# *HEALTH AND DISABILITIES COMMITTEE*

**Members present:**

Ms L.H. Nelson-Carr MP (Chair)
Mr M.F. McArdle MP
Mrs E.A. Cunningham MP
Ms T.E. Davis MP
Ms A.A. Johnstone MP
Mrs C.A. Smith MP

**Staff present:**

Ms S. Cawcutt (Research Director)
Ms E. Nagle (Principal Research Officer)

## PUBLIC BRIEFING ON THE ONE FUNDING SYSTEM FOR BETTER SERVICES BILL

### TRANSCRIPT OF PROCEEDINGS

**WEDNESDAY, 12 OCTOBER 2011**

**Brisbane**

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**Committee met at 11.22 am**

**CHAIR:** Welcome back, everyone. Welcome to you, Minister, and also to you, Brad. Nice to see you. Mr Brad Swan and Mr Craig Hodges from the Department of Communities are here to brief us on the One Funding System for Better Services Bill. My name is Lindy Nelson-Carr, member for Mundingburra, and I am the chair of the Health and Disabilities Committee. The other members of the committee, for those of you who do not know, are Mr Mark McArdle, deputy chair and member for Caloundra; Mrs Liz Cunningham, member for Gladstone; Ms Tracy Davis, member for Aspley; Ms Mandy Johnstone, member for Townsville; and Mrs Christine Smith, member for Burleigh.

I would just like to remind everybody that the proceedings here are similar to those of parliament to the extent that the public cannot participate. In this regard I remind members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the committee. The committee has resolved that the proceedings may be broadcast in line with the media broadcasting rules which are available from the secretariat in this room. Hansard is making a transcript of the proceedings so I would ask you to identify yourselves when you first speak and speak clearly and at a reasonable pace. It is the intention of the committee to publish the transcript unless there is good reason not to. As you know, the findings of the committee will be included in a report to the parliament and recommendations may be made about issues that are identified.

I would ask you to turn off or down your pagers or your phones. The briefing will end at 12.15 pm. You are not required to take an oath today. However, as this hearing is a proceeding of parliament, any person intentionally misleading the committee is committing a serious offence. Thank you for the written information that you have already provided. We would like to begin our briefing. It is good to see some familiar faces.

### HODGES, Mr Craig, Director, Strategy and Policy, Department of Communities

### STRUTHERS, Hon. Karen MP, Minister for Community Services and Housing and Minister for Women

### SWAN, Mr Brad, Deputy Director-General, Communities, Child Safety, Youth and Families, Department of Communities

**Ms STRUTHERS:** Thank you, Madam Chair, and members of the committee. It is good to have the opportunity to go through the provisions of this bill. I think you have asked that Craig and Brad go through in some detail the provisions of the bill, so I guess my role is to give you at least a flavour of the bill and an overview of what we are trying to achieve here.

From hearing the issues you have raised in parliament and from working with some of you more directly, I know that you are all pretty familiar with community services in your own locations and state-wide, so I think you would welcome the provisions of this bill which largely are trying to achieve a streamlined system of our laws and the accountabilities across agencies. Whilst I am the minister leading the charge at the moment with this bill, and the staff in my agency have been the ones doing a lot of the hard yakka bringing other agency staff together to develop the bill, it involves a number of ministers, a number of portfolios and a number of agencies. Something like 2,000 non-government organisations are impacted by the bill and many have had input into the provisions or the development of the bill.

It is the first time that we have really given this all a good shake to get an across-government approach to funding services. The new laws aim to establish a simpler, more consistent legal basis for supporting the work of the non-government sector and safeguarding the investment that government makes. Across government, our investment is probably over $1.8 billion for the non-government organisations alone, and then there are grants and subsidies for research institutes, the private school sector and a whole lot of other areas. Some of those are excluded specifically from the bill, and I am sure Craig can go into some of the detail of those exclusions. But it is critical that this investment is protected. It is critical that we try to streamline the internal administrative arrangements for organisations and reduce red tape for them. We already have processes in train, quite apart from the work in this bill. My own agency has been working on one common service agreement and a number of other provisions to make the administrative load on the organisations a lot lighter.

This bill does apply to a range of entities across the employment area, DEEDI and other agencies. Many of these non-government agencies apply for and obtain funding from a range of different sources. Some of them can have up to 15 or 20 different service agreements. With some of them, as I know the member for Townsville and probably the member for Mundingburra would well know with current issues around some funded agencies in Townsville that are getting public attention, there is a need to have

auditors brought in to assess those organisations and go through a compliance process. We want to try to make those accountability and compliance provisions as clear, simple and effective as possible. At the moment there are varying arrangements and agreements across the range of agencies.

The bill basically sets two minimum requirements. These might seem straightforward, but in some cases they do not exist. Firstly, it is a written request for funding. In not all areas of government, particularly in relation to some small amounts, has there been a specific application or request and then a specific written agreement for funding. Under a streamlined process that this bill will achieve those agreements will vary across funding programs and agencies, but there will be common elements to those and elements added to those, particularly, as is done now, bringing in elements of Commonwealth funding to those agreements as well.

The principles and aims here are very good ones. It will be important that in the implementation we continue to have cross-agency cooperation to ensure we get these funding agreements and the processes working effectively. We certainly take compliance issues seriously. Many of you would have heard me say in the parliament yesterday that in the last six years there has been a 160 per cent growth in community services funding in Queensland alone. That is state based growth. That is not taking account the significant Commonwealth investment that we have in disabilities, mental health and housing. We are talking about significant investment by government of public funds and a growing investment by government of public funds in the very important area of community services delivery and jobs programs and the others that come in under this legislation.

Certainly we want to make sure that we have very clear processes for managing complaints and clear compliance processes. The capacity to appoint an interim manager will be in this bill as well. I will leave some of the details for Craig. As I said, Craig has been the key person working across government to develop the provisions within this bill. In conclusion, I really want to indicate to you that, in the meetings, in the consultation leading up to the bill and in the work of the Compact that has been established in Queensland to bring non-government partners together to work with government on a number of these areas including this bill, we have had very constructive input into this and it has been very welcome to have a process that this bill provides for a much more streamlined approach to funding and accountabilities.

I guess the red-tape reduction is a critical point. It is modest at the moment. We estimate that there have been savings of $3.5 million. The cross-government commitment to red-tape reduction—not just in the community services and non-government grants area—is $150 million. We anticipate that, through the processes that are developed as a result of this bill, we can see some significant administrative burden being eased for organisations and significant red-tape reduction. That is certainly one of the goals of the bill.

Madam Chair, I think you had requested specifically that Craig and Brad address some detail. I am not sure if you have specific questions in mind or whether you want to raise any of those with me firstly or get Craig and Brad to go through some of the detailed provisions.

**CHAIR:** Our job today is probably to listen to you guys first. Craig, unless anyone has any questions of the minister before we begin, it would be good to hear from you.

**Mr Hodges:** We have provided the committee with some fairly detailed briefing material. For the purposes of today it might be useful just to give you a one-pager to have a look at while we talk through the questions of the committee.

**Mr McARDLE:** Thank you for that, too. It was very good. It was excellent.

**CHAIR:** It was really helpful.

**Ms STRUTHERS:** Did you get the questions and answers?

**CHAIR:** Yes, that is good.

**Ms STRUTHERS:** These fellows have done a good job. They have been working very hard.

**Mr Hodges:** I do not know if some of you noticed, but in your package there is a further copy of this one-pager, and we have published it online for stakeholders to be able to get a snapshot of the bill. The bill is really divided into three main areas. The first is concerned with its application. It defines what the bill will apply to by defining funding for the purposes of the bill. It does that by making it clear that funding can include other forms of assistance that government might provide a non-government entity, and that can include money, buildings, leases of land or in-kind support. It also makes it clear that this is concerned with funding to a range of entities, and they can include non-profit organisations, for-profit businesses, incorporated or unincorporated entities. So it is quite a broad range of entities that the bill will apply to. Funding decisions themselves will be based on matters that are relevant to the product or the service that is being funded. That might include an organisation's capacity to deliver a product or service or its record of financial management.

The bill also makes it clear what is not funding for the purposes of the bill. You might have noticed that there is a range of exemptions from the definition of funding for the purposes of the bill. Essentially, it is concerned with funding that is provided to a non-government entity where government is specifying products or services to be delivered with that funding and that product or service is for the benefit of

Queensland. So there is a range of kinds of assistance that government might otherwise provide—and they can include gifts and donations, for example prizes—that are not considered funding for the purposes of this bill.

The second main area of the bill concerns itself with how funding decisions are made. It sets up a three-step process. It requires that a written request is provided to a department for funding, but it does not specify what form that request has to be made in. It could be an email or it might be a formal funding round and submission process to accommodate the range of circumstances where funding might be considered. The second step is that the bill enables a minister or their delegate to approve funding, again on the basis of any relevant matter as I described before. The bill, again, is not prescriptive about the kinds of matters that ministers must consider so it does not create an extra red-tape requirement for funded entities.

The third step is that the bill requires a funding agreement to be entered into between the relevant department and the funded entity. Again, the bill is not prescriptive about what form the funding agreement might take. For small amounts of funding it could be an exchange of letters and then for more sophisticated products or services and larger amounts of funding that is more likely to be a more extensive funding agreement.

The third part of the bill is concerned with dealing with serious concerns. The bill is very clear that—it takes some time to be clear that—remedies that might be available to a funding agency are not necessarily all contained in the bill. They might be in the funding agreement and it reminds the reader that a range of remedial measures might be available. Some of those will be in a funding agreement; others are available in the bill. It also specifically encourages a cooperative approach to be taken and that that should be considered before actions are taken under the legislation.

The bill specifies what are the triggers for serious concerns—what are the three matters that would give rise to the exercise of powers under the bill. They include—and you will see in your one-pager here—harm to a person, a failure to deliver a funded product or a service or the misuse of public funds. So they are the three triggers for the use of the investigative and remedial powers that are contained in the bill.

Remedial action that can be taken under the bill includes issuing a compliance notice, which requires the funded entity to take specified action within a specified amount of time; to recover misspent funds as a debt; and, thirdly, to appoint an interim manager for the purpose of ensuring that that funded product or service continues to be delivered.

The bill contains a number of criteria around the decision making around each of those powers, so they are not automatically available. The first trigger is, as I have described, the presence of a serious concern and the second is specified in relation to each of those remedial measures. An example would be for a decision to appoint an interim manager. It must be considered to be an essential product or service before an interim manager can be appointed. Then the interim manager's powers and functions only relate to the product or service that is being delivered with the agency's funding.

The other element to the compliance measures is the investigative powers. The bill also allows, in very serious circumstances, the capacity to appoint an authorised officer who can enter and search premises either with the occupant's consent or, if there is not consent, with a warrant that is issued by a magistrate. Once they enter the premises, the bill also provides power to conduct inspections to require documents and records to be provided and for the authorised officer to talk to, for example, clients or others at the service.

Then there are a number of provisions in the bill to provide additional safeguards. There are specific provisions that allow for reviews and appeals of key decisions. The key decisions that I might mention include the decision to appoint an interim manager—so that is reviewable and appealable—the decision to cease or suspend funding or the decision to terminate a funding agreement following a compliance notice process. The bill sets out a first step of internal review within the agency and then the capacity to make an application to QCAT, the Queensland Civil and Administrative Tribunal, for a merit based decision. As you will see noted on the page, there are also some provisions ensuring the confidentiality of personal information that might be obtained during an investigation or a compliance action that is taken under the legislation. They are really the main elements of the bill.

**CHAIR:** Thanks very much. Does anyone want to start questioning yet? Brad, would you like to add anything to that?

**Mr Swan:** No, that is fine.

**CHAIR:** Mandy?

**Ms JOHNSTONE:** I always have questions, as the minister knows. I just want to get a practical sense of what this actually would mean for an NGO. What would be different now for a community based organisation applying for funding? How will it look different?

**Mr Hodges:** For organisations themselves, a lot of this is the legislation operating behind the scenes and it will not make a lot of difference for organisations. It is designed to be consistent with the basic contracting and funding processes that are already in place across government. For organisations funded under the Disability Services Act, the Community Services Act and the Housing Act in particular, it will remove some existing legislative requirements that are placed on them. One of those is a requirement for preapproval under the Community Services Act and the Disability Services Act. This funding bill will remove that current requirement.

A second change will be for those organisations. It involves the repeal of a number of prescribed requirements that are currently set out under the Community Services Regulation, the Disability Services Regulation and the Housing Regulation. We can provide for the committee's information a copy of the draft regulatory amendments that set out how those prescribed requirements will be repealed. They are the main differences.

For organisations that are funded in other circumstances that are not under current legislation, it will really make very little difference. It has been designed so that it does not impose additional requirements for those organisations.

**CHAIR:** With a matter like a serious concern, Minister, you just said that sometimes there can be 15 to 20 different service industries and that will go right across Commonwealth and state. How are you going to manage that? How will it work?

**Ms STRUTHERS:** Clause 106 gives us the opportunity for the chief executive of the primary or lead agency to actually take charge of the compliance process and the investigation or anything that needs to occur. So that allows for agreement across those agencies, particularly the one providing the most funding or having the most contact or where the primary services are. If it is primarily a disability service it might be that the Minister for Disability Services or the CEO of that agency takes charge. Clause 106 enables there to be agreement across the agencies that one person—I think it is a really important thing straight-up that there is clarity about who has responsibility. I know that the member for Townsville has experienced that in relation to state based agencies and the Commonwealth in some services funded in Townsville. It is important that there is clarity about that.

I think Craig's point is a critical one. In relation to compliance, in relation to signing up for money, there will not be a lot that is different upfront for services. It is back of house where it is going to be streamlined and improved. They will see improvements in funding agreements and clarity around their funding agreements.

This enables us to continue the work that we are doing to streamline processes, like the common service agreement reporting arrangements. We want to minimise reporting arrangements. We want to get clarity around which agencies are funding what activities. At the moment it is very difficult to have comparative systems. Hypothetically, if you want to get data on who is funding senior services across Queensland, there are a number of agencies involved, including Health. It is hard to unscramble some of that. This will lead us to a better process for those back-of-house government administrative services. It will give us a better sense of who is getting what funding, for what purpose and from what agency.

I note that Myles McGregor-Lowndes and others who are here have been doing great work on the standardisation of chart of accounts. There are a whole lot of other processes that are happening that this legislation does not specifically need to be in existence to provide for, but it is part of that movement to the streamlining of the processes.

I do not think we mentioned local government, but local government gets significant funding. A lot of youth workers, for instance, are funded by my agency direct to local government. Those sorts of grants will be within this legislation.

**Ms JOHNSTONE:** Minister, you just said that you can appoint one CEO from a department to have the authority to conduct investigations. Will they then have the authority to investigate across a number of departments? Will this bill allow for that?

**Ms STRUTHERS:** The intent of the bill is to have a lead agency taking that responsibility, with other players meeting their responsibilities for their part of the funding. It is about the coordination of that. Many agencies—and you are familiar with these—have multiple sources of funding, and quite significant funding. If there are concerns it is important that the action is effective and there is cooperation. Organisations need the appropriate internal review and external review processes. This bill provides for that as well.

**Ms JOHNSTONE:** In relation to the bill and the Auditor-General's new power—the 'follow the dollar' issue—how will the two bills interact when an investigation might have to take place to check if funding has been used appropriately?

**Ms STRUTHERS:** I will get Craig to respond to that.

**Mr Hodges:** The bill has been designed so that it can operate alongside other investigative processes. Another example might be a Child Safety review. There are a range of circumstances where a service delivery or a funding issue might also be connected with a separate issue of concern under other legislation. The bill has been designed so that it can work in concert with other processes. The timing of those are determined by each piece of legislation. It means that this bill can stand alone when it needs to, but it can also work in concert with others if that is required.

**Mrs CUNNINGHAM:** I have a question about the powers of entry. The bill talks about the qualifications of an authorised person and their identity cards et cetera. I am predicating this question on all that being in place. At page 47 of the bill it says that an authorised officer may enter a place on two grounds—one is with the consent of the occupier and the other is with a warrant. With regard to the consent of the occupier, I notice that over the page it talks about public places and gives a definition of a public place. Given some of the jurisdictions and the areas of work for the big picture Department of Communities, including Child Safety and others, part of the funding would be for places like respite

centres. If, because of some concern, an authorised officer is going to enter a respite centre—it might be a residential respite centre—an occupier sounds to me to be very general in that an occupier could be one of the clients. How will that apply, or does it not apply to that sort of scenario? The examples that you gave of a public place were a beach, a park, a road, a saleyard and a showground. Unless I have missed something with the progression in the bill, this power of entry to authorised officers is to places that are receiving this funding. That seems very general.

**Ms STRUTHERS:** I will get Craig to give some clarification on that definition of occupier, which I think is at the heart of your question, Liz. First up, let me say that some of these provisions already exist. It is the Housing Act, for instance, that already enables authorised officers to enter premises. Partly what we are trying to get is consistency across funding programs. Some of these provisions are already in use. I am not entirely sure of the detail of whether there is a definition of occupier in the Housing Act, but I will get Craig to comment on that in a second.

We want to work with organisations and local governments in a cooperative manner. If there is no cooperation we then may have to take that next step of seeking a warrant through a Magistrates Court. As a safeguard then, what we are trying to achieve in the bill is enabling people who may have been affected adversely in some way by a process that was not done properly to seek compensation or some kind of follow-up. Do we need to take this on notice or are you happy to respond? You were quite specific about who is the occupier.

**Mrs CUNNINGHAM:** Yes. In a lot of bills where powers of entry are given it is only to commercial, non-public buildings; they cannot go into homes. There is a specific exclusion in a lot of legislation where powers of entry are granted. If a person runs a business in the front room of their house and the rest of the house is where they are domiciled, they cannot go into the rest of the house. This appears to be more general. The occupier is not specified.

**Mr Swan:** The legislation at clause 63(1) goes through three levels. The person can enter the place with consent, so that would be any part of the premises with consent. So that could include the respite centre or another part of a house. Then they can enter a public place without consent. They can enter any other place with a warrant. It provides the three layers by which you would be able to enter a place.

**Mrs CUNNINGHAM:** Who is the occupier of a respite centre?

**Mr Hodges:** There is a definition of occupier in the dictionary and I will refer members to that. We can certainly provide some further clarification, if that is helpful. The definition is on page 122.

**Ms STRUTHERS:** We are happy to have another look at that and see whether we are satisfied that that definition is adequate. Rather than put you on the spot now to make that assessment, I would be happy to get further feedback from the committee—

**Mrs CUNNINGHAM:** You might fund—I do not know whether you do in Queensland—Endeavour Foundation houses. There might be four or five clients in an Endeavour Foundation house, each of them being the occupier, but none probably competent to understand what their consent is. I will take Endeavour Foundation out of the equation. That was the one that I thought of. It could be a respite centre where the authorised officer comes to the front door and says to the person who answers the door, 'Can I come in?' If it is one of the clients with diminished capacity that person really is not competent to give the right of entry, but they are an occupier.

**Ms STRUTHERS:** This is the benefit of the committee process, because you are drilling down into a very specific issue. I need to be satisfied in bringing forward the legislation that we have these definitions of not only occupier but also consent right. That raises a whole lot of issues. We might get Craig and Brad to have another look at that. If you have further input you would like to provide, please provide that. The definition of occupier itself probably is not adequate for what you are asking. Having given that some consideration, I think we need to look at the consent issue and where there might be diminished capacity or something as well. If you are happy, Madam Chair, we will take that issue on notice and give that more consideration. We welcome any further input from the committee once you have another look at it, too.

**CHAIR:** Okay. Thank you.

**Ms JOHNSTONE:** I will go back to the appointment of an interim manager. In clause 26 it gives the grounds on which a chief executive can appoint the interim managers. It says there 'if they are satisfied that it is reasonably necessary'. What is the trigger for 'reasonably necessary'? How do you reach that threshold?

**Ms STRUTHERS:** Again, I might get Craig to give you a more technical assessment. I guess it is a standard that is applied in legal terms. What is deemed reasonable—what a reasonable person would deem improper practice. Do you want to comment on that?

**Mr Hodges:** The rest of that paragraph goes on to say if it is reasonable necessary 'to remedy the serious concern'. There has to be a presence of the serious concern at the funded entity. The step of appointing an interim manager must be considered to be relevant for remedying that particular concern.

**Ms STRUTHERS:** The other thing to take account of—and again you are all familiar with this—is that we are dealing with independent entities, autonomous entities that have their own governance arrangements. As a funder we largely prefer to work in a way that is cooperative and that those directors or management committee members meet their responsibilities. If complaints are made it is up to that governance body to act on those appropriately. We, as the funder, would only want to come in with the

provisions of this bill if that is not adequate. I guess what Craig has described there are grounds upon which a serious concern is identified and that we are satisfied that the management board, or whoever is governing the agency, is not taking appropriate action or is the source of the problem, which happens.

**Ms JOHNSTONE:** I read through the list of the agencies, because it is pretty broad. There are all sorts of departments that are going to be impacted on by this legislation. So you are satisfied from your consultation that you have ticked off the major peak groups and organisations that could be affected by this? I was having trouble trying to understanding it. This is a whole-of-government measure and I was trying to understand how you consult.

**Ms STRUTHERS:** The Queensland Compact has been the key mechanism as well. The Compact comprises key agencies across a number of those sectors, particularly within the Communities area. I do not know whether the Compact actually engages DEEDI or employment based peak bodies and others. That has certainly been one of the key mechanisms. Certainly, with our committee process this is an opportunity for the public and the organisations to have input as well. I think it has been an ongoing process. Craig would know the detail of meetings and locations, but it has been a pretty extensive consultation process and we have had really welcome and constructive input into the bill.

**Mr Hodges:** Minister, I am happy to provide a bit more detail about the consultation. The minister is correct that the Queensland Compact was the basis for engaging with health and community services peaks and other agencies. Our partners across government and other departments assisted us in reaching their stakeholders and funded entities. Some agencies wrote to peak or representative organisations or other funded entities and offered briefings or meetings as part of the consultation. They were provided with links to the bill and with briefing material along the way.

**Ms STRUTHERS:** You will find as you read through the submissions lots of really constructive input from people. No doubt across agencies there has been a bit of tension and toing and froing about where they are happy to land in relation to a provision that is going to cross agencies. Again I commend the work that Craig and Brad and others have done in getting some pretty hard negotiations to some good outcomes. My sense from the contact I have had with people who have had input into this across agencies and in the non-government sector is that, by all accounts, there is general support. There will be people who are keen to see various provisions strengthened or things that might not be included, but are included in funding agreements themselves, included in the legislation. This is not crossing every T and dotting every I; there will be a lot that will be funding agreements themselves that will govern the arrangements. This is the overarching framework to get that consistency, but the detail can then be provided by way of funding agreements with agencies with their own requirements and the organisation's own requirements as well being addressed at that level.

**CHAIR:** Can I ask a question following on from that. With your amendment of schedule 56 in the grants of aid to Indigenous communities, what do you see as the actual practical differences that will apply now with that amendment?

**Ms STRUTHERS:** I need to get some information on that.

**CHAIR:** It is on page 87.

**Ms STRUTHERS:** I might just get Craig to explain it. It is not complicated, but he knows it all. It saves it coming through the messenger.

**CHAIR:** It does not look like there is much of a difference, so what would be the practical differences?

**Mr Hodges:** In practice, the recipients of the grants of aid are probably not likely to see much of a difference in the process because the bill has been designed to be consistent with common government processes for funding. What this amendment does, like a number of others in the schedules, is make sure that when a decision to provide funding is being made under the relevant act, and the funding is the type of funding that would be provided under this bill, it activates the provisions of the bill and the considerations and requirements of the funding bill apply. It provides a consistent approach to the requirements.

**CHAIR:** Has that not always been the case?

**Mr Hodges:** This bill has not previously applied. What it does is require that the same approach is taken for a grant of aid decision under this particular act as it would be under other acts. It provides the same approach. What would be required is a written request for funding, consideration by a minister to approve funding and then the drawing up of an agreement.

**CHAIR:** Any other questions?

**Ms STRUTHERS:** Thank you for your consideration, members and Madam Chair.

**CHAIR:** Thank you for coming along and providing us with the information. We will send a transcript to you for you to check. It will also be placed on the committee's website. The report will also be sent to you and made available on the website once it is tabled in parliament. In the meantime, if you have any questions or any issues you want to clarify, please do not hesitate to contact the secretariat.

**Ms STRUTHERS:** We will follow up on the issue about the occupier and the consent issue.

**Committee adjourned at 12.04 pm**