HEALTH, COMMUNITIES, DISABILITY SERVICES AND DOMESTIC AND FAMILY VIOLENCE PREVENTION COMMITTEE

Members present:

Ms L Linard MP (Chair)
Mr MF McArdle MP (Deputy Chair)
Mr SE Cramp MP (via teleconference)
Ms LE Donaldson MP (via teleconference)
Mr AD Harper MP
Dr MA Robinson MP (via teleconference)

Staff present:

Mr K Holden (Committee Secretary)
Mr J Gilchrist (Assistant Committee Secretary)

PUBLIC BRIEFING—EXAMINATION OF THE CHILD PROTECTION REFORM AMENDMENT BILL 2017

TRANSCRIPT OF PROCEEDINGS

THURSDAY, 21 SEPTEMBER 2017

Brisbane

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Committee met at 9.13 am

CHAIR: I declare open this public briefing of the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee. I would like to acknowledge the traditional owners of the land on which we are meeting today and pay my respects to elders past, present and emerging. My name is Leanne Linard. I am the chair of the committee and the member for Nudgee. The other members of the committee present here Mr Mark McArdle, the deputy chair and member for Caloundra.

Mr McARDLE: Good morning, ladies.

CHAIR: Mr Aaron Harper, the member for Thuringowa.

Mr HARPER: Good morning.

CHAIR: We have joining us via teleconference Mr Sid Cramp, the member for Gaven.

Mr CRAMP: Good morning.

CHAIR: And Ms Leeane Donaldson, the member for Bundaberg.

Ms DONALDSON: Good morning.

CHAIR: And Mark Robinson, the member for Cleveland.

Dr ROBINSON: Good morning.

CHAIR: Today's briefing is part of the committee's examination of the Child Protection Reform Amendment Bill 2017. The bill was introduced by the Hon. Shannon Fentiman, Minister for Communities, Women and Youth, Minister for Child Safety and Minister for the Prevention of Domestic and Family Violence on 9 August 2017. The committee is required to report on the bill by 28 September 2017.

There are a few procedural matters before we start. The committee is a statutory committee of the Queensland parliament and, as such, represents the parliament. It is an all-party committee that takes a nonpartisan approach to inquiries. Witnesses have been provided with a copy of the instructions for witnesses. So we will take those as read. Hansard will record the proceedings and you will be provided with a copy of the transcript. This briefing will also be broadcast live on the parliament's website.

GILES, Ms Megan, Executive Director, Legislative Reforms, Department of Communities, Child Safety and Disability Services

STROHFELDT, Ms Merrilyn, Deputy Director-General, Service Delivery and Practice, Department of Communities, Child Safety and Disability Services

CHAIR: I warmly welcome you, Ms Megan Giles and Ms Merrilyn Strohfeldt, for coming to brief us again today. We appreciate the opportunity to not only ask supplementary questions but also get your feedback. I understand we received your response to submissions, but this gives us an opportunity to hear from you also about the feedback that the committee has received in the preceding three days while we have been travelling and holding hearings in Townsville, Mount Isa and Palm Island. Can I invite you to open with some comments or feedback on the submissions and what we have heard in the past three days, if you have had a report back from different officers in the field, and then we will open for questions?

Ms Giles: I, too, would like to acknowledge the traditional owners of the land upon which we meet and pay my respects to elders past, present and emerging. We will talk only very briefly about the issues, because we have provided a very comprehensive response to submissions and we would like to give you the opportunity to ask questions today. There are a couple of touchpoints, though. I know that a lot of the submissions that the committee has received have focused particularly on the

issue of permanency and, in particular, two areas in relation to permanency, the first being the provision in clause 32 of the bill around limiting the making of short-term orders to two years unless it is in the best interests of the child to make a longer-term order. I think it is important to clarify that that provision really goes to the Childrens Court and the Childrens Court's power to make successive short-term orders. It does not go to the department's role in supporting families. It is not a time limit on how long a department can spend supporting a child's family to meet their protection and care needs or, even after a child protection order is made, to continue to do that. When a long-term order is made, of course, we continue to involve the family in the child's life. There is also an exception in that provision, as I think the committee and some witnesses before the committee have pointed out, that makes it clear that the court can make a longer-term term order if it is in the best interests of the child and if the court is satisfied that the child's parents are likely to continue to work with us and meet the child's protection and care needs during that longer-term order.

On the issue of permanent care orders, I would also like to point out that I know number of submissions have raised concerns around the protection and safeguards that exist in permanent care orders. I think it is important to point out that permanent care orders really shift the focus from the department playing a key role in the child's life to the child's permanent guardian being the legal guardian for the child. As such, the bill designs a new suite of safeguards rather than applying the existing safeguards that exist for other types of long-term guardianship orders. There would be little purpose in us just using those safeguards that exist for long-term guardianship orders now on permanent care orders because the order would, in effect, have the same effect as the existing suite of orders that are available.

Some other jurisdictions—New South Wales and Victoria, for example—do not have the equivalent of our existing long-term guardianship orders. They have only orders similar to our permanent care order in the bill. We are retaining our long-term guardianship order options. If a court is concerned that the permanent guardian is not a suitable person to exercise the full guardianship for the child, they still have those other options that they can use as alternatives to permanent care orders.

The other thing that I would like to point out is that there have been some issues raised about information sharing and particularly the effect that that might have on community legal services. Yes, community legal services might fall within the definition of 'specialist service provider' in the bill as they may fall within the definition of 'service provider' in the current act. The bill does a couple of things. Firstly, similar to how the information-sharing provisions in the current act work as an enabling suite of provisions, the majority of the provisions in the bill are also enabling. Also, for the first time we are introducing new principles for information sharing, including the principle that the preferred way of sharing information is with consent. That is not in the legislation now—of course, the consent of the person about whom the information relates when it is safe to get that consent.

There is a provision in the bill—it is new section 159N—that is a compulsion section that requires information to be provided to the department if requested. That provision exists in the current legislation. However, clause 66 of the bill protects privilege for the purposes of the disclosure of information. It is our intent and our understanding that clause 66 would, in effect, protect any legal professional privilege that exists on information held by a community legal service. Those were the only issues that I particularly wanted to cover from what I have heard from the committee's hearings. I will leave it for you if you have any questions that we would be able to answer.

CHAIR: Thank you very much for those opening statements. Can I just clarify that the committee has received your response to submissions, but we have not personally received a copy yet because it came in when we were travelling. We have not read that. We may well cover that ground again today and seek clarification around those issues. Thank you very much. Most of my questions have arisen either from the initial written brief that you have kindly provided or things that were raised when we were travelling. I am interested in understanding the involvement of independent entities in any decision by a court to make a permanent care order. In that regard am referring particularly to QATSICPP's submission and reference to the Victorian legislation. You would know, because you read the submissions, but the key concern in the submission was that the wording that the Childrens Court must have proper regard to Aboriginal tradition does not state clearly how this will occur and thus should include a specific reference in the legislation to the independent entity. I do not have in my mind how that will operate in practice. I will move to my supplementary question, which is more an issue that was raised by the recognised entity, which is that these independent entities, if they are an individual, may not be resourced or educated in policy or process to really be a strong advocate. Can you speak to that, please?

Ms Giles: I will go to your first question. In terms of the role of independent Aboriginal and Torres Strait Islander entities in the Childrens Court, we do not need to reference that specifically in relation to permanent care orders, because it is captured at the beginning of the bill in proposed new section 6AB in clause 8, which requires the Childrens Court in the first instance—

When exercising a power under this Act in relation to an Aboriginal or Torres Strait Islander child, the court must have regard to—

(a) Aboriginal tradition and Island custom relating to the child; and

…

(b) the child placement principles in relation to the child.

It goes on to say in subclause 3—

(3) To inform itself about the matters ... the court may have regard to the views about those matters of—

(a) an independent Aboriginal or Torres Strait Islander entity for the child; or

(b) the child; or

(c) a member of the child's family

That requirement is up-front and it applies to all of the Childrens Court processes, so we do not then need to pick it up specifically in each of the provisions throughout the legislation that relate to specific exercises of the Childrens Court's powers and functions.

Your second question was around how an independent Aboriginal and Torres Strait Islander entity for a child will participate in a court process. The Childrens Court processes are not bound by the rules of evidence. The court can inform itself in any way it thinks appropriate. The paramount principle for the court is the safety, wellbeing and best interests of the child. It is up to an individual magistrate how they conduct proceedings before them. That ranges throughout the state. Currently, in relation to the role of recognised entities, a similar provision to the one that I have just read out exists in the Child Protection Act for recognised entities. They are not a party to the proceedings, but some magistrates let them be at the bar table and make submissions. Some let them cross-examine witnesses. It is really up to the court. There are also wide powers throughout the act that enable the court to exercise those functions more clearly. Under section 113 of the act, the court can make a person a party to the proceedings if they have a significant interest in the proceedings and give them some of the rights and responsibilities of a party to those proceedings.

I think you went on further to ask how will independent Aboriginal and Torres Strait Islander entities be resourced and skilled. In terms of our thinking at this stage around how those provisions will be implemented, under the bill the existing suite of 11 recognised entities across the state continue to perform that function of an independent Aboriginal and Torres Strait Islander entity for a child. They are resourced and funded to perform their current functions with policies and procedures in place. The role shifts a little bit from giving advice themselves to facilitating the participation of families to give that advice and give the court that advice around culture and custom.

In terms of skilling up other people in the community to perform those roles, the intent is that the provision is flexible and that the function of an independent entity could be provided by even an elder, or an aunty, or a family member for the child. We have done some preliminary work inside the department around how we might develop a suite of tools to assist the individual entity in a particular matter to perform those functions. In identifying who would provide that function in a particular matter, the bill makes it clear that we would seek the input of the family when it is safe to do so—get their advice and consent about whom they think would be well placed to perform that function for them, given the role shifts to be about them. I am not sure if I have answered your question.

CHAIR: No, you have. I appreciate that there are different limbs to it. Certainly, from what we heard in regard to the self-determination elements of the bill and also independent entities, the community wants to have the ultimate ownership of the decision. They felt, whether fairly or not, that previously the case has been that they are not involved early enough, or at all, that they have not been given the opportunity to say, 'We could take responsibility for this within our overall kin and family arrangements,' but the child has been moved elsewhere. To me, I think it is a step in the right direction, because it recognises that you are empowering individuals and elders. We heard strongly from the grandmothers in the community about wanting that sense of ownership. Equally, when we were in Townsville, the recognised entity raised some pertinent points about—and there is a tension there, I appreciate that—'We are resourced and understand the system and the processes and bring something important to the table, too.' To my mind, I appreciate that the family will be the ones to indicate, 'I want the recognised entity to speak for me,' or, 'I want this elder to speak for me' but how will all of that operate in practice? I think that is a key message that came up for us. We are looking at the bill, but often the commentary is about the practice on the ground.

Ms Giles: Certainly, I have had conversations with all of the recognised entities in teleconferences. They have indicated support for the direction of the bill, but also a willingness to participate in how the department develops the suite of things that we need to put in place to provide more flexibility about who could provide this independent entity role, recognising the skills that they have already in terms of performing the function that REs have currently.

CHAIR: And what their relationship might be. The recognised entity was saying, 'Maybe we still come in and have an important facilitation role.' Of course, there needs to be that transition, which I think the bill gives effect to, from the department being the client and a recognised entity, to use their wording, to being an advocate for the community but still have that elder. I think there are some wonderful opportunities there. It is just how that will operate in practice and resourcing the community to do that.

Ms Giles: We really want to make sure that our primary focus in decision-making, planning and discussion is on getting the child's family to the table—that is what the principle of self-determination is all about—and recognising that the best placed source of cultural authority for the child is the child's family themselves.

Ms Strohfeldt: The only thing that I would like to add is that, currently, we have a process review underway in terms of the role of the recognised entity. We are trying to move it a little closer towards what we have outlined in the act. That is currently underway.

CHAIR: I think that is a positive thing. I just have two more lines of questioning. I do not want to take all the other members' time. I can come back to some of my questions. I am interested in the support provided to kinship carers. I apologise that I am not aware of it. I know there are support payments for parents and for foster carers, but it was raised by some of the women elders in the community that they do not want to, to use their terminology, 'dob' in their children who may not be doing a good job of parenting because if they lose those parenting payments they then lose their home and it increases and deepens the cycle of concern and poverty for the family. This is a very vexed issue. They do not have any financial support as the kinship carers who might have 15—one had 20—children in their care. From your point of view this cannot be an uncommon concern raised in some of these communities. The suggestion was made if the child spends 75 per cent of their time in their care then there should be some kind of kinship support payments. What do kin carers get now? Can you clarify that for me?

Ms Strohfeldt: Kinship carers get pretty much the same allowances that foster carers receive.

CHAIR: If there is a formal order?

Ms Strohfeldt: If there is a formal order, absolutely. What I would say though is that it does not necessarily equate that an order would mean that that child would be removed from that family. It may be that we can make things safe in that household and family through some other means that enables that child to stay in the house. For example, it could be that granny could live within that household. There are a whole heap of things that could be considered prior to removal of the child from the parent so long as we can maintain the safety and the wellbeing of the child.

CHAIR: I was aware they got some payment. It is equal to foster carers. I suspect this is more in the early stages they do not want to tell the department that there is a risk within this family because they are aware that that enters them into a formal process which will have repercussions by nature of that. That is a very difficult one. The other thing I particularly wanted to ask before I hand over, and I have more supplementaries but I can ask them later, is a question raised by the Aboriginal and Torres Strait Islander Legal Service in North Queensland. It was a point that I know would be in your response, but I thought it was a good point. On page 3 of their submission they are referring to section 6AA and their concern is the potential inclusion of Aboriginal and Torres Strait Islander entities or family in decision-making because of the section which reads—

> is not practicable because an independent Aboriginal or Torres Strait Islander entity for the child is not available or urgent action is required ...

Something that was raised on Palm Island as well as Townsville and potentially Mount Isa is that it should actually read 'where the entity is not available and urgent action is required'. I think the concern again was not the legislation, but it was more in practice what does 'not available' mean? Does it mean I tried to call a recognised entity? Does it mean I tried to call the known independent entity, they did not answer and so therefore I am going to make decisions and that early involvement is lost early. I thought that sounded reasonable. I wanted to give you the opportunity to say whether that was an issue or something considered or previously raised?

Ms Giles: Yes, it is addressed in our lengthy written response to issues, but I will park that and answer your question. The intent of the provision is to require the department as far as possible to involve an independent Aboriginal and Torres Strait Islander entity when decisions are made about a child. However, we need to balance that with the role and functions of the department, the chief executive as the statutory child protection authority, to take action sometimes quite immediately and that despite best efforts we may not be able to contact an independent entity at the point in time, particularly when an urgent decision is made, but that may not only be when there is a circumstance of urgency.

I can understand the concerns that the service has raised. However, at the end of the day the legislation places some quite clear statutory obligations on the chief executive to act to protect a child and the department needs to be able to do that, including when it is not practicable to contact the independent entity or when an urgent decision needs to be made. Those things might be that there has been an incident in the middle of the night or a domestic violence callout or despite reasonable efforts we have not been able to get onto grandma who is performing the function of the independent entity in this particular case. I guess the term ‘not practicable’ is one that the drafters use in legislation across the statute books. It means not that we can get out of it without making reasonable efforts but recognises that in some circumstances the exercise of statutory obligations needs to take precedence.

CHAIR: I think the use of ‘not practicable’ is fine. I do not think that was a key concern. I think the concern was the use of the word ‘or’ rather than ‘and’. All the situations you raise could occur and still the wording ‘and’ would have allowed for those situations and the department to operate. I raise that as something that I think was a valid consideration raised and given the deep concern, which I do not need to tell you about, you are the specialist in this area, you would well have heard these concerns over a long period of time, and anxiety, I think it is fair to say, about decisions that are made about families that seemed something potentially that could be done to provide additional security, but I wanted to get your view.

Ms Giles: It is the intent that it is an ‘or’. I think the issues that the service has raised are important though as well in terms of practice issues that they are seeing and observing, which are important things for the department to take into consideration through the implementation not only of that little subsection, but of all of the provisions in the bill and the act. It is important that they raise that issue and to remind us of those issues.

CHAIR: Member for Gaven, are you on the line? Do you have questions of the department at this point?

Mr CRAMP: Unfortunately it cut out a couple of times and the sound is pretty poor quality. I will read the transcript and if I have anything I will seek to follow it up. Other than that I am fine.

CHAIR: Thank you. Member for Cleveland?

Dr ROBINSON: No, I am fine.

CHAIR: Member for Bundaberg, I know you are at a disadvantage because you were not necessarily able to travel with us, but do you have any questions?

Ms DONALDSON: I have no questions at the moment.

CHAIR: Member for Thuringowa?

Mr HARPER: Thank you both for being here. The last few days in Mount Isa, Palm Island and Townsville have been informative in terms of their different nuances and challenges in their areas, in particular Palm Island. You spoke about the recognised entity and looking to better resource them, but some of the language that came back was that the community was not consulted in relation to out-of-home care placements. There was one officer, I think, on Palm Island. How do you better resource them? If they can set up an independent entity on Palm Island as opposed to the recognised entity through TAIHS in Townsville, how do you physically resource that? I do not know if you can speak to that particular point.

Ms Strohfeldt: We can certainly consider whether or not we can make arrangements for Palm Island. As you say, it is currently serviced through TAIHS in Townsville, but we could certainly take that on notice and consider that.

Mr HARPER: That was some very genuine feedback from the community. It was a reasonably good turnout, I think, at Palm Island.

Ms Giles: As Merrilyn has already pointed out to the committee, the department is doing a comprehensive piece of work around reviewing the role of recognised entities. That work has been underway and preceded the provisions that are in the bill. It will be complemented by the provisions

in the bill that then shift the role and functions of recognised entities. That work will continue. As part of that work we will be looking at what is the resourcing required for recognised entities to perform the new functions that they have under the reformed model for the delivery of those services which may not be limited to independent Aboriginal and Torres Strait Islander entities under the act. We are working with them around what are they best placed to do into the future given the current expertise that those services have across the state. The resourcing consideration comes into consideration with what their functions are into the future.

Mr HARPER: Some of the other feedback we got, particularly in Mount Isa, was around simplifying the language within the bill, particularly around self-determination. I do not know if you can speak to that particular point. You would have heard or picked up some of that no doubt if you were following the public briefings. Can you expand on that?

Ms Giles: Can I check with you, the comments were that the legislation is too complicated in its wording? Unfortunately, as the committee is probably well aware, legislation has legal effect and so our drafters, despite the best efforts that we make with them to use plain English and that contemporary drafting practice is that provisions should be easy to understand, sometimes even the best of us with several degrees in law still struggle to understand some of the concepts and words in legislation. However, I guess then it is the role of the department and other government entities who administer that legislation to develop more plain English fact sheets and other information that supports the interpretation of the legislation and communicates that to the community rather than the legislation itself which has legal effect and needs to be drafted in a way that uses terms that have previously been defined at law. It is a complex issue.

Mr HARPER: It is, and I think it is open to interpretation whoever opens the page. That is all for now. I might come back to something later on.

CHAIR: Deputy chair?

Mr McARDLE: Thank you, Chair, and thank you, ladies, for being here this morning. I have not had a chance to read your documents yet, but I shall brace for the weekend. Ms Giles, you made mention earlier that new section 6AB referred to the independent entity. I note of course that in subsection (3) it only uses the word 'may have regard'. There is no compulsion for that even to be considered by a court, as I read the word 'may'.

Ms Giles: The compulsion is in subsection (2)—

When exercising a power under this Act in relation to an Aboriginal or Torres Strait Islander child, the court must have regard to—

(a) Aboriginal tradition and Island custom relating to the child

Then subsection 3 is not meant to limit the court's discretion in how the court accesses that information taking into consideration the other provisions in the act around the court being able to inform itself in any way it sees fit. Subsection (3) is meant to be giving guidance in terms of how the court exercises the mandatory obligation in subsection (2).

Mr McARDLE: Yes, I understand that. Why not use the word 'shall'? I would have thought the independent entity, given the function they are going to serve, would be an exceptionally important entity that would prepare a document to go to the court. It does not make sense to me. Here we have an independent entity being established by the legislation, but the court 'may' have regard to its views. You still need to use the word 'shall' have regard to the views but give such weight to it as it deems fit. When you consider the Victorian model, there is a requirement, if I recall correctly, under section 323 that they get a report from an agency that recommends the making of the order. You refer to New South Wales and Victoria as well in regard to permanent care orders and you made section 6AB as part of the principles that flow through whatever process we are looking at.

Ms Giles: Yes, that's correct.

Mr McARDLE: I would have thought that that sort of report 'shall' be considered but will be given such weight because 'may' be considered means the court is not even required to consider it. It may find evidence by other means.

Ms Giles: That's correct. In fact, the intent of the provision is that we do not limit the discretion of the court to inform itself in any way it sees fit in terms of the tradition relating to that particular child, taking into consideration that the role of the independent Aboriginal and Torres Strait Islander entity is not to give advice itself around the making of an order or otherwise but rather to facilitate the participation of the child and their family as the experts in the cultural issues that relate to that particular child or family itself. We would like the court to be in a position ideally where the parents and the child, particularly the parents, are exercising their rights as parties to the proceedings to give

that cultural advice to the court directly themselves. Subsection (3) is intended not to limit the way the courts would get that information. The provisions in the bill have been provided to the Childrens Court and to our colleagues at the Department of Justice and Attorney-General and not only that provision there, but throughout the legislation the general feedback from the courts and from Justice and Attorney-General is that as far as possible the discretion of the court in terms of how it exercises the obligation to take into consideration the cultural issues should not be fettered.

Mr McARDLE: Why put it in at all? Why not leave 2(a) as it is? Why is (3) there at all, then? Why does it exist unless there is a meaning behind it?

Ms Giles: Courts generally like to be given some guidance around how they will inform themselves of those things.

Mr McARDLE: Do you think so?

Ms Giles: Yes. That provision was included, I can say, directly on the request of our colleagues. The way it works in practice now is through our contacts with the magistracy. The way it works practically at the moment is that a Childrens Court form is completed by the Director of Child Protection Litigation that advises the court about who is the recognised entity for a particular child. That recognised entity can attend court proceedings as it sees fit and can participate in hearings if the court requires them to do so. It certainly is not our intent, given the broad discretion of the court to exercise its powers and functions in the best interests of the child, to fetter how a court might come to that particular decision in the best interests of the child in a particular matter.

Mr McARDLE: I suppose it leaves the argument that the best interests of the child covers all of this; the whole lot.

Ms Strohfeldt: It is the paramount principal.

Mr McARDLE: It covers everything: any report, any police document, any child safety record, as the case may be. Again, I think that subsection (3) is superfluous. We are talking about a court matter that will take several years to get from day 1 of notification to a court determination. I am concerned that an IE who has ongoing contact and will be interacting with this family and other people within the community will prepare a report, I suspect, for the court or give evidence before the court, but the court may ignore it. It does not make sense to me. Here we have a central core theme in the bill, an independent entity to a large extent replacing a recognised entity, and their consideration is a ‘may’. Their belief is a ‘may’.

Ms Giles: Because their function is to facilitate the child and the family to participate in the decision-making, not to be an expert advisor in their own right.

Mr McARDLE: Their report will also include observations of how the family interact and what the parents have done to comply with reasonable requests. They are heavily involved in the whole process from day 1. We will move on from that, I suspect.

Ms Giles: There is no requirement for an independent entity to prepare a report for the court.

Mr McARDLE: No, but they could give evidence.

Ms Giles: They could do, if a court requires them to.

Mr McARDLE: Correct. The evidence will be on how the family conducted themselves during a lengthy period. That will be very important for a court determination, I would have thought. Therefore, I am concerned that their evidence ‘may’ be of value as opposed to ‘shall’ be of value.

Ms Giles: I do not think we can otherwise prescribe in the legislation what a court must do in terms of placing particular weight in an individual matter on certain evidence that is before the court in a particular case. I think that is a discretion for the magistrate. It is also important to remember that the purpose of this clause is about culture and custom. It is about giving advice to the court, which the court must then take into consideration, around the relevant culture and traditional matters for a particular child and family.

Mr McARDLE: We will differ on that. I think it is either superfluous entirely or the wording actually plays down the role of the independent agency. On Palm Island we were advised that the IEs should be locally based. The recognised entity is based in Townsville. They were posing the question that the independent entity should be based on the island. Is that likely to occur, do you think?

Ms Strohfeldt: I think that was a similar question to one I received from the member for Thuringowa. It is in the mix for consideration as part of our review in general of recognised entities and also what we do going forward in the implementation of the bill.

Ms Giles: Also, the definition of an independent entity in clause 8 of the bill is deliberately intended to be broad, so that it could include in a particular case an elder or a significant family member for the child and their family. It is not intended to limit it to an entity that is funded by a government as an organisation, as an NGO. It could be a person who is significant in the child's life, given that the function shifts to being about facilitating the participation of the child and the family in decision-making.

Mr McARDLE: When will that determination be made by the department as to the raft or breadth of who is going to be independent entity?

Ms Giles: The bill makes it clear that we need to continue, as the current requirements in the legislation point out, to facilitate the participation of the entity and of the family in decision-making at all critical points across any decision that is made by the department and must in relation to significant decisions. It is not envisaged that that would be limited to any particular part of a department's involvement with the child and the family. It is also not envisaged that there would need to be one entity identified for the child at a particular point in time that could not then change to another entity at a future point in time, if for some reason the grandmother or the elder or the other significant person was no longer able to perform that function. Given the role of that function shifts from being expert advisers to the department, so shifting from being a service to the department, to being a service for the family and assisting them to participate in processes themselves, that function could be performed by an individual or an organisation as identified and with the consent of the child and their family at any point in the continuum of our involvement with the child and the family. It could change, if it is needed to, for some reason.

Mr McARDLE: It might well be that a person on Palm Island such as a grandmother becomes an IE, but then it goes back to Townsville later and it could go to Cairns later. That is what I am trying to understand.

Ms Giles: The role is about the child and family participating. It is hard to talk generally given the breadth of the provisions in the legislation are meant to be general and to apply in all circumstances. It would be hard to imagine how the role could be performed by someone who is not in the same community as the child and the family, given the role of the independent entity is to facilitate the participation of the child and family in the decision-making.

Mr McARDLE: I suppose we are talking words on paper.

Ms Giles: Yes, that is correct.

Mr McARDLE: In Mount Isa, on Palm Island and in Townsville, the issue on the ground became, shall we say, the discussion point. This was raised very clearly on Palm Island. They are concerned that Townsville-based REs are looking after Palm Island. They said, 'No, we want it locally based'. Are you saying that that might happen or that it will happen, but it could change in relation to who that IE is? That is what I need to understand.

Ms Giles: Yes, that is correct.

Mr McARDLE: I am trying to put their question to you, so that when they read the report they get that question answered.

Ms Giles: One of the issues that you are raising is one of the reasons why we are moving to these provisions in the bill that provide greater flexibility about who can perform the function of an independent entity for a child. It will not be limited just to a funded non-government organisation locked into a particular location.

Mr McARDLE: When will it go to Palm Island? Will it go to Palm Island and will it stay there?

Ms Giles: If a child on Palm Island is subject to intervention by the department, at any point in that intervention the child and the family will have an independent entity for them.

Mr McARDLE: Where?

Ms Giles: Wherever they choose.

Mr McARDLE: They will choose; the department will not choose?

Ms Giles: They could nominate that it continues to be the Townsville-based service, if that is what the family wanted. They could nominate an elder in the community. I do not want to limit—

Mr McARDLE: If they say Palm Island, can the department under this bill change that? Under this bill, can the department change the location of the IE or is it always with the family? That is what they want to know. I think I am right there, Madam Chair. It is a very important point that they raise.

Ms Giles: If you look at clause 8, section 6 is the section that goes to who can perform the role of an independent Aboriginal or Torres Strait Islander entity for a child. That provision does require the chief executive to be satisfied that the person to perform that function is a suitable person. It also has some more detailed provisions around being satisfied that the person is, in fact, a person of significance for the child or the child's family; is a suitable person for associating on a daily basis with the child—that is a term defined in the Child Protection Regulation at the moment; is a person with appropriate authority to speak on behalf of the child; and is not an officer or employee of the department. So long as the person nominated by a family fits within all of those provisions, the department would work with the family to support that person to perform those functions.

Obviously, we need to have some safeguards in place. I talked at the public briefing previously with the committee about the bill around needing to have some checks and balances in place to ensure that it is not a domestic violence perpetrator, for example, who is intimidating or influencing the family to nominate them to perform that role.

Mr McARDLE: I think we can give credit to the people of Palm Island to do the right thing and to pick a person who is going to protect the child. I find it very incredible that they would even contemplate, particularly the grandmothers we spoke to, someone who has committed domestic violence as a relevant person to be the IE.

Ms Giles: Of course I am not making any insinuations about Palm Island. I am just talking about the provisions in the bill that appropriately include safeguards around nominating the person to perform that function and there needing to be some safeguards around that person being a suitable person.

Mr McARDLE: You would say section 8 would mean that they will be safe, and I think we can assume common sense in these communities and that the members of the community who are most concerned will act in the best interests of the child. In particular, the grandmothers who are seen to be and in many cases are the leader of the family will act appropriately. In those cases, there would never be a concern about the IE being removed from a person on the island?

Ms Giles: I cannot give that assurance, because that provision would need to be applied in every individual case.

Mr McARDLE: That is fine. One of the things that really struck many people, in fact, I think the bulk of people, was the right of review under section 65A. On my reading of that particular section, the director of litigation is the only person who can actually seek an application to review. There was a division between whether a child and a parent or a child alone should have the right to seek a review. I appreciate that the child can seek legal advice and the parents can seek leave advice, but under that provision there is nothing to allow them to make an application of their own motion to the appropriate jurisdiction. I do not think I am mistaken in saying that both the Indigenous and non-Indigenous communities were concerned that was seen as a very harsh rule, particularly for children.

A child of three or four will have a point of view, but will be given little weight given the age of the child. However, at 12 or 15 years, we know courts are very reluctant—particularly for a 15- or 16-year-old—to not accept their point of view, because they are going to walk out the door anyway. Is there any reason why that cannot reflect the right, particularly of a child and maybe a parent in certain circumstances, to make application to the court and let the court decide whether or not that is an appropriate application, whether it has merit and perhaps even amend the order? I understand very clearly the argument about the need for a conclusion of legal proceedings. However, that struck me as a very strong point that came from many people who gave evidence before the committee across the past three days.

Ms Giles: I have heard those concerns raised by people at the hearing last Friday and also in their submissions. The intent of that provision is to recognise the fact that, as opposed to the existing long-term guardianship orders that will continue to be available to a court, a permanent care order is intended to be exactly that: a permanent order. I think it should be made clear that there are still rights of appeal that exist under the legislation that are not altered by clause 38.

Mr McARDLE: Not review; it is appeal.

Ms Giles: Appeal provisions.

Mr McARDLE: Correct.

Ms Giles: Certainly I was concerned, through some of the stakeholders I heard, whether there was a misunderstanding that there was not only not an ability under a permanent care order for a parent or a child to bring an application to vary or revoke the order but also no appeal rights. I think it

is important to make it clear that there are still existing appeal rights. The provision is intended to sit alongside the other safeguards that we have in the bill. For example, with the introduction of a complaints framework, specifically in relation to permanent care orders that recognises the fact that the order is intended to be permanent and long term. That order in itself provides stability and security for a child. We have heard, through the consultation on the review of the act, from children and young people themselves, that one of the reasons why they want this type of order in place to be an option for them is because even knowing that their parents may at any time bring an application for an order to vary or revoke the long-term guardianship order that they are subject to creates instability and uncertainty for them. They want an option where they can be on an order until they are 18, knowing that it cannot be subject to ongoing review in the courts. It is intended to be a permanent order.

The complaints framework then enables a child or a member of the child's family or a permanent guardian, as issues arise throughout the length of the permanent care order, to come back to the department and make a complaint, along with the requirement or the ability of a permanent guardian or a child to contact the department at any time to ask for the case plan for the child to be reviewed. We see those two mechanisms as being the first point of call. You would go to an application to vary or revoke the order as a last resort. If any issues come up through the life of the child during the permanent care order, we would want to be able to be given the opportunity as a department to support the child, the guardian and the family to resolve those issues in the first instance, before the matter went off to an application before the court to vary or revoke the order.

Mr McARDLE: Why not say that?

Ms Giles: In the bill, are you suggesting?

Mr McARDLE: My concern is that you have argued in relation to—I will let it go.

CHAIR: Ms Giles and Ms Strohfeldt, I thank you very much for coming back to the committee. As I should have said in my initial questioning, while many issues were raised—as you would expect; we travel and hold hearings to understand those issues—and speaking on my own behalf and not on behalf of the committee, one thing that I felt did come up consistently was a very passionate and heartfelt position that those child placement principles should be embedded in the act and that is what you are doing. Every time I or anyone mentioned that, there was a great sense of relief. I appreciate in your submission you talked about how that has happened over the past 20 years to varying degrees. Whether or not we should have done it 20 years ago, it is being done. Something very strongly heard throughout the communities was that that is a wonderful thing. I wanted to say that, as well. For me personally, it was very special on Palm Island when they understood that. The mayor himself raised how important that was.

On behalf of the committee, I thank you for coming and I also thank your fellow departmental officers sitting behind you who have been involved in the bill. I declare the hearing closed.

Committee adjourned at 10.03 am