for this opportunity to have input into this very important area. I also take this opportunity to thank Ms Julia Anderson (Law and Justice Advocacy Development Officer) and Ms Lisa Stewart (Child Protection Legal Practitioner) for their invaluable input into the first draft of this submission. If required, we would be only too pleased to provide additional information to the Committee.

Yours sincerely,



Shane Duffy  
Chief Executive Officer