

PUBLIC GUARDIAN BILL 2014

Explanatory Notes

Short title

The short title of the Bill is the Public Guardian Bill 2014.

Policy objectives and the reasons for them

On 1 July 2013, the Queensland Child Protection Commission of Inquiry (the Commission) released its report - *Taking Responsibility: A Road Map for Queensland Child Protection*. The Commission found that the child protection system is under immense stress and made 121 recommendations aimed at addressing the risk of systemic failure and making Queensland the safest place to raise children.

The Commission found that children in the child protection system are particularly vulnerable and need to have their voices heard. Assisting them to understand the system and to be involved in decision making processes sets them on the right path for the future. The Commission identified that the support services currently provided to children in the child protection system by the Commission for Children and Young People and Child Guardian (CCYPCG) do not have the required focus on individual support and advocacy for children and, in the case of the community visitor program, has too wide an ambit.

The Commission recommended that:

- the role of the Child Guardian (within the CCYPCG) be refocused on providing individual advocacy for children and young people in the child protection system. The Commission noted that the role could be combined with the existing Adult Guardian to form the Public Guardian of Queensland, an independent statutory body reporting to the Attorney-General and Minister for Justice (recommendation 12.7); and
- the role of Child Guardian — operating primarily from statewide ‘advocacy hubs’ that are readily accessible to children and young people — assume the responsibilities of the child protection community visitors and re-focus on young people who are considered most vulnerable (recommendation 12.8).

On 16 December 2013, the Queensland Government released its response to the Commission’s report, supporting the key reforms to advocacy services and the visitor program for children in the child protection system recommended by the Commission.

The Public Guardian Bill 2014 (the Bill) gives effect to recommendations 12.7 and 12.8 of the Commission’s report. The policy objectives of the Bill are to:

1. establish the role of the Public Guardian, an independent statutory body, reporting to the Attorney-General and Minister for Justice;
2. transfer refocussed child guardian functions including child advocacy and visit functions from the CCYPCG to the Public Guardian;
3. transfer the functions and powers of the Adult Guardian, including for the community visitor program, to the Public Guardian and consequently abolish the position of Adult Guardian; and
4. make consequential amendments to the *Child Protection Act 1999* (CP Act), *Commission for Children and Young People and Child Guardian Act 2000* (CCYPCG Act), *Guardianship and Administration Act 2000* (GA Act) and other Queensland legislation to support the above policy objectives.

Achievement of policy objectives

1. Establish the role of Public Guardian, an independent statutory body, reporting to the Attorney-General and Minister for Justice

The Bill establishes the Public Guardian, as an independent statutory position. The Public Guardian has control of the office of the Public Guardian (the office) and its staff. The Public Guardian is not under Ministerial control. The Public Guardian will be required to provide an annual report to the Minister on the performance of the office, including specific information about the child and adult community visitor programs. The Minister must table the report in the Legislative Assembly to ensure accountability and transparency.

Under the Bill, the Public Guardian is appointed by the Governor in Council for a term of up to five years, but may be reappointed for further terms. A person is eligible for appointment as the Public Guardian only if the person has demonstrated qualities of leadership, management and innovation in a senior government or a private sector role. A person may not hold office as the Public Guardian while the person holds another office having functions concerning the rights and interests of, or provision of services or facilities to adults with impaired capacity or to children.

The Bill provides that staff of the Public Guardian will be employed under the *Public Service Act 2008*. In addition, the Public Guardian can appoint community visitors necessary for both the adult and child community visitor programs. Other functions may also be delegated to community visitors where necessary and where the Public Guardian considers the visitor to be appropriately qualified to undertake the function.

The Public Guardian functions under the Bill are divided into two streams: one set of functions relate to adults with impaired capacity for a matter (adult guardian functions); and the other stream relate to children who are subject to orders, agreements or interventions under the CP Act (relevant children) and also children staying at visitable sites (child advocate functions). This delineation of functions is a safeguard against dilution of the respective programs.

The adult guardian functions have been transferred from Chapters 8 and 10 of the GA Act, including the community visitor program to safeguard the interests of adults with impaired capacity for a matter residing at visitable sites.

The Public Guardian is given child advocate functions allowing it to provide a continuum of services and support. In addition, the Public Guardian is responsible for providing a community visitor program for children.

The Public Guardian will have the ability to delegate functions to appropriately qualified staff, and consult with, and employ medical, legal, accounting and other professionals as required. The Public Guardian will also have the ability to engage external contractors to undertake child advocate functions, with the exception of providing the community visitor program. The Bill provides the Public Guardian with the flexibility to enable services to be responsive to local needs and conditions and to allow some services to be delivered by the Public Guardian and others to be outsourced, (where cost-efficient and appropriate), to non government service providers. These arrangements in the Bill also promote clear lines of responsibility to the Public Guardian as the leader of the office, opportunities for shared management structures and policies across the office to facilitate a cohesive culture, and to maximise efficiencies, and therefore the available resources, to deliver better outcomes for clients.

2. Transfer refocussed Child Guardian functions including child advocacy and visit functions from the Commission for Children and Young People and Child Guardian (CCYPCG) to the Public Guardian

The Bill provides that the Public Guardian will undertake functions such as general information provision and support, monitoring plans, advocacy, mediation, intervention in court, tribunal hearings and conferences in relation to relevant children. Relevant children include children who are subject to any of the following under the CP Act: temporary assessment order (section 27(1)); court assessment order (section 44); temporary custody order (section 51AE); intervention with parent's agreement (Chapter 2, Part 3B, Division 2); care agreement (51ZE); child protection order (section 61); or transition order (section 65A). The Public Guardian will also be able to assist children who immediately before the order, agreement or intervention stopped, the Public Guardian was providing help and the Public Guardian believes it is appropriate to finish helping the child on a particular matter; or if the Public Guardian believes a child needs help in reviewing a decision to end the order, agreement or intervention. In addition, the Public Guardian may help with transition from being subject to an order, agreement or intervention if a child turns 18 and requests the help.

Under the Bill, the Public Guardian will administer the community visitor program for relevant children who are residing in out-of-home care and all children who are staying at a visitable site. Visitable sites include residential care facilities, detention centres, boot camps, corrective services facilities and mental health facilities.

The Bill prescribes guiding principles to be considered by the Public Guardian and any other person undertaking a child advocacy function to ensure that the focus of programs remains on individual advocacy and promoting and protecting the rights, interests and wellbeing of children. The best interests of children are the paramount consideration.

Child advocacy functions

The Bill provides the Public Guardian with child advocacy functions and necessary powers to promote and protect the rights, interests and wellbeing of relevant children and children at visitable sites.

The Bill provides the Public Guardian with powers necessary to exercise the child advocacy functions. When performing a child advocate function, or exercising a power in relation to a child, a person must seek, and take into account, the views and wishes of the child in a way that has regard to the child's age and maturity.

To ensure that the Public Guardian has the information required to be able to advocate on behalf of children and conduct an effective community visitor program, the Bill provides the Public Guardian with the ability to obtain and disclose information, including confidential information, required for the performance of child advocate functions. Prescribed entities, which include government and non-government providers of education, health and child and family support services, the Family and Child Commission, Queensland Police Service, Director of Public Prosecutions, Legal Aid Queensland and the Department of Communities, Child Safety and Disability Services, must comply with a Public Guardian request for information. Appropriate exceptions apply for disclosures such as those that would endanger a person's wellbeing or that would prejudice certain investigations. These provisions override any other law that would otherwise prohibit or restrict the giving of information, with the exception of sections 186, 189, 193 and 194 of the CP Act which protect the confidentiality of notifiers of harm or risk of harm and relate to the publication of information leading to the identity of children (including child victims) and restrictions on reporting on court proceedings with child witnesses. The use of the information exchanged under these provisions will be protected by the strict confidentiality provisions in the Bill.

The Bill also requires the Chief Executive (Child Safety) to advise the Public Guardian as soon as practicable after becoming aware that a child is subject to, or no longer subject to, orders, interventions or agreements under the CP Act, so that the Public Guardian has the information required to exercise its advocacy functions.

The Bill allows the Public Guardian to support a child in all legal proceedings and to support a child and participate in family group meetings, conferences or mediation. It also provides the Public Guardian with the statutory right to intervene in any legal proceedings in the Childrens Court or tribunal in relation to a child protection matter, so that the Public Guardian may effectively advocate for children in child protection proceedings and address the Commission's finding that the views and wishes of children are not always heard in proceedings. The statutory right of intervention will allow the Public Guardian to communicate the child's wishes, appear, make submissions and lead and test evidence in the proceedings as required to advocate for and to provide support to a child. To facilitate this role, the Public Guardian will have the required access to court and tribunal files in relation to the matter.

The Bill allows the Public Guardian to apply to the Queensland Civil and Administrative Tribunal (the tribunal) to have certain reviewable decisions reviewed if the Public Guardian is dissatisfied with a reviewable decision and has been unable

to resolve the matter with the Chief Executive (Child Safety) to the Public Guardian's satisfaction.

The Bill provides that child advocacy officers who are required to visit relevant children to provide advocacy and support services with the powers of entry needed to perform these functions. The Bill provides that a child advocacy officer may enter a visitable site during normal visiting hours without notice or outside of normal hours without notice with the Public Guardian's authorisation. Visits to other places, including residential premises may occur if it is a public place at a time when the place is open to the public, by consent, or if necessary under warrant issued by the Magistrates Court.

Community visitor (child) functions

Under the Bill the Public Guardian has the function of providing a community visitor program to a child in out-of-home care arrangements or staying at a visitable site. Community visitors exercising these functions will be appointed by, and subject to the direction of, the Public Guardian. By providing for this separate community visitor program for the most vulnerable children, the Bill meets the objective of transferring refocussed visit functions from the CCYPCG to the Public Guardian.

There are three tiers to the community visitor (child) program under the Bill. Firstly, the Public Guardian, through its community visitors (child), must regularly visit all children who are staying at visitable sites. Secondly, the Public Guardian must visit all children staying at visitable sites or residing in visitable homes who request a visit. Thirdly, the Public Guardian will determine other children residing in visitable homes who require visits, including the regularity and frequency of those visits.

The Bill outlines a list of non-exhaustive factors that the Public Guardian may take into account when determining other children who should be visited. These factors include, the age of the child, the number of children at the visitable home, the appropriateness of the accommodation, any recent information or report given to the Chief Executive (Child Safety), the number of visitable locations a child has resided at, whether the child has moved out of a visitable location without authority, any contact the child has had with the youth justice system, the child's cultural or linguistic background and any other matter the Public Guardian thinks is relevant. This three tier approach will ensure the level of service provided by the Public Guardian reflects the needs of children receiving visits rather than attempting to reach all children including those who might not benefit from the community visitor program. The Bill also provides for technology to be used to contact a child or someone else at a visitable location to discharge a visitor function.

The Bill provides for separate functions and powers for community visitors. Community visitors must provide a report to the Public Guardian after visiting a child. The Bill also provides for other people such as the child, a person in charge of the site or relevant government entities to be given a copy of a report.

Like child advocacy officers who have an ability to visit children, the Bill also provides community visitors with the powers of entry. Visitable sites may be entered during normal visiting hours without notice or outside of normal hours without notice with the Public Guardian's authorisation. At a visitable site, a community visitor

(child) will have the power to do all things necessary to perform the visitor functions including power to inspect the site, have access to the child, and obtain information and documents from a staff member at the site. A staff member who refuses to comply with a request for information or documents without reasonable excuse commits an offence. Visitable homes may also be visited with consent or; if there is no consent, if the entry is authorised under warrant issued by the Magistrates Court. At a visitable home, a community visitor (child) may view the home to assess appropriateness, see and talk to the child and request reasonable help from a carer residing at the home to exercise these powers.

3. Transfer the functions and powers of the Adult Guardian, including for the community visitor program, to the Public Guardian and consequently abolish the position of the Adult Guardian

The Bill abolishes the position of the Adult Guardian and the office of the Adult Guardian and transfers Chapters 8 and 10 of the GA Act to the Bill. The GA Act will continue to provide for the scheme related to guardianship matters for adults with impaired capacity for a matter.

Adult Guardian functions and powers

The Bill provides the Public Guardian with adult guardian functions and powers to promote and protect the rights, interests and wellbeing of adults with impaired capacity for a matter.

The Public Guardian will be able to investigate complaints or allegations and audit records in relation to financial matters. The Public Guardian also has protective powers which allow the Public Guardian to claim and recover possession of property, damages for conversion of an injury to property or payment of money for an adult with impaired capacity, and also to suspend an attorney's power if the Public Guardian considers that the attorney is not competent. In addition, the Public Guardian has decision making powers to consent to forensic examination of an adult with impaired capacity.

Community visitor (adult) functions

Under the Bill, the Public Guardian also provides, as is currently the case, for a community visitor program for adults with impaired capacity for a matter who reside at certain mental health facilities, private hostels and residential facilities funded or operated by the Department of Communities or Queensland Health. The provisions in the Bill related to this program have been transferred from Chapter 10 of the GA Act. However, one difference is that instead of the Chief Executive administering the program, the Public Guardian will be responsible for it. The Bill provides for separate functions and powers for community visitors (adult). Community visitors (adult) exercising these functions will be appointed by, and subject to the direction of, the Public Guardian.

Under the Bill, community visitors (adult) are required to visit sites regularly, but may determine the frequency of visits. Community visitors (adult) must also visit a site if asked by the consumer or another person for the consumer. The Bill provides for technology to be used to contact a person to discharge a visitor function.

Community visitors (adult) must provide a report to the Public Guardian after visiting a site. The Bill also provides for other people such as the consumer, a person in charge of the site, relevant government entities, the tribunal, the Public Advocate, a guardian or an administrator, to be given a copy of the report.

The Bill also provides community visitors (adult) with powers of entry to enter a visitable site without notice during normal hours, or outside of normal hours with the Public Guardian's authorisation. At a visitable site, a community visitor (adult) will have power to do all things necessary or convenient to perform the visitor's functions including enter the site, have access to the consumer or a person employed at the site, and obtain information and documents from a staff member at the site. The Bill provides that to the greatest extent practicable, a community visitor (adult) must seek and take into account the views and wishes of a consumer before asking a person employed at the visitable site a question in relation to the consumer, or before inspecting, taking extracts from, or making copies of documents relevant to a function of the visitor in relation to the consumer. However, regardless of the consumer's views and wishes, the visitor must act in a way consistent with the consumer's proper care and protection. A staff member who refuses to comply with a request for information or documents without reasonable excuse commits an offence.

4. Make consequential amendments to the CP Act, CCYPCG Act, GA Act and other Queensland legislation to support the above policy objectives

The Bill amends the CP Act to facilitate information sharing arrangements between the Chief Executive (Child Safety) and the Public Guardian by allowing the Chief Executive (Child Safety) to make information available to the Public Guardian for the purposes of the Bill. The Bill also repeals provisions of the CCYPCG Act and GA Act related to functions and powers that have been transferred to the Public Guardian under the Bill such as functions and powers related to the current community visitor programs. The Bill also makes other minor consequential amendments to these Acts and other Queensland legislation as required to achieve the policy objectives of the Bill.

Alternative ways of achieving policy objectives

The proposed legislation is essential to commence implementation of key recommendations made by the Commission. There are no alternative ways of achieving the reforms.

Estimated cost for government implementation

Full implementation of the Bill is expected to result in the following costs accruing to Government recurrently:

- salaries, on-costs and accommodation for the office of the Public Guardian and its staff employed as public service employees under the terms and conditions of the *Queensland Public Service Award State 2012*; and
- corporate services to enable the Public Guardian to operate as a separate public service office and to comply with applicable whole-of-Government

requirements. These services will include information and communications technology, human resources, finance, internal audit, legal, right to information, record keeping and conduct and integrity services.

It is not anticipated that the State Government will not incur additional costs in the implementation and support of the Public Guardian. Costs will be met from the existing budget of the CCYPCG which will cease operation from 1 July 2014 when the Public Guardian will commence operations.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

A. Legislation should have sufficient regard to the rights and liberties of individuals, section 4(2)(a) *Legislative Standards Act 1992*

Under the Bill, both community visitors and child advocacy officers exercising the Public Guardian's function in relation to children will have the power to enter residential premises to visit a child if a carer residing in the home consents to entry or if the entry is authorised by warrant.

Entry without consent, authorised by a warrant is justified, to give effect to the key functions of both community visitors and child advocacy officers, that is, to promote and protect the rights, interests and wellbeing of relevant children or children who reside in residential care, detention, correctional or mental health facilities.

Entry without consent can only occur if authorised by a court through a warrant. It is anticipated that this will be necessary in those rare cases where the community visitor or child advocacy officer is refused entry to the child's home and those officers need to see a child to perform their functions. The requirement for a magistrate to issue a warrant will provide the necessary checks and balances to ensure powers of entry without consent are only exercised in appropriate cases.

It is not intended to change the scope of current provisions in the GA Act in relation to powers of entry for community visitors exercising adult guardian functions. While the power of a community visitor (child) or child advocacy officer to enter a visitable site without a warrant and without notice is a change from the existing arrangements for community visitors under the CCYPCG Act, this change aligns community visitor powers with those currently under the GA Act and across the visiting programs within the Public Guardian.

In the context of the community visitor (adult) functions, the Bill requires persons in charge of, or employed at, visitable sites to answer questions and produce documents relevant to the visitor's functions. Protections apply for answers that might tend to incriminate. These provisions continue existing arrangements in the GA Act, section 227(1)(c) and are necessary to protect and assist adults with impaired capacity in a matter at visitable sites.

The Bill contains similar provisions for community visitors (child) in relation to persons in charge of or employed at visitable sites, aligning the powers of the community visitors (adult) and (child) at similar sites. While this provision expands the existing power in CCYPCG Act to require staff members of visitable sites to give reasonable help in obtaining information about the site and its operation, the new arrangements are justified as the object of the power is to provide the same protection and assistance to vulnerable children and young people as is currently provided to adults.

In addition, the Bill allows the Public Guardian to apply to the tribunal for a warrant to enter a place and remove an adult with impaired capacity for a matter when there are reasonable grounds for suspecting there is an immediate risk of harm, because of neglect, exploitation or abuse to the adult. This power of entry is justified as it enables the Public Guardian to keep adults with impaired capacity for a matter safe from immediate harm in exceptional circumstances.

The Bill allows confidential information about children to be shared between the Public Guardian and prescribed entities. However information may only be requested by the Public Guardian to help the Public Guardian perform its child advocacy functions. Prescribed entities include government departments, private schools, health service chief executives, external contractors who perform the Public Guardian's child advocate functions, the chief executive officer of a visitable site and other entities that may be prescribed under a regulation. The use of the information exchanged under these provisions is protected by strict confidentiality provisions. While these arrangements expand on those existing in relation to information exchange with the CCYPCG, they reflect the different nature of the child advocacy program of the Public Guardian and are justified given the object is to protect and assist vulnerable children. The Public Guardian, through its child advocacy functions, can only help children if it has detailed knowledge of the problems facing the child at school, at their home, or relating to the child's health. This knowledge can then be used by the Public Guardian to assist the child in solving problems in these areas.

The Bill provides that that there will be no compensation provided in relation to the early termination of the appointment of the Adult Guardian. This provision negatively affects the rights of the existing Adult Guardian, whose appointment will end prior to the expiry of their current appointment, when the position of Adult Guardian is abolished on 1 July 2014. However, the Bill allows for the appointment of the existing Adult Guardian as the Public Guardian (if he consents) so the actual impact on the person holding the position of Adult Guardian could be minimal.

In addition, the Bill provides that no compensation will be provided to any early termination of community visitor appointments under the former CCYPCG Act. This provision is justified as the CCYPCG will be abolished and the policy intent is for the visiting program to be minimised so that resources can be focused on visiting the children in most need.

- B. Legislation should have sufficient regard to the institution of Parliament, section 4(2)(b), *Legislative Standards Act 1992*

The Public Guardian has the power to authorise an external entity to perform child advocate functions, with the exception of the community visitor program. While this has potential to circumvent the traditional means of accountability generally applicable to the public sector, this is justified in light of the Queensland Government's commitment to improve service delivery and build a strong economy.

Any concerns arising are mitigated by provisions under Bill to ensure that non government agencies authorised to undertake functions are as responsible and accountable as if they were a public sector organisation.

The oversight role of the community visitor program means this function will not be able to be authorised under these provisions. Further, the ability for a person exercising child advocate functions to obtain a warrant will not extend to external entities performing those functions. In those cases, the entity will be required to approach the Public Guardian who will determine whether an application to the court for a warrant is necessary. There will also be no ability for the non government agency to subcontract out functions.

The Bill outlines prescribed entities that the Public Guardian can require information from and give information to in relation to the performance of child advocate functions. The list of prescribed entities includes an entity that may be prescribed by a regulation. This is justified as it allows where appropriate, that new entities can easily be included, given the importance of information sharing arrangements to the successful performance of the Public Guardian's functions.

The Bill includes a transitional regulation-making power to enable any unforeseen matters relating to the transition from the CCYPCG Act to this Bill to be addressed as they arise. While this will ensure a smooth transition of all relevant powers and functions, a provision of an Act which enables an Act to be amended by regulation raises fundamental legislative principle issues. This regulation is considered reasonable as its limited application is to affect only transitional matters and it expires six months after commencement.

Consultation

Key child protection and disability agencies and peak bodies, academics and the legal sector were invited to provide submissions on a draft of the Bill. An exposure draft of the Bill was released for targeted consultation with these groups in February 2014.

The Queensland Ombudsman, the Public Advocate, the Adult Guardian, Legal Aid Queensland, the Chief Magistrate and the Queensland Civil and Administrative Tribunal were also consulted on a draft of the Bill.

Concerns were raised by some community organisations about the accessibility of the child advocacy and community visitor programs of the Public Guardian. In the case of the community visitor program, some stakeholders were concerned that visits to children in the child protection system will not occur for all children, but rather for those children who the Public Guardian determines are most vulnerable or who request a visit. In the case of the child advocacy program, some stakeholders were concerned that the proposed service delivery model relies on children making

arrangements to travel to hubs or on using technology to access virtual hubs, which may raise issues for children who are unable to travel independently to a hub or to use technology.

Some stakeholders also expressed concern about combining the role of the Adult Guardian and Child Guardian within the Public Guardian, noting a dedicated Child Guardian function is preferred to ensure the specialist focus required to support children effectively. The Public Advocate also expressed concern that providing for the community visitors for adults with impaired capacity to report to the Public Guardian, rather than the Chief Executive (Department of Justice and Attorney-General), erodes the safeguard of an independent community visitor program provided by the GA Act.

Stakeholders' comments were considered and, where appropriate, amendments were made to Bill during the drafting process. However, given the Queensland Government accepted the Commission's recommendations to merge the office of the Adult Guardian with the refocused child guardian functions, to form the Public Guardian and to also only visit those children in the child protection system who are most vulnerable, feedback related to these issues was not incorporated.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation in the Commonwealth or another State. While the Bill is not intended to achieve uniformity with laws in other jurisdictions, the Commission in making its recommendations considered the operation of child protection systems in Australia and international jurisdictions.

Notes on provisions

Part 1 Introduction

Clause 1 establishes the short title of this Act as the *Public Guardian Act 2014*.

Clause 2 provides for commencement of this Act. It provides that this Act other than sections 241 and 243 commence on 1 July 2014. Sections 241 and 243 commence on assent.

Clause 3 provides that particular words used in this Act are defined in the dictionary in schedule 1.

Clause 4 establishes that this Act binds all persons including the State, the Commonwealth and the other States.

Part 2 Purpose and principles of Bill

Clause 5 provides that the purpose of this Act is to establish the Public Guardian to promote and protect the rights and interests of adults with impaired capacity for a matter and of relevant children and children staying at visitable sites.

Clause 6 provides the principles and acknowledgements that persons are required to apply when performing functions or exercising powers under this Act for adults with impaired capacity for a matter.

The general principles and the health care principle that must be applied are outlined in schedule 1 of the GA Act.

The acknowledgements are provided for in section 5 of the GA Act.

Clause 7 provides the principles that must be applied by persons and entities performing functions or exercising powers under this Act in relation to relevant children and children staying at visitable sites.

Subsection 1 provides that the main principle to be applied is that the best interests of the child are paramount.

Subsection 2 provides other general principles that must be applied including: the child's family has primary responsibility for the child's upbringing and development and should be supported in that role; the child is a valued member of society; the child is to be treated in a way that respects the child's dignity and privacy and to be cared for in a way that protects the child from harm and promotes the child's wellbeing and allows the child to reach his or her full potential; the child's emotional, moral, social and intellectual development is important and must be taken into account; the child is entitled to be heard, even if others may not agree with the views expressed by the child; the child should be able to exercise his or her rights and participate in decisions that affect his or her life; the child should be able to access available services necessary to meet his or her needs; an ongoing relationship between the child and the

child's family is important for the child's welfare and wellbeing and must be taken into account; and an ongoing connection with the child's culture, traditions, language and community is important for the child's welfare and wellbeing and must be taken into account.

Part 3 Relationship with other Acts

Clause 8 provides for the relationship between this Act and the GA Act and the *Powers of Attorney Act 1998* (POA Act). These three Acts are to be read in conjunction with each other so far as they relate to adults with impaired capacity for a matter.

The GA Act establishes a scheme by which the tribunal may:

- (a) appoint a guardian for an adult with impaired capacity for personal matters to make particular decisions and do particular other things for the adult in relation to the matters;
- (b) appoint an administrator for an adult with impaired capacity for financial matters to make particular decisions and do particular other things for the adult in relation to the matters;
- (c) consent to the withholding or withdrawal of a life-sustaining measure and to particular special health care.

In addition, this scheme provides for health care for adults with impaired capacity for the matter concerned, including an order of priority for dealing with health care.

The POA Act provides a scheme by which:

- (a) by enduring power of attorney or advance health directive, an adult may authorise other persons to make particular decisions and do particular other things for the adult in relation to financial matters and personal matters at a time when the adult does not have capacity to do those things; and
- (b) by advance health directive, an adult may make directions for the adult's future health care; and
- (c) a statutory health attorney is authorised to do particular things for an adult in particular circumstances in relation to health care.

If there is an inconsistency between this Act and the GA Act, the GA Act prevails.

Chapter 2 Public Guardian

Clause 9 establishes the statutory position of the Public Guardian.

Clause 10 provides that the role of the Public Guardian in relation to adults with impaired capacity for a matter is to protect their rights and interests. The role of the Public Guardian in relation to relevant children and children staying at a visitable site is to protect their rights and interests.

Clause 11 provides for the Public Guardian to have the functions given to the Public Guardian under this Act or another Act.

Clause 12 provides the Public Guardian with functions related to adults with impaired capacity for a matter (adult guardian functions). This clause transfers the existing functions of the Adult Guardian from section 174 of the GA Act.

Clause 13 provides for the functions of the Public Guardian related to relevant children and children staying at visitable sites (child advocate functions).

Clause 14 provides that the Public Guardian has the powers given under this Act or another Act, including the powers of a community visitor or a child advocacy officer. It allows the Public Guardian to do all things necessary or convenient to be done to perform the Public Guardian's functions.

Clause 15 provides that the Public Guardian is not subject to the control or direction of the Minister in performing the functions, or exercising the powers, of the Public Guardian.

Chapter 3 Provisions relating to adults with impaired capacity

Part 1 Preliminary

Clause 16 provides an overview of Chapter 3, which relates to the Public Guardian's functions for adults with impaired capacity for a matter.

Clause 17 defines 'adult' and 'power of attorney' for the purposes of Chapter 3.

Part 2 Advice and supervision

Clause 18 provides that the Public Guardian may give advice and impose supervision on attorney's, guardians or administrators. The attorney, guardian or administrator of an adult may apply to the tribunal to review the Public Guardian's decision relating to the advice, notice or requirement and the tribunal may make any order it considers appropriate. This clause has been transferred from the existing section 179 of the GA Act.

Part 3 Investigations

Clause 19 provides that the Public Guardian may investigate a complaint or allegation that an adult with impaired capacity for a matter is being, or has been, neglected, exploited or abused or has inappropriate or inadequate decision-making arrangements. This clause has been transferred from the existing section 180 of the GA Act.

Clause 20 allows the Public Guardian to delegate the power to investigate a complaint or allegation to an appropriately qualified person. However, the Public Guardian cannot delegate a power to give notice under section 25(1) (power to require witnesses to attend before the Public Guardian and answer questions or produce documents or things) or section 29 (power to require the payment of costs of investigations and audit in certain circumstances).

The power to delegate under this section does not affect the Public Guardian's general ability to delegate powers and functions under section 144 of this Act.

Any person who carries out an investigation under a delegation from the Public Guardian must make a written report and give a copy to the Public Guardian after the investigation is completed.

It is a lawful excuse for the publication of defamatory statements in a report if the publication is made in good faith and is, or purports to be, made for this Act.

A person who has been delegated a power to investigate and is not a member of the Public Guardian's staff, is entitled to remuneration decided by the Public Guardian.

This clause was transferred from the existing section 181 of the GA Act.

Clause 21 provides that the Public Guardian may, by written notice, require an attorney under an enduring power of attorney who has power for a financial matter, or an administrator, to file with the Public Guardian, by a date stated in the notice, a summary of receipts and expenditure or more detailed accounts of dealings and transactions for the adult for a specified period. The date stated in the notice must give the person reasonable time to comply with the notice. The Public Guardian may appoint an auditor to audit the summary or accounts that have been filed. The maximum penalty for failing to comply with this section is 100 penalty units. This clause was transferred from the existing section 182 of the GA Act.

Clause 22 provides that the Public Guardian has a right to all information necessary to investigate a complaint or allegation or to carry out an audit. The person must comply with a notice issued by the Public Guardian unless they have a reasonable excuse. The maximum penalty for failure to comply is 100 penalty units. It is a reasonable excuse not to comply if complying might tend to incriminate the person.

This section, subject the provision related to self incrimination, overrides any restriction in an Act or the common law about the disclosure or confidentiality of information and any claim of confidentiality or privilege, including a claim based on legal professional privilege.

This clause has been transferred from the existing section 183 of the GA Act.

Clause 23 provides that if the Public Guardian requires that a person give information to the Public Guardian under Chapter 3 of this Act, then the Public Guardian may, by written notice given to the person, require the person to give the information by way of statutory declaration. It also provides that the person must comply with the notice unless the person has a reasonable excuse for not doing so. The maximum penalty for failing to comply is 100 penalty units. This clause has been transferred from section 184 of the GA Act.

Clause 24 protects a person from liability who is required to give information to the Public Guardian under sections 22 or 23. Merely because the person gives the information, they can not be held to have breached any code of professional etiquette or ethics or departed from accepted standards of professional conduct.

A person may give the information despite any other law that would otherwise prohibit or restrict the giving of the information. The clause protects persons from civil and criminal liability and provides that they have not breached any code of ethics or etiquette or departed from accepted standards of professional conduct in giving the information.

A person has a defence of absolute privilege for publishing information in a proceeding for defamation and if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person does not contravene the Act, oath, rule of law or practice by giving the information and is not liable to disciplinary action for giving the information.

This clause has been transferred from the existing section 248B of the GA Act.

Clause 25 provides that the Public Guardian may, by giving a written notice to a person, require the person to attend before the Public Guardian at a stated time and place to give information, answer questions, or produce stated documents or things. The person must comply with the notice unless the person has a reasonable excuse. The maximum penalty for failing to comply is 100 penalty units.

The Public Guardian may require the person to take an oath, administer the oath if the circumstances allow or permit the person to tender a statement verified by oath if the Public Guardian directs. A person must not refuse to take an oath unless the person has a reasonable excuse. The maximum penalty for failing to comply with this clause is 100 penalty units.

A person who is required to attend before the Public Guardian is entitled to receive payment from the Public Guardian equal to the amount that the person would be entitled to receive under the *Courts Fees and Allowances Regulation* if the person were attending before a Magistrates Court as a witness.

This clause has been transferred from existing section 185 of the GA Act.

Clause 26 provides that a Magistrates Court may, at the request of the Public Guardian, issue a subpoena requiring the attendance of a person before a court if the person does not comply with a notice given under section 25. The *Uniform Civil Procedure Rules 1999* other than rules 417, 418 and 420 apply to the subpoena. The court may require the person to take an oath. The Public Guardian may examine a person before the court under a subpoena to give evidence or a subpoena for production and to give evidence. This clause has been transferred from existing section 186 of the GA Act.

Clause 27 provides that if a person who is subpoenaed under section 26 without reasonable excuse refuses to be sworn, refuses to answer a question put to the person or fails to give an answer to the court's satisfaction, then the court may treat the person's refusal or failure as a contempt of court. This clause has been transferred from section 187 of the GA Act.

Clause 28 provides that self-incrimination is not a reasonable excuse for failing to comply with a notice or for refusing to answer a question or failing to give an answer to the court's satisfaction under sections 25(1) or 26. However, evidence directly or indirectly obtained from that person's answer or production of a document or thing which may incriminate them is not admissible in evidence against the person in a civil or criminal proceeding other than:

- (a) a proceeding for an offence about the falsity of the answer, document or thing; or
- (b) if the answer or production is relevant to the person's employment—a proceeding brought by or for the person against the person's employer; or
- (c) if the answer or production is relevant to the person's professional registration or licence—a proceeding about the registration or licence; or
- (d) if the answer or production is relevant to the person's registration, licence or approval as proprietor or operator of a service or facility involved in the care of adults with impaired capacity for a matter—a proceeding about the registration, licence or approval.

This clause has been transferred from section 188 of the GA Act.

Clause 29 provides the Public Guardian with an ability to recover costs for investigations or audits where the Public Guardian is satisfied the request was frivolous, vexatious or otherwise without good cause or the Public Guardian considers the attorney or administrator concerned has contravened this Act, the GA Act or the POA Act. The Public Guardian may also, by written notice, require a person who has requested an investigation or audit to pay to the Public Guardian an amount as security that the Public Guardian considers appropriate.

A person may apply to the tribunal to review the Public Guardian's decision to require the payment, or about the amount of the payment, and the tribunal may make the order it considers appropriate.

This clause has been transferred from section 189 of the GA Act.

Clause 30 provides that a person must not obstruct or improperly influence the conduct of an investigation or audit. The maximum penalty for failing to comply with this section is 100 penalty units. This clause has been transferred from section 192 of the GA Act.

Clause 31 provides that after the Public Guardian has carried out an investigation or audit in relation to an adult, the Public Guardian must make a written report and give a copy of the report to any person at whose request the investigation or audit was carried out and to every attorney, guardian or administrator for the adult. It is a lawful excuse for the publication of a defamatory statement made in the report that the publication is made in good faith and is, or purports to be, made for this Act.

Also, the Public Guardian is required to allow an interested person to inspect a copy of the report at all reasonable times and, at the person's own expense, to be given a copy of the report. If a report contains information about a person and the Public Guardian considers it appropriate to protect the person's identity, then the Public

Guardian may remove, from the copy of the report to be given or inspected, information likely to result in the person's identification.

This clause has been transferred from section 193 of the GA Act.

Clause 32 provides that if a person accesses a report that contains information about a person but the person has been de-identified, then the person accessing the report must not, without a reasonable excuse, publish information contained in the report to the public or a section of the public if the publication is likely to result in the identification of the de-identified person by a member of the public or by a member of the section of the public. The maximum penalty for failing to comply with this section is 200 penalty units.

This section does not apply if the person gives the information to a person such as the a relevant person (under the GA Act), the Public Guardian or a member of the Public Guardian's staff, an attorney, a community visitor, a consultant or employee of the Public Guardian, a Public Guardian's delegate for an investigation or an external contractor. A *note* for this section refers to the relevant confidentiality provisions in the GA Act, POA Act and this Act.

This clause has been transferred from section 193A of the GA Act.

Part 4 Protective powers

Clause 33 provides a remedy where the Public Guardian considers the property of an adult with impaired capacity is wrongfully held, detained, converted or injured or that money is payable to the adult. In such a case the Public Guardian may, in the name of the Public Guardian or the adult, claim and recover possession of the property, damages for conversion of, or injury to, the property or payment of the money, by application to the Supreme Court. This clause has been transferred from section 194 from the GA Act.

Clause 34 provides the Public Guardian with the power, by written notice to an attorney, to suspend the operation of all or some of an attorney's power for an adult where the Public Guardian suspects, on reasonable grounds, that the attorney is not competent. A suspension can be for no more than three months. The Public Guardian may lift the suspension on the terms the Public Guardian considers appropriate. An attorney whose power has been suspended may apply to the tribunal to review the Public Guardian's decision to suspend the attorney or the terms on which the suspension is lifted. The tribunal may make any order it considers appropriate. This clause has been transferred from section 195 of the GA Act.

Clause 35 provides that during the suspension of the operation of power of an attorney, the attorney must not exercise the power. The maximum penalty for failure to comply with the section is 100 penalty units. During the suspension of a power of attorney for a personal matter, the Public Guardian is taken to be the attorney for the adult for the personal matter and during the suspension of a power of attorney for a financial matter, the public trustee is to be the attorney for the suspended power. This clause has been transferred from section 196 of the GA Act.

Clause 36 provides that where the Public Guardian considers there are reasonable grounds for suspecting there is an immediate risk of harm, because of neglect (including self-neglect), exploitation or abuse, to an adult with impaired capacity for a matter, the Public Guardian may apply to the tribunal for a warrant to enter a place and remove the adult under section 148 of the GA Act. This clause has been transferred from section 197 of the GA Act.

Clause 37 provides that if a health provider who is treating an adult considers the adult has impaired capacity for a matter and does not have an attorney, guardian or administrator for the matter, the health provider may advise the Public Guardian of the adult's name, current location and contact address, contact details for the adult's nearest relative and the health providers opinion about the adult's capacity. This section overrides any restriction, in an Act or common law, about the disclosure or confidentiality of information and any claim of confidentiality or privilege. This clause has been transferred from section 198 of the GA Act.

Part 5 Power to consent to forensic examination

Clause 38 provides that the Public Guardian may consent to a forensic examination of an adult with impaired capacity if the Public Guardian reasonably considers that the examination is in the adult's best interests and no guardian or attorney is appointed or the appointed guardian or attorney has failed or refused to consent or the Public Guardian reasonably considers the adult's interests would not be adequately protected if the consent of any guardian or attorney for the adult were sought. A *note* for this clause refers to protections for persons carrying out a forensic examination with consent under section 248A of the GA Act. This clause has been transferred from section 198A of the GA Act.

Part 6 Community visitor program (adult)

Division 1 Interpretation

Clause 39 provides definitions related to visits to adults with impaired capacity for Part 6. This clause has been transferred from section 222 of the GA Act.

Division 2 Purpose

Clause 40 provides that the purpose of providing a program involving community visitors (adult) for visitable sites is to protect the rights and interests of consumers at the visitable sites. It also provides that the Public Guardian may allocate one or more community visitors (adult) for a visitable site. This clause has been transferred from section 223 of the GA Act, however, the Public Guardian is now responsible for the program rather than the Chief Executive.

Division 3 Functions

Clause 41 provides that a community visitor (adult) has inquiry and complaint functions. The inquiry functions of a community visitor include inquiring into and reporting to the Public Guardian on the adequacy of services for the assessment,

treatment and support of consumers at the visitable site and the appropriateness and standard of services for the accommodation, health and well-being of consumers at the visitable site.

The complaint functions of the community visitor (adult) for a visitable site are to inquire into and seek to resolve complaints about a matter made by or for a consumer at the visitable site and to identify and make appropriate and timely referrals of unresolved complaints to appropriate entities for further investigation or resolution.

Community visitors are also able to discharge functions by contacting a consumer or someone else at a visitable site by using 'relevant technology' which includes a telephone or any other technology that allows persons using the technology to communicate effectively, for example, text messaging, email or video conference. This clause has been transferred from section 224 of the GA Act, however, the Public Guardian is now responsible for the program rather than the Chief Executive, including reporting to the Public Guardian. In addition, the use of technology to discharge a community visitor function has been newly introduced into the program.

Clause 42 provides that a community visitor (adult) must, for performing the functions of a community visitor (adult), regularly visit the visitable site and the Public Guardian may decide priorities for visiting particular visitable sites that affect the frequency of visits. This clause has been transferred from section 225 of the GA Act, however, the Public Guardian is now responsible for deciding priorities rather than the Chief Executive.

Clause 43 provides that a consumer at a visitable site or a person for the consumer may ask the Public Guardian to arrange for a community visitor (adult) to visit the visitable site for performing the functions of a community visitor (adult). It further provides that a consumer may ask a staff member at the visitable site to arrange for a community visitor (adult) to visit. A request made to the person at the visitable site must be passed on to the Public Guardian within three business days after the request is made. A maximum penalty of 40 penalty units applies for non compliance with this section. The community visitor must visit the site as soon as practicable if informed of the request to visit. This clause has been transferred from section 226 of the GA Act, however, the Public Guardian is now responsible for the program rather than the Chief Executive.

Division 4 Powers

Clause 44 provides that a community visitor (adult) may do all things necessary or convenient to be done to perform the visitor's functions. It provides that a community visitor (adult) may:

- (a) enter a visitable site during normal hours without notice;
- (b) enter a visitable site outside normal hours without notice if the Public Guardian authorises the visit;
- (c) require a staff member of the site to answer questions, and produce visitable site documents, relevant to the visitor's functions
- (d) inspect and take extracts from, or take copies of, any visitable site documents;
- (e) confer alone with a consumer or staff member of the visitable site;

- (f) require a staff member of the site to give the visitor reasonable help, if practical, to enable to visitor to do one of these things.

The section protects the consumer or anyone else from any liability if they comply with a requirement under subsection 1(c) or (f). The section provides that the maximum penalty for failing to comply with a requirement under subsection 1(c) or (f) is 40 penalty units. It is a reasonable excuse for a person not to comply if compliance with the requirement might tend to incriminate the person.

This clause has been transferred from section 227 of the GA Act, however, the Public Guardian is now responsible for authorising visits outside of normal hours rather than the Chief Executive.

Clause 45 enables the Public Guardian to authorise a community visitor (adult) to enter a visitable outside normal hours where the community visitor (adult) cannot adequately inquire into a complaint by entering the visitable site during normal hours. The Public Guardian must specify a period of no more than two hours during which the entry is authorised. This clause has been transferred from the existing section 228 of the GA Act, however, the Public Guardian is now responsible for authorising visits outside of normal hours rather than the Chief Executive.

Clause 46 requires a community visitor (adult) to seek and take into account the views and wishes of the consumer, to the greatest extent practicable, before asking a staff member at the visitable site a question relevant to a function of the community visitor (adult) or inspecting, taking extracts from, or making copies of, a visitable site document. Regardless of the consumers' views and wishes, the community visitor (adult) must act in a way consistent with the consumer's proper care and protection. This clause has been transferred from section 229 of the GA Act.

Clause 47 requires a community visitor (adult) to prepare a report as soon as practicable after a visit and give a copy of the report to the Public Guardian. If the visitor entered the site outside of normal hours, the visitor must state the authority for the entry in the report. The Public Guardian must give a copy of the report to the person in charge of the site as soon as practicable after receiving the report. The Public Guardian may also give a copy of the report to: the consumer (if the report relates to a complaint); the Public Advocate; the director of mental health appointed under the *Mental Health Act 2000*; the director of forensic disability under the *Forensic Disability Act 2011*; and if a restrictive practice is being used at the site – the tribunal; a guardian or administrator for an adult in relation to whom a restrictive practice is used; or the Chief Executive (disability services). This clause has been transferred from section 230 of the GA Act, however, the Public Guardian is now responsible for receiving and distributing the reports rather than the Chief Executive.

Clause 48 provides that a community visitor (adult) is subject to the directions of the Public Guardian in the exercise of a power.

Division 5 Miscellaneous

Clause 49 provides that a staff member at a visitable site must not open, read, copy or remove any correspondence sent, or being sent, between a community visitor (adult)

and a consumer residing at the site, unless the consumer asks the staff member to do so. The maximum penalty for contravening this section is 20 penalty units.

Chapter 4 Provisions relating to relevant children and children staying at visitable sites

Part 1 Preliminary

Clause 50 provides an overview of Chapter 4, which relates to the Public Guardian's functions and powers for relevant children and children staying at visitable sites.

Clause 51 provides the definitions for Chapter 4 that relate to the community visitor program for children and the exercise of child advocacy officer powers.

Clause 52 outlines the Public Guardian's jurisdiction for exercising child advocacy functions in relation to 'relevant children', that is, children that are subject to any of the following under the CP Act:

- (a) temporary assessment order (section 27(1));
- (b) court assessment order (section 44);
- (c) temporary custody order (section 51AE);
- (d) intervention with parent's agreement (chapter 2, part 3B, division 2);
- (e) care agreement (section 51ZE); or
- (f) child protection order (section 61) (this includes orders that continue in force under a transition order or on adjournment for a matter related to a transition order).

Subsection 2 provides that a child stops being a relevant child if the child is no longer subject to an order, intervention or agreement or if the child turns 18.

Subsection 3 provides that the Public Guardian can assist other children who were previously a relevant child if:

- (a) immediately before the child stopped being subject to an order, intervention or agreement, the Public Guardian was providing particular help to the child and the Public Guardian believes it is appropriate to finish providing the particular help to the child; or
- (b) the Public Guardian believes that the child requires particular help to review a decision to end the order, intervention or agreement.

The intention of this subsection is that if the Public Guardian is in the process of helping a child, for example, with a complaint, the Public Guardian can continue to assist the child with the complaint even if the child is no longer subject to an order, intervention or agreement. Also, if the child needs assistance reviewing a decision that has ceased the order, intervention or agreement, the Public Guardian will be able to help the child.

Subsection 4 provides that the Public Guardian may also assist a person who was a relevant child and who has turned 18 if the person asks the Public Guardian for help with the person's transition from being a relevant child and the Public Guardian is satisfied the person continues to be in need of particular help for the transition. This

recognises the importance of continuing to assist children transitioning in to independent living.

Subsection 5 provides that a person stops being a relevant child under subsections 3 and 4 when the Public Guardian is finished providing the particular help and advises the person accordingly.

To clarify, a reference to a ‘child under care’ in the Bill is a reference to a subset of relevant children who are in out-of-home care, (that is, they are residing in a home with someone other than a parent). Further, a child staying at a visitable site may be a relevant child but this is not always the case, for example, a child may be in a youth detention centre and have no contact with Child Safety but can still be visited by a community visitor (child).

Clause 53 provides a definition of ‘parent’ for the purposes of this Part.

Clause 54 provides that to the greatest extent practicable, the Public Guardian or another entity who performs a child advocate function or exercises powers under this Act in relation to a child must seek, and take into account, the views and wishes of the child however expressed when performing the function or exercising the power. The section also states the ways in which a child may express their views and wishes and that the views and wishes of a child should be taken into account in a way that has regard to their age and maturity.

Part 2 Community visitor program (child)

Division 1 Purpose

Clause 55 provides that the purpose of providing a program of community visitors (child) is to protect the rights and interests of children staying at the visitable locations. The section also provides that one or more community visitors (child) may be allocated by the Public Guardian for a visitable location.

Division 2 Functions

Clause 56 provides the functions of a community visitor (child) which include:

- (a) to develop trusting and supportive relationships with the child, so far as is possible;
- (b) to advocate on behalf of the child by listening to, giving voice to, and facilitating the resolution of, the child’s concerns and grievances;
- (c) to seek information about, and facilitate access by the child to, support services appropriate to the child’s needs provided by service providers;
- (d) to assess the adequacy of information given to the child about the child’s rights;
- (e) to assess the physical and emotional wellbeing of the child;
- (f) for a visitable home—
 - (i) to inspect the home and report on its appropriateness for the accommodation of the child; and

- (ii) to ensure the child's needs are being met by persons caring for the child at the home;
- (g) for a visitable site—
 - (i) to inspect the site and report on its appropriateness for the accommodation of the child or the delivery of services to the child, having regard to relevant State and Commonwealth laws, policies and standards; and
 - (ii) to ensure the child's needs are being met by staff members at the site;
- (h) at the request of the Public Guardian, to inquire into and report on any other matter relating to a child under care staying at a visitable home or a child staying at a visitable site.

Community visitors (child) can give advice and reports to the Public Guardian about anything relating to their functions. Community visitors (child) are also able to discharge functions by contacting a consumer or someone else at a visitable location by using 'relevant technology' which includes a telephone or any other technology that allows persons using the technology to communicate effectively, for example, text messaging, email or video conference.

A community visitor (child) may also perform other child advocate functions if directed to do so by the Public Guardian.

Clause 57 provides that the Public Guardian may direct a community visitor (child) to visit a child under care staying at a visitable home. The section sets out a non exhaustive list of factors that the Public Guardian may have regard to when deciding whether to direct a community visitor (child) to visit a child under care. These factors include: the age of the child; the number of children residing at the visitable home; the appropriateness of the visitable home; whether the child has been in contact with the justice system; any recent suspicions that a child is in need of protection that the Chief Executive (Child Safety) has had; the number of visitable locations the child has resided in or stayed at; whether the child has moved out of visitable locations without the approval of the Chief Executive (Child Safety); the child's cultural or linguistic background; and any other matter the Public Guardian considers relevant. The section also allows the Public Guardian to decide the regularity or frequency of visits to the child.

Clause 58 provides that a community visitor (child) for a visitable site must regularly visit the visitable site to perform the community visitor's (child) functions and provides that the Public Guardian may decide priorities for particular visitable sites that affect the frequency of visits by the visitor.

Clause 59 provides that a child staying at a visitable home is entitled to ask the Public Guardian to arrange for a community visitor (child) to visit the visitable home, ask an authorised officer under the CP Act to arrange for a community visitor (child) to visit the home, ask a carer to arrange for a community visitor (child) to visit the home, or inform a carer that the child wishes to communicate with a particular community visitor (child).

An authorised officer or carer must tell the Public Guardian about the request as soon as possible. In addition, it provides that the carer must take reasonable steps to inform the particular community visitor if one is requested by the child as soon as possible.

A community visitor (child) must comply with a child's request to visit the visitable home or communicate with the child as soon as practicable after being informed of the request. There are no offence provisions attached to this section.

Clause 60 provides that a child staying at a visitable site is entitled to ask the Public Guardian to arrange for a community visitor (child) to visit the site. Also a child may ask a staff member of the site to arrange for a community visitor (child) to visit the site or tell a staff member that the child wishes to communicate with a particular community visitor (child). The staff member must tell the Public Guardian about the request as soon as possible or take reasonable steps to inform the particular visitor as soon as practicable. The maximum penalty for a staff member who does not comply with this section is 40 penalty units. The clause also provides that a community visitor must comply with a request to visit a site or communicate with the child staying at a site, as soon as practicable after being informed of the request.

Division 3 Powers

Subdivision 1 Visitable homes

Clause 61 provides that a community visitor (child) may enter a visitable home in which a child under care is staying if a carer in the home consents to the community visitor's (child) entry or if the entry is authorised by a warrant.

In order to ask a carer for consent to enter, a community visitor (child) is entitled to enter the land around the visitable home to the extent that it is reasonable to contact the carer, or enter part of the home that the community visitor (child) considers members of the public ordinarily are allowed to access when they wish to contact the carer.

Clause 62 provides a number of matters which apply when a community visitor (child) is seeking consent to enter a visitable home from a carer. It provides that before asking for consent to enter the community visitor (child) must tell the carer the purpose of the community visitor's (child) entry and that the carer is not required to consent.

The section also provides that the community visitor (child) may ask the carer to sign an acknowledgement of the consent, outlines details that the acknowledgement must state, and requires the community visitor (child) to give a copy of the acknowledgement to the carer. In any proceeding the onus of proof is on the person relying on the lawfulness of the entry to prove that the carer consented if the acknowledgement is not produced.

Clause 63 allows the Public Guardian to apply to a magistrate for a warrant for a visitable home in which the child under care is staying. An application for a warrant must be sworn and state the grounds on which it is sought. A magistrate may refuse to

consider the application for the warrant until the Public Guardian gives to the magistrate all of the information that the magistrate requires about the application in the way that the magistrate requires.

Clause 64 provides that a magistrate may issue a warrant only if the magistrate is satisfied that a community visitor (child) cannot properly carry out one or more of the community visitor's (child) functions in relation to the child without gaining entry to the visitable home. It also provides for all of the things that the warrant is required to state, including the name of the community visitor (child) who is authorised to enter, the hours when the warrant can be executed and the date the warrant ends (must be within 14 days of issue).

Clause 65 provides the procedure that must be followed before entering a visitable home under a warrant. The community visitor (child) must do or make a reasonable attempt to:

- (a) identify to a carer residing in the visitable home that the person is a community visitor (child) by showing the community visitor's (child) identity card or another document evidencing their status as a community visitor (child);
- (b) give the carer a copy of the warrant;
- (c) tell the person that the warrant authorises the community visitor (child) to enter the visitable home;
- (d) give the person an opportunity to allow the community visitor (child) immediate entry to the home without using force.

Clause 66 provides that a community visitor (child) after entering a visitable home with consent or under warrant is permitted to look around the home and assess the appropriateness of the home, have access to the child under care, talk with the child at out of the hearing of other persons at the home and require a carer to assist the community visitor (child) in exercising a power under this section. No offence is committed if the carer fails to comply with the requirement of the community visitor (child) to assist the community visitor (child) in exercising a power under this section.

Subdivision 2 Visitable sites

Clause 67 provides that a community visitor (child) may do all things necessary or convenient to perform the visitor's functions. This includes power to:

- (a) enter a visitable site during normal hours without notice;
- (b) enter a visitable site outside normal hours without notice, with the Public Guardian's consent;
- (c) inspect the site;
- (d) have access to a child;
- (e) talk with a child out of the hearing others;
- (f) require a staff member at the site to answer questions and produce documents relevant to visitor functions;
- (g) inspect and take extracts from, or make copies of any visitable site documents;
- (h) confer alone with a staff member at the site;
- (i) require a staff member to give help that the community visitor (child) reasonably requires to exercise powers.

The section makes it clear that a person who complies with such requirements does not incur any liability because of the compliance. However penalties apply if a person fails to comply with (f) or (i) without reasonable excuse (maximum penalty is 40 penalty units). A reasonable excuse may be that compliance with the requirement might tend to incriminate the person. It is also a reasonable excuse if the visitable site is a corrective services facility or detention centre and disclosure of information could be reasonably expected to prejudice the security or good order of the facility or centre.

In addition, if the visitable site is a corrective services facility, the exercise of power is subject to any direction or procedure given or made by the Chief Executive (Corrective Services) to facilitate the effective and efficient management of corrective services.

If the visitable site is a detention centre, the exercise of power is subject to any direction given or made by the Chief Executive (Youth Justice Services) for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres.

Clause 68 provides that the Public Guardian may authorise a community visitor (child) to access a visitable site outside normal hours if the community visitor (child) cannot adequately perform one or more of the visitor's functions during normal hours. The Public Guardian must specify a period of not more than two hours during which the entry is authorised.

Subdivision 3 General

Clause 69 requires a community visitor (child), in performing a function or exercising a power in relation to a child staying at a visitable site or a child under care staying at a visitable home to act in a way that preserves, as far as practicable, the privacy of children or persons staying or residing at the location, and in a way that respects the wishes of any of the children who do not wish to communicate with the visitor.

Clause 70 provides that as soon as practicable after visiting a child a community visitor (child) must prepare, and give to the Public Guardian a report about the visit. If the visitor entered a visitable site outside of normal hours, the authority for the visit must be included in the report. The Public Guardian may give a copy of the report, or information from the report, to certain persons, if the Public Guardian considers it appropriate.

Clause 71 provides that the community visitor (child) is subject to the directions of the Public Guardian in the exercise of a power.

Division 4 Miscellaneous

Clause 72 provides that a staff member of a visitable site or a carer at a visitable home must not open, read, copy or remove any correspondence sent, or being sent, between a community visitor (child) and a child staying at the site or home, unless the child asks the staff member or carer to do so. This section does not apply to corrective

services facilities as special mail procedures are established in the Corrective Services Act to balance privacy with the security of the facility. Correspondence between community visitors and children in correctional facilities is considered privileged mail under the *Corrective Services Act 2006*. The maximum penalty for failing to comply with this section is 20 penalty units.

Part 3 Child advocacy officers

Division 1 Functions

Clause 73 provides that a child advocacy officer may perform child advocate functions for a relevant child.

A child advocacy officer may exercise child advocate functions and any powers relevant to the undertaking of these functions in relation to relevant children only, for example, a child advocacy officer may visit a child in a visitable home, visitable site or another place as long as the child is a relevant child - a child advocacy officer cannot visit any other child at a visitable site except for those who are relevant children.

Division 2 Powers

Clause 74 provides that a child advocacy officer has power to enter a visitable site during normal hours without notice, or outside normal hours if authorised by the Public Guardian. A child advocacy officer may also enter another place where a relevant child is staying if a person in charge of the place consents or it is a public place and entry is made when it is open to the public, or if authorised by warrant. For the purpose of asking for consent, a child advocacy officer may, without the person's consent or a warrant, enter land around the place to an extent that is reasonable to contact the person, or enter part of the place the child advocacy officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the person.

Clause 75 provides that the Public Guardian may authorise a child advocacy officer to access a visitable site outside normal hours if the child advocacy officer cannot adequately perform one or more of their functions during normal hours. The Public Guardian must specify a period of not more than two hours during which the entry is authorised.

Clause 76 provides that a child advocacy officer may, after entering a visitable site, have access to the child staying at the site, talk with the child staying at the site out of the hearing of staff members of the site and other persons at the site and require a staff member, at any reasonable time, to give the officer reasonable help if it is practicable to give help to the officer to exercise the officer's powers under the section. A staff member must comply with the request unless the staff member has a reasonable excuse. The maximum penalty for failing to comply with the requirement in this section is 40 penalty units.

Clause 77 provides a number of matters which apply when a child advocacy officer is seeking consent to enter a place where a relevant child is staying from the person in charge of the place. It provides that before asking for consent to enter the child advocacy officer must tell the carer the purpose of the child advocacy officer's entry and that the carer is not required to consent.

The section also provides that the child advocacy officer may ask the person in charge of the place to sign an acknowledgement of the consent, outlines details that the acknowledgement must state, and requires the child advocacy officer to give a copy of the acknowledgement to the carer. In any proceeding the onus of proof is on the person relying on the lawfulness of the entry to prove that the person in charge of the place consented if the acknowledgement is not produced.

Clause 78 provides that the Public Guardian may apply to a magistrate for a warrant for a place where a relevant child is staying and that the application must be sworn and state the grounds on which the warrant is sought. The magistrate may refuse to consider the application until the Public Guardian gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Clause 79 provides that a magistrate may issue a warrant only if the magistrate is satisfied that a child advocacy officer cannot properly carry out one or more of the child advocacy officer's functions in relation to the child without gaining entry to the place where the relevant child is staying. It also provides for all of the things that the warrant is required to state, including the name of the child advocacy officer who is authorised to enter, the hours when the warrant can be executed and the date the warrant ends (must be within 14 days of issue).

Clause 80 provides the procedure that must be followed before entering a place where a relevant child is staying under a warrant. The child advocacy officer must do or make a reasonable attempt to:

- (a) identify to a person in charge of the place that the person is a child advocacy officer by showing the child advocacy officer's identity card or another document evidencing their status as a child advocacy officer;
- (b) give the person in charge of the place a copy of the warrant;
- (c) tell the person that the warrant authorises the child advocacy officer to enter the place;
- (d) give the person an opportunity to allow the child advocacy officer immediate entry to the place without using force.

Clause 81 provides that a child advocacy officer, after entering a place where a relevant child is staying with consent or under warrant is permitted to look around the place and assess the appropriateness of the place, have access to the child, talk with the child out of the hearing of other persons at the place and require a person in charge of the place to assist the child advocacy officer in exercising a power under this section. No offence is committed if the person in charge of the place fails to comply with the requirement of the child advocacy officer to assist the child advocacy officer in exercising a power under this section.

Clause 82 requires a child advocacy officer, in performing a function or exercising a power in relation to a visitable site or in relation to a place where a relevant child is staying, a child advocacy officer must act in a way that preserves, as far as practicable, the privacy of children staying at the site or place.

Part 4 Information exchange

Clause 83 provides the purpose of Part 4, which is to authorise and facilitate appropriate exchange of information, including confidential information, about a child and a child's circumstances between a prescribed entity and the Public Guardian to help the Public Guardian perform child advocate functions in relation to relevant children. The intention is to establish a framework to assist prescribed entities to work cooperatively with the Public Guardian to promote and protect the rights and interests of relevant children.

Clause 84 sets out a list of prescribed entities for Part 4.

Clause 85 provides for the Public Guardian to ask a prescribed entity to give information in the prescribed entity's control to the Public Guardian. A prescribed entity must comply with the request unless a listed exemption applies, including: information that is subject to legal professional privilege; or giving the information could reasonably be expected to prejudice certain investigations or endanger a person's life or safety.

Also, protections are provided in the case of information exchanged between the Public Guardian and the Director of Public Prosecutions or the Chief Executive of Legal Aid Queensland, so that the information requested relates only to the child and the child's circumstances.

Clause 86 provides that the Public Guardian may use information under Part 4 to help the Public Guardian discharge child advocate functions in relation to a child. It provides a number of examples for how information may be used.

Clause 87 provides that the Chief Executive (Child Safety) must advise the Public Guardian as soon as practicable after making a reviewable decision in relation to a child or becoming aware that a child is subject to, or is no longer subject to, an order, intervention or agreement mentioned in section 52(1). The Chief Executive (Child Safety) must advise the Public Guardian as soon as practicable after becoming aware that the child is no longer the subject of an order, intervention or agreement. The intent of this section is to ensure the Public Guardian has the information needed to determine the children who may require the assistance of the Public Guardian.

Clause 88 provides that the Public Guardian may disclose information, including confidential information, about a child or a child's circumstances to a prescribed entity to protect, in the performance of child advocate functions, the rights and interests of the child.

Clause 89 allows the Public Guardian to make arrangements with the Chief Executive (Child Safety) to make information about a child gained in the

administration of this Act available to officers of the Child Safety Department for the purposes of the CP Act.

Clause 90 provides for protection from liability civilly, criminally or under an administrative process if a person, acting honestly, gives information under Part 4. Also the giving of the information cannot be held to breach a professional code of etiquette or ethics or to depart from accepted standards of conduct.

In a proceeding for defamation, the person has a defence of absolute privilege for publishing the information. Also, if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person does not contravene the Act, oath or rule of law or practice by giving the information.

Clause 91 provides that the provisions of Part 4 do not limit a power or obligation under an Act or law to give information. Part 4 applies to information despite any law that would otherwise prohibit or restrict the giving of the information. However, provisions in the CP Act related to confidentiality of notifiers of harm or risk of harm and publication of information about children are not overridden by the section given their importance in ensuring the safety of children in the child protection system. The section also clarifies that if the Public Guardian obtains information under another Act, the Public Guardian is able to use that information to protect, in the performance of child advocate functions, the rights and interests of a relevant child.

Chapter 5 Administration

Part 1 Appointment of Public Guardian and related provisions

Clause 92 provides that the Public Guardian is to be appointed by the Governor in Council on recommendation from the Minister. The Minister may only recommend a person for the role of Public Guardian if the person has demonstrated qualities of leadership, management and innovation in a senior government or private sector role.

The section also ensures that there will be no conflict of interest by prohibiting a person to hold office if they hold another office having functions concerning the rights and interests of or the provision of services or facilities to, adults with impaired capacity or the rights and interests of, or the provision of services to, children.

Clause 93 provides that the Public Guardian is appointed under this Act rather than the *Public Service Act 2008*.

Clause 94 outlines the processes that the Minister is to undertake in recommending a person for appointment as Public Guardian. This includes advertising for applications from suitably qualified persons unless the person is being reappointed as Public Guardian.

Clause 95 provides that the Public Guardian holds office for no more than five years, however, may be reappointed.

Clause 96 provides that the Public Guardian is to be paid the remuneration and allowances decided by the Governor in Council. To the extent that this Act does not state the terms on which the Public Guardian holds office, the Public Guardian holds office on the terms decided by the Governor in Council.

Clause 97 provides that the Public Guardian may resign from office by signed notice given to the Minister (at least one month's notice must be given). The Public Guardian will be removed from office if they are convicted of an indictable offence or become insolvent. The Governor in Council may remove the Public Guardian from office on recommendation by the Minister if the Public Guardian has been found guilty of misconduct, is incapable of performing their duties or has neglected their duties or performed them incompetently. The Minister may suspend the Public Guardian for up to 60 days if there is an allegation of misconduct or the Minister is satisfied that there may be grounds for removing the Public Guardian from office based on this section.

Clause 98 provides that if a person who is a public service officer is appointed as the Public Guardian, the officer keeps all rights accrued or accruing as if service as the Public Guardian were a continuation of service as a public service officer. At the end of the person's term of office or on resignation, the person's service is taken to be public service for deciding the person's rights as a public service officer.

Clause 99 provides that the Minister may appoint someone to act as the Public Guardian for a period of not longer than six months if there is a vacancy in the office or if the Public Guardian is absent or, for any other reason, is unable to perform the functions of the office.

The person appointed on an acting basis under this section for a period of less than six months may be appointed for a further period by the Minister, so long as the total period of continuous appointments for the person is not longer than six months. If an acting appointment is to be for a period of longer than six months or if continuations of an acting appointment will, in aggregate, be for longer than six months, the appointment must be made by the Governor in Council.

Part 2 Office and staff of the Public Guardian

Clause 100 establishes the office of the Public Guardian and provides that the office consists of the Public Guardian and the staff of the office.

Clause 101 provides that the Public Guardian is to control the office. It also provides that nothing prevents the office from attaching to the department for the purpose of ensuring that the office is supplied with the administrative support that it requires to carry out its functions effectively and efficiently. A *note* to this section refers to section 63A of the *Public Trustee Act 1978* which requires the Public Trustee to give the Public Guardian financial and other resources that have been approved by the Minister.

Clause 102 provides that staff of the office are employed under the *Public Service Act 2008*. A person consulted, employed or remunerated under section 103 of this Act and community visitors are not considered to be staff of the office under this Act.

Clause 103 provides that the Public Guardian may consult with, employ and remunerate medical, legal, accounting or other professionals if the Public Guardian considers it necessary. The Public Guardian is also empowered to obtain help from someone else whom the Public Guardian considers to be appropriately qualified to give the help and also to cooperate with any service provider or other entity providing services or dealing with issues affecting children. The Public Guardian is entitled to reimbursement from an adult for remuneration paid concerning the adult.

Part 3 External contractors

Clause 104 provides that the Public Guardian may authorise, in writing, an external contractor to perform the Public Guardian's child advocate functions under this Act, with the exception of the community visitor program, community visitor functions and the ability to apply for a warrant under section 78. An external contractor has all the powers of the Public Guardian to undertake child advocacy functions but cannot authorise someone else to perform the Public Guardian's functions under subsection 1 (subcontract).

The Public Guardian may give the authority subject to stated conditions and limitations including, for example, a condition that a particular power only be exercised subject to a decision of the Public Guardian; or imposing particular duties on the external contractor's employees.

The authorisation of an external contractor to perform an authorised function does not relieve the Public Guardian of the Public Guardian's obligation to ensure the function is properly performed.

Laws apply to the external contractor and to persons in relationship to the external contractor in the performance of an authorised function or in the exercise of a power for an authorised function as if the external contractor were the Public Guardian.

Clause 105 provides that the *Right to Information Act 2009*, the *Information Privacy Act 2009*, the *Crime and Misconduct Act 2001*, the *Judicial Review Act 1991*, the *Ombudsman Act 2001* and the *Public Interest Disclosure 2010* apply to external contractors.

Clause 106 provides that the Public Guardian may appoint an appropriately qualified person to review an external contractor's performance of its authorised functions. The person must provide a report to the Public Guardian. The external contractor must allow the person unlimited access to records relating to:

- (a) the performance of the authorised functions; or
- (b) persons employed or engaged by the contractor; or
- (c) anything else stated in the appointment.

Part 4 Appointment of community visitors and child advocacy officers and related provisions

Clause 107 provides that the Public Guardian may appoint a person to be a community visitor (adult); a community visitor (child); if eligible, both a community visitor (adult) and a community visitor (child); or a child advocacy officer. The intent is that a community visitor may perform community visitor functions for both child and adult visits. Appointment for these roles may be on a full time, part time or casual basis.

Clause 108 provides that 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). To avoid a conflict of interest, this Act provides a list of factors that preclude a person being appointed as a community visitor (adult).

In appointing persons as a community visitor (adult), the Public Guardian must take into account the desirability of community visitors (adult) having a range of knowledge, experience or skills relevant to the exercise of the functions of community visitors (adult) and reflecting the social and cultural diversity of the general community. A community visitor (adult) is appointed under this Act and not under the *Public Service Act 2008*.

Clause 109 provides that a person is eligible for appointment as a community visitor (child) only if the Public Guardian considers the person has the knowledge, experience or skills needed to perform the functions of a community visitor (child). To avoid a conflict of interest, this Act provides a list of factors that preclude a person being appointed as a community visitor (child).

In appointing persons as community visitors (child), the Public Guardian must take into account the desirability of community visitors (child) having a range of knowledge, experience or skills relevant to the exercise of the functions of community visitors (child) and reflecting the social and cultural diversity of children in Queensland. A community visitor (child) is appointed under this Act and not under the *Public Service Act 2008*.

Clause 110 provides that a member of the Public Guardian's staff is eligible for appointment as a child advocacy officer only if the Public Guardian considers the person has the knowledge, experience or skills needed to perform the functions of a child advocacy officer.

Clause 111 provides that a person holds office as a community visitor for a term not longer than three years. The clause also provides how a community visitor is to resign office and the circumstances in which the Public Guardian may suspend or terminate the community visitor's appointment.

Clause 112 provides that the Public Guardian must decide the remuneration and allowances payable to community visitors and to the extent this Act does not state the terms on which a community visitor holds office, the community visitor holds office on the terms decided by the Public Guardian. No provision has been made in the Bill

for remuneration and allowances for child advocacy officers as they will be performing this role as public service employees.

Clause 113 provides that the powers of a community visitor or child advocacy officer may be limited under a regulation, condition of appointment, or by written notice of the Public Guardian. The notice may first be given orally but, as soon as practicable after giving the oral notice, the oral notice must be confirmed in writing.

Clause 114 provides that the Public Guardian must give each community visitor and each child advocacy officer an identity card. The card must contain a recent photo of the visitor or officer, be in the approved form, be signed by the visitor or officer and state the card's expiry date. The card must also identify the role the person is appointed to under this Act.

Clause 115 provides that a person who ceases to be a community visitor or child advocacy officer must return the person's identity card to the Public Guardian within 21 unless the person has a reasonable excuse. The maximum penalty for failing to comply with this section is 10 penalty units.

Clause 116 provides that a community visitor or child advocacy officer may exercise a power in relation to another person only if the visitor or officer first produces his or her identity card for the person's inspection or has the visitor's or officer's identity card displayed so it is clearly visible to the other person.

Part 5 Assessing suitability of persons to be engaged in particular employment

Clause 117 provides that a person seeking to be engaged by the Public Guardian as a community visitor or child advocacy officer must disclose any criminal history prior to becoming engaged.

Clause 118 provides that the Public Guardian may make investigations about a person to help the Public Guardian decide whether the person is suitable to be a community visitor or child advocacy officer. The Public Guardian may ask the Commissioner of the Police Service for a written report about the criminal history of the person and the Commissioner must give the report to the Public Guardian. The report is only required to contain criminal history the Commissioner has, or has access to.

Clause 119 requires a community visitor or child advocacy officer to immediately disclose a change in their criminal history. Information disclosed must be in an approved form and include particular information.

Clause 120 provides that it is an offence for a community visitor or child advocacy officer to fail to disclose information as required under sections 117 and 119. It is also an offence to provide information in the approved form under section 119 in a way that is false, misleading or incomplete in a material particular. The maximum penalty for non compliance with this section is 100 penalty units or two years imprisonment.

Clause 121 provides that before using the information to assess a community visitor or child advocacy officer's suitability, the Public Guardian must disclose to the person, the information obtained from the Commissioner of the Police Service and allow the person a reasonable opportunity to make representations to the Public Guardian about the information.

Clause 122 provides that if the Public Guardian is considering information about a person received under this Part, the information must not be used for any purpose other than assessing the person's suitability to be a community visitor or child advocacy officer. When making the assessment, the Public Guardian must have regard to particular matters relating to the person's criminal history, including: when the offence was committed or was alleged to have been committed; the nature of the offence and its relevance to the person's proposed duties; and anything else the Public Guardian considers relevant.

Clause 123 provides that the Public Guardian must make guidelines for dealing with the information obtained by the Public Guardian under this Part. The purpose of the guidelines is to ensure natural justice is afforded and that only relevant information is used to assess a person's suitability. A copy of the guidelines must be provided to a community visitor or child advocacy officer upon request.

Part 6 Other provisions

Clause 124 provides that, as soon as practicable after the close of each financial year but not later than four months after the close, the Public Guardian must prepare a report on the performance of the Public Guardian's functions during the year. Information about the operations of community visitors during the year, including the number of entries of visitable sites outside normal hours authorised by the Public Guardian, must be included in the report.

The Public Guardian must give a copy of the report to the Minister and the Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

Clause 125 provides that the Public Guardian is not a statutory body for the purposes of the *Statutory Bodies Financial Arrangements Act 1982* or the *Financial Accountability Act 2009*.

Chapter 6 General

Part 1 Tribunal provisions

Clause 126 provides the definition of 'reviewable decision' for Part 1 which relates to particular decisions made under the CP Act.

Clause 127 allows the Public Guardian to authorise someone in writing to undertake a role under this Part. A person who has been authorised by the Public Guardian must, if asked, produce evidence of the authority.

Clause 128 provides the Public Guardian with the right to support a relevant child at, and participate in, conferences or mediations ordered or facilitated by the tribunal and to present the child's views and wishes at the conference or mediation. It also provides that the Public Guardian with a right to appear before the tribunal to present the child's views and wishes to the tribunal and to make submissions, call witnesses and test evidence, including by cross-examining witnesses.

The Public Guardian must give written notice of the intention to attend or appear to the principal registrar within a reasonable time before the conference, mediation or appearance. However, failure to give notice does not prevent the Public Guardian attending at the conference or mediation or appearing before the tribunal.

Clause 129 provides that at least seven days before the hearing of a child protection matter, the tribunal must give notice of the hearing to the Public Guardian. This section only applies to child protection matters identified by the Public Guardian under an arrangement agreed with the registrar of the tribunal. The section allows the tribunal to make a direction reducing the seven day timeframe.

Clause 130 provides the Public Guardian with the ability to access documents and other information or things filed in the tribunal registry or produced to the tribunal or a party to the proceedings, about particular child protection matters. The intention is that the Public Guardian will have access to the same documents and information that a party to a proceeding has access to so that the Public Guardian is in the best position possible to assist the child. The tribunal must give access to a document or other information to the Public Guardian on request. If a party to whom a document or thing has been produced fails to give access to the Public Guardian, the tribunal may make an order requiring the party to give it to the Public Guardian. This requirement has effect despite the CP Act, section 99ZF which prohibits a person who is not a party to a proceeding having access to these documents. The tribunal may displace the Public Guardian's right to access a document or other information by way of a confidentiality order.

Clause 131 provides that if, in performing the Public Guardian's child advocate functions in relation to a relevant child, the Public Guardian is dissatisfied with a reviewable decision and has been unable to resolve the matter with the Chief Executive (Child Safety) to the Public Guardian's satisfaction, the Public Guardian may apply to the tribunal to have the reviewable decision reviewed. The Public Guardian may apply to the tribunal only if the Public Guardian is satisfied that to do so would be in the child's best interests. The Public Guardian must give notice to the Chief Executive (Child Safety) that they intend to apply to the tribunal for a review of the decision.

Part 2 Evidence and legal proceedings

Clause 132 provides that, in relation to a proceeding under or in relation to this Act or for any other purpose, a certificate signed by the Public Guardian that an identified child is or was a relevant child at a stated time or during a stated period is proof that the child is or was a relevant child at the stated time or during the stated period.

Clause 133 provides that unless a party, by reasonable notice, requires proof of the appointment of a community visitor or child advocacy officer under this Act or the authority of a community visitor or child advocacy officer to do something under this Act, the appointment or authority must be presumed.

A signature purporting to be the signature of the Public Guardian, a community visitor or child advocacy officer is evidence of the signature it purports to be. In addition, a certificate purporting to be signed by the Public Guardian a document is a copy of a notice given or issued under this Act, or on a stated day, a stated person was given a stated notice under this Act.

Clause 134 provides that a proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.

Clause 135 provides that a proceeding for an offence against this Act may be started within one year after the offence is committed or one year after the offence comes to the complainant's knowledge, but within two years after the offence is committed.

Part 3 False or misleading statements

Clause 136 provides that a person must not state anything to the Public Guardian the person knows is false or misleading in a material particular. The maximum penalty for contravening this provision is 100 penalty units.

Clause 137 provides that a person must not give the Public Guardian a document containing information the person knows is false or misleading in a material particular. The maximum penalty for contravening this provision is 100 penalty units. This section does not apply to a person if the person, when giving the document, tells the Public Guardian, to the best of the person's ability, how it is false or misleading and if the person has, or can reasonably obtain, the correct information, gives the correct information.

Part 4 Confidentiality

Clause 138 prohibits the use of confidential information except in particular circumstances.

Subsection 2 provides that if a person gains confidential information through involvement in the administration of this Act, the GA Act or the POA Act the person must not make a record of the information or intentionally disclose the information to anyone, other than under the exceptions in the section nor recklessly disclose the information to anyone. The maximum penalty for contravening this section is 200 penalty units.

Subsection 3 identifies when a person gains information through involvement in the administration of this Act, the GA Act or the POA Act. This includes when a person gains the information because of being, or an opportunity given by being any of the following:

- (a) the Minister or a member of the Minister's staff; or
- (b) the Public Guardian; or

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- (c) a member of the Public Guardian's staff, including a child advocacy officer; or
 - (d) a community visitor; or
 - (e) a person consulted or employed by the Public Guardian for this Act; or
 - (f) a Public Guardian's delegate for an investigation; or
 - (g) an external contractor; or
 - (h) a person authorised in writing by the Public Guardian under section 127.

Subsection 4 provides that a person may make a record of confidential information or disclose it to someone else in particular circumstances which include:

- (a) for this Act, the GA Act or the POA Act; or
- (b) to discharge a function under another law; or
- (c) for a proceeding in a court or the tribunal; or
- (d) if authorised by a court or the tribunal in the interests of justice; or
- (e) if authorised by regulation or another law; or
- (f) if the person is authorised in writing by the person to whom the information relates; or
- (g) for the purpose of obtaining counselling, advice or other treatment for the person to whom the information relates; or
- (h) for the purpose of reporting a suspected offence to a police officer or helping a police officer in the investigation of a suspected offence; or
- (i) if the confidential information relates to an adult with impaired capacity for a matter—
 - (i) to prevent a serious risk to the adult's life, health or safety; or
 - (ii) for the purpose of obtaining legal or financial advice; or
 - (iii) to assist the public advocate in the performance of functions under the GA Act.
- (j) if the confidential information relates to a child—for a purpose related to the child's wellbeing or protection.

Clause 139 prohibits a receiver of confidential information given by a person mentioned in section 138(4) from using or disclosing the information to anyone else except: if it is authorised by the Public Guardian; or is otherwise required or permitted by law. The maximum penalty for contravening this subsection is 200 penalty units.

Clause 140 allows the Public Guardian (despite section 138) to disclose information to the public or a section of the public about an issue the subject of an investigation by the Public Guardian if the Public Guardian is satisfied the disclosure is necessary and reasonable in the public interest. In deciding whether the disclosure is necessary and reasonable in the public interest, the Public Guardian must have regard to any likely prejudice disclosure may have on the investigation; any need to protect the identity of a complainant or another entity; or any circumstances of urgency. This clause has been transferred from existing section 250 from the GA Act.

Also, if the disclosure would ordinarily require the Public Guardian to give the entity notice of the information and an opportunity to comment on it, the Public Guardian must have regard to this fact when deciding whether the disclosure is necessary and reasonable in the public interest; but may decide the disclosure is necessary and reasonable in the public interest despite the entity not being given notice of the information and an opportunity to comment on it.

Clause 141 provides that the Public Guardian may disclose information to a person undertaking research if the Public Guardian is satisfied the research is genuine; and the person gives a written undertaking to preserve the confidentiality of the information and the anonymity of the person to whom the information relates. A person must not contravene the undertaking with the maximum penalty for non compliance being 200 penalty units. If the person contravenes the undertaking and by contravening it also contravenes the CP Act, section 189 (prohibition of publication of information leading to identity of children), the person may be prosecuted under this section or the CP Act at the election of the prosecution.

Part 5 Miscellaneous

Clause 142 provides that the Public Guardian may make a complaint about services provided by a service provider to a relevant child or, on behalf of a relevant child, refer a complaint about the services to a complaints agency or other government service provider. The Public Guardian may, by written notice to the complaints agency or government service provider, ask for information about the outcome of the complaint, including any action taken to address the complaint; or a decision not to investigate or to continue to investigate the complaint and the reasons for the decision.

The complaints agency or government service provider must comply with a request for information from the Public Guardian despite any express provision in an Act establishing a complaints agency that makes it an offence for anyone involved with administration of the Act to disclose the information.

Complaints agencies include the Ombudsman, the Crime and Misconduct Commission, the Anti-Discrimination Commissioner and the Health Ombudsman.

Clause 143 provides that an official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act, the GA Act or the POA Act. An official includes:

- (a) the Minister; or
- (b) a community visitor; or
- (c) a person consulted or employed by the Public Guardian; or
- (d) a person acting under the direction of the Public Guardian or a member of the Public Guardian's staff.

If a civil liability is prevented from attaching to an official, the liability attaches instead to the State. However no one, including the State, is liable for an honest report by a community visitor under sections 47 or 70. It is noted that the Public Guardian and staff members will be protected from liability under the *Public Service Act 2008* and therefore are not included in this section.

Clause 144 provides that the Public Guardian may delegate the Public Guardian's functions and powers under this Act or another Act (other than the power to give notice under sections 25(1) or 29 and the power to authorise an external contractor to undertake functions under section 104) to an appropriately qualified member of the Public Guardian's staff; or another individual, including a community visitor, whom

the Public Guardian considers is an appropriately qualified person to perform the functions or exercise the powers delegated to the person.

A person exercising the Public Guardian's mediation or conciliation power under a delegation must, if asked, produce evidence of the delegation.

Also, if the Public Guardian has power for a personal matter for an adult, the Public Guardian may delegate the power to make day-to-day decisions about the matter to:

- (a) an appropriately qualified person who is caring for the adult;
- (b) a health provider of the adult;
- (c) an attorney under an enduring document;
- (d) one of the persons who could be eligible to be the adult's statutory health attorney.

Clause 145 provides that the Public Guardian may approve forms for use under this Act.

Clause 146 provides that the Governor in Council may make regulations under this Act.

Chapter 7 Transitional provisions

Part 1 Transitional provisions for repealed sections of the Commission for Children and Young People and Child Guardian Act 2000

Clause 147 provides definitions for Part 1.

Clause 148 provides that in Part 1, a reference to a numbered repealed section is a reference to the repealed section of that number of the former Act.

Clause 149 provides that if a child residing at a visitable site asked a staff member of the site under repealed section 90(1)(b) to arrange for a community visitor to visit the site to perform the functions of a community visitor under the former Act; or a child residing at a visitable site informed a staff member of the site under section 90(1)(c) that the child wished to communicate with a stated community visitor; and the staff member had not informed the Commissioner of the request before commencement, the staff member must inform the Public Guardian of the request as soon as practicable. The maximum penalty for failing to comply with this request is 10 penalty units. This clause ensures that all outstanding requests for visits by children at visitable sites are actioned by staff members of the Public Guardian.

If a child residing at a visitable site asked the Commissioner under repealed section 90(1)(a) to arrange for a community visitor to visit the site to perform the functions of a community visitor under the former Act and the visit had not taken place before commencement; or a staff member at a visitable site advises the Public Guardian of a request the Public Guardian must arrange for a community visitor (child) to visit the child at the visitable site as soon as practicable to perform the visitor's functions. The community visitor (child) may not be the stated visitor due to operational transition.

Clause 150 provides that if a child residing in a visitable home asked a carer of the child under repealed section 91(1)(b) to arrange for a community visitor to visit the home to perform the functions of a community visitor under the former Act; or a child residing in a visitable home informed a carer of the child under repealed section 91(1)(c) that the child wished to communicate with a stated community visitor and the carer had not informed the Commissioner of the request before commencement, the carer must inform the Public Guardian of the request as soon as possible. The carer does not commit an offence only by failing to comply with this requirement. This section ensures that all outstanding requests for visits by children at visitable homes are actioned by staff members of the Public Guardian.

Also, if a child residing in a visitable home asked the Commissioner under repealed section 91(1)(a) to arrange for a community visitor to visit the site to perform the functions of a community visitor under the former Act and the visit had not taken place before commencement; or a carer of a child residing in a visitable home advises the public guardian of a request, the Public Guardian must arrange for a community visitor (child) to visit the child at the visitable site as soon as practicable to perform the visitor's functions. The community visitor (child) may not be the stated visitor due to operational transition.

Clause 151 applies if under repealed section 92, a community visitor was required to prepare, and give to the Commissioner, a report about a visit and the community visitor had not prepared or given the report the Commissioner before the commencement and after the commencement, the community visitor is appointed a community visitor (child), the community visitor must prepare and give the report to the Public Guardian as soon as practicable after commencement. This requirement is only placed on community visitors that continue in the role. The Public Guardian may deal with a report given under this section as if it were a report given under section 70. This provision ensures that any reports finalised after commencement can be given to the Public Guardian.

Clause 152 applies if in the performance of the function of giving advice or reports as mentioned in repealed section 93(2), a community visitor had prepared, or was in the process of preparing, an advice or report for the Commissioner and the community visitor had not given the advice or report to the Commissioner before commencement and after commencement, the community visitor is appointed a community visitor (child), the community visitor may give, or prepare and give, the advice or report to the Public Guardian. This provision ensures that any reports finalised after commencement can be given to the Public Guardian.

Clause 153 provides that a warrant issued by a magistrate to enter a visitable home, on the application of a community visitor under repealed section 97, and in force on this Act's commencement, continues to have effect according to its terms and may be executed by the stated community visitor as if it had been issued under section 64.

Clause 154 provides that a person who immediately before this Act's commencement, held appointment as a community visitor under repealed section 107, is taken to be appointed as a community visitor (child) until whichever of the following happens first: the day the person is appointed as a community visitor (child)

under section 107; or the end of 30 September 2014. The terms of the person's employment are continued under this Act, with necessary changes, until changed by the Public Guardian.

No amount, whether by way of compensation, reimbursement or otherwise is payable by the State for or in connection with the revocation of the person's appointment as a community visitor. However, for a community visitor (child) whose appointment ends on 30 September 2014 under this section, compensation may be payable if expressly provided for under the person's terms of appointment or the *Industrial Relations Act 1999* (IR Act).

For the purpose of working out the person's entitlements under this Act or the IR Act, employment by the Commissioner and employment by the Public Guardian are taken to be employment by the same employer.

A notice under the IR Act given by a person holding appointment as a community visitor under repealed section 107 immediately before the commencement to the Commissioner as the person's employer is taken to have been given to the Public Guardian.

Also, if under the person's instrument of appointment as a community visitor, a decision about an entitlement was required to be made by the Commissioner or Assistant Commissioner, the decision must be made by the Public Guardian.

Clause 155 requires a person who ceases to be a community visitor before commencement of this Act and has not returned the person's identity card to the Commissioner to return the card to the Public Guardian as soon as possible after the commencement (but within 21 days), unless the person has a reasonable excuse. The maximum penalty for failing to comply with this section is 10 penalty units.

Clause 156 provides that if the Commissioner applied to the tribunal to have a reviewable decision reviewed under repealed section 370 and the reviewable decision had not been reviewed before commencement of this Act, a reference to the Commissioner in a document relevant to the review is taken to be a reference to the Public Guardian; and the review may proceed as if the application had been made under section 131. This provides that any outstanding applications before the tribunal under repealed section 370, may proceed as if the application was made under section 131 of this Act and any reference to the Commission in documents relevant to the review are taken to be referenced to the Public Guardian.

Clause 157 allows a transitional regulation to be made to make provision for the matters necessary to allow or facilitate the doing of anything to allow transition from former Act to this Act. This section and any transitional regulation made expires six months after commencement of this Act.

Part 2 Transitional provisions for the Guardianship and Administration Act 2000

Clause 158 provides definitions for Part 2.

Clause 159 provides that in an Act or document, a reference to the Adult Guardian is, if the context permits, taken to be a reference to the Public Guardian.

Clause 160 provides that in this Part, a reference to a numbered repealed section is a reference to the repealed section of that number of the GA Act.

Clause 161 provides that the Public Guardian is the successor in law of the Adult Guardian.

Clause 162 provides for transition of the current Adult Guardian to the position of the Public Guardian. The person who, immediately before the commencement of this Act, held the office of Adult Guardian goes out of office and that person is to be offered appointment as the Public Guardian. No advertising for the position is required.

The Minister must, as soon as practicable after this Act's commencement, give the person a written notice stating the conditions decided by the Governor in Council for appointment to the office. The person must consent to hold office. The term of appointment is until 12 August 2015.

No amount, whether by way of compensation, reimbursement or otherwise is payable by the State for or in connection with the abolition of the Adult Guardian's office, other than as expressly provided for under the person's contract of employment. This does not limit or otherwise affect the person's right to benefit or entitlement that, under the person's contract, had accrued or was accruing immediately before commencement.

However, upon refusal of the position, any benefit or entitlements cease to accrue and become payable as if the person's contract had, according to its terms, been terminated on that day; and the termination is other than by the person.

Section 17 of the *Acts Interpretation Act 1954* applies to this section which allows a provision of an Act that does not commence on its enactment (had it commenced), confer a power to make an appointment, the power may be exercised and anything may be done for the purpose of enabling the exercise of the power or bringing the appointment into effect before the empowering provision commences.

Clause 163 provides that a delegation made by the Adult Guardian under the GA Act that is in force immediately before this Act's commencement continues in force, with necessary changes, as if the delegation had been made by the Public Guardian under section 144 until 12 months after the commencement unless earlier revoked or amended by the Public Guardian.

Clause 164 applies if, under repealed section 178, the Adult Guardian consulted or employed a professional under a contract that was in force immediately before the commencement, the contract continues in force according to its terms (with necessary changes) as if it had been entered into by the Public Guardian under section 103.

Clause 165 provides that an attorney, guardian or administrator who, immediately before the commencement of this Act, is subject to the Adult Guardian's supervision under a written notice given under repealed section 179, continues to be subject to the

Public Guardian's supervision in accordance with the written notice as if the notice had been given by the Public Guardian under section 18.

Also, if the Adult Guardian had required an attorney to present a plan of management for approval and it has not been provided on commencement, the notice continues to have effect according to its terms as if it had been given by the Public Guardian under section 18.

Clause 166 provides that a complaint or allegation made to the Adult Guardian under repealed section 180 that has not been investigated or fully investigated on the commencement of this Act may be investigated by the Public Guardian under section 19.

Clause 167 provides that if the Adult Guardian had delegated the Adult Guardian's powers under the GA Act to a person to investigate a complaint or allegation and the investigation had not been completed on the commencement of this Act, the person may continue to carry out the investigation, make a written report and give a copy of the report to the Public Guardian as if the delegation had been given by the Public Guardian under section 20.

Clause 168 provides that a written notice given by the Adult Guardian to an attorney or an administrator under repealed section 182, that has not been complied with on the commencement of this Act, continues to have effect according to its terms as if the notice had been given by the Public Guardian under section 21.

Clause 169 provides that a written notice given by the Adult Guardian to a person who had custody or control of information under repealed section 183(2) that has not been complied with on the commencement of this Act, continues to have effect according to its terms as if the notice had been given by the Public Guardian under section 22.

Clause 170 provides that a written notice given by the Adult Guardian to a person to give information by statutory declaration under repealed section 184(1) that has not been complied with on the commencement of this Act, continues to have effect according to its terms as if the notice had been given by the Public Guardian under section 23.

Clause 171 provides that a written notice given by the Adult Guardian requiring a person to attend before the Adult Guardian under repealed section 185(1) that has not been complied with on the commencement of this Act, continues to have effect according to its terms as if the notice had been given by the Public Guardian under section 25.

Clause 172 provides that if a subpoena is issued by a Magistrates Court at the request of the Adult Guardian requiring the attendance of a person before the court on or after the commencement of this Act, the Public Guardian may examine the person as if the subpoena had been issued at the request of the Public Guardian under section 26.

Clause 173 provides that if the Adult Guardian by written notice under repealed section 189, required a person to pay to the Adult Guardian an amount (which

remains unpaid on the commencement of this Act) appropriate for the cost of the investigation or audit then the notice continues to have effect according to its terms as if the notice had been issued by the Public Guardian under section 29.

If the Public Guardian is satisfied that a request by a person under repealed section 189 was frivolous or vexatious or otherwise without good cause and no notice had been issued by the Adult Guardian to the person then the Public Guardian may, by written notice under section 29, require a person to pay to the Public Guardian the amount the Public Guardian considers appropriate for the cost of the investigation or audit.

Clause 174 provides that if the Adult Guardian carried out or was carrying out an investigation or audit and had not made or given a written report about the investigation or audit to a person under repealed section 193 before commencement of this Act, the Public Guardian may complete the investigation or audit and give a copy of the report to the person under section 31.

Clause 175 provides that a proceeding commenced by the Adult Guardian under repealed section 194 and not finalised before the commencement of this Act may be continued by the Public Guardian.

Clause 176 provides that a notice given by the Adult Guardian to an attorney under repealed section 195 and in force immediately before the commencement of this Act continues to have effect according to its terms as if it had been given by the Public Guardian under section 34.

Clause 177 provides that a warrant issued by the tribunal on the application of the Adult Guardian under repealed section 197 and in force on the commencement of this Act continues to have effect according to its terms and may be executed by the Public Guardian as if it had been issued under the GA Act, section 149.

Clause 178 provides that the Public Guardian must prepare an annual report on the performance of the Adult Guardian's functions for the reporting year 2013 – 2014. The Public Guardian must give a copy of the report to the Minister on or before 1 November 2014.

Clause 179 provides that if in the performance of the function of reporting to the Chief Executive a community visitor had prepared, or was in the process of preparing, a report for the Chief Executive and the community visitor had not given the report to the Chief Executive before the commencement of this Act and, after commencement, the community visitor is appointed a community visitor (adult), the community visitor may give, or prepare and give, the report to the Public Guardian.

Clause 180 provides that if before this Act's commencement a consumer at a visitable site asked a staff member at the visitable site to arrange for a community visitor to visit the site, and the person had not informed the Chief Executive of the request before this Act's commencement, the person must inform the Public Guardian of the request as soon as practicable. The maximum penalty for failing to comply with this subsection is 40 penalty units.

If, before this Act's commencement, a consumer at a visitable site asked the Chief Executive under the repealed section 226 to arrange for a community visitor to visit the site and the visit had not taken place at the commencement or a staff member of the site informs the Public Guardian of a request, the Public Guardian must arrange for a community visitor (adult) to visit the consumer at the visitable site as soon as practicable to perform the visitor's functions under section 41.

Clause 181 provides that an authority given by the Chief Executive under repealed section 228 that has not been acted on but is in force is taken to be an authority given by the Public Guardian under section 45.

Clause 182 provides that if a community visitor had prepared, or was in the process of preparing, a report under repealed section 230 for the Chief Executive and the community visitor had not given the report to the Chief Executive before the commencement of this Act, the community visitor may give, or prepare and give, the report to the Public Guardian. The Public Guardian may deal with the report as if it had been prepared and given under section 47.

Clause 183 provides that if the Chief Executive asked the Commissioner of the Police Service for a written report about the criminal history of a person under repealed section 230A and the Commissioner had not given the report to the Chief Executive before the commencement, the Commissioner may give the report to the Public Guardian.

Clause 184 provides that a person holding appointment as a community visitor under repealed section 231 immediately before the commencement of this Act is taken to be a community visitor (adult) appointed under this Act. The terms of the person's appointment as a community visitor under the GA Act are taken to be the terms of the person's appointment as a community visitor (adult) under this Act, with necessary changes.

Also, for the purpose of working out the person's entitlements under this Act or the *Industrial Relations Act 1999*, employment by the Chief Executive under repealed section 231 and employment by the Public Guardian are taken to be employment by the same employer.

A notice under the *Industrial Relations Act 1999* given by a community visitor immediately before the commencement to the Chief Executive as the person's employer is taken to have been given to the Public Guardian.

Also, if under the person's instrument of appointment as a community visitor, a decision about an entitlement was required to be made by the Commissioner or Assistant Commissioner, the decision must be made by the Public Guardian.

Clause 185 provides that if the Chief Executive has, by written notice under repealed section 232(4), suspended the appointment of a person as a community visitor and the suspension is in force immediately before the commencement of this Act, the suspension continues to have effect according to its terms as if the community visitor were a community visitor (adult) under this Act and the person's appointment had been suspended by the Public Guardian under section 111(4).

Clause 186 provides that a person who ceases to be a community visitor before the commencement of this Act and has not returned the person's identity card to the Chief Executive, must return card to the Public Guardian as soon as possible after the commencement (but within 21 days), unless the person has a reasonable excuse. The maximum penalty for non compliance with this section is 10 penalty units.

Clause 187 provides that the Public Guardian must prepare an annual report on the operations of community visitors (including the number of entries of visitable sites outside normal hours authorised by the Chief Executive) for the reporting year 2013 – 2014. The Public Guardian must give a copy of the report to the Minister on or before 1 November 2014.

Chapter 8 Amendment of Acts

Part 1 Amendment of this Act

Clause 188 provides that Part 1 amends this Act.

Clause 189 amends the long title of this Act.

Part 2 Amendment of Child Protection Act 1999

Clause 190 provides that Part 2 amends the CP Act.

Clause 191 inserts new section 40A which enables the Public Guardian to enter into arrangements with the registrar of the Childrens Court (at any location) about providing advice to the Public Guardian in relation to all applications for court assessment orders filed and hearings of applications identified by the Public Guardian.

Clause 192 renumbers sections 51L(1)(g) and (h) and inserts new subsection 51L(1)(g) to include the Public Guardian as a person to whom the convenor of a family group meeting must give a reasonable opportunity to attend and participate.

Clause 193 renumbers section 51W(1)(g) and (h) and inserts new subsection 51W(1)(g) to include the Public Guardian as a person to whom the Chief Executive (Child Safety) must give a reasonable opportunity to participate in the review and preparation of a revised case plan.

Clause 194 inserts new section 55A which enables the Public Guardian to enter into arrangements with the registrar of the Childrens Court (at any location) about providing advice to the Public Guardian in relation to all applications for child protection orders filed and hearings of applications identified by the Public Guardian.

Clause 195 renumbers section 70(5) as section 70(6) and inserts new section 70(5) to include the Public Guardian as a person who may attend a court ordered conference in its own right.

Clause 196 replaces the reference to the CCYPCG in section 74(4)(c) to reflect that the Chief Executive (Child Safety) must ensure that if the Chief Executive has custody or guardianship of a child under a child protection order or has custody of a child under a care agreement, the Chief Executive must ensure the child is told about the Public Guardian and other entities known to the Chief Executive that can help the child if the child considers that the charter is not being complied with in relation to the child.

Clause 197 omits the definition of ‘reviewable decision’ in section 99B and the *editor’s note* for the definition and inserts a new definition of reviewable decision to provide that, for Chapter 2A of the Act (tribunal proceedings), a reviewable decision includes a reviewable decision under the section 126 of this Act.

Clause 198 omits section 99F and inserts a new section 99F as it is the Public Guardian rather than the Commissioner for CCYPCG who will be able to make applications to the tribunal for a review of a reviewable decision.

Clause 199 renumbers section 99J(2)(d) to (f) as section 99J(2)(e) to (g) and inserts new section 99J(2)(d) to provide that the Public Guardian is a person who is entitled to be present at tribunal proceedings that are held in private under section 99J(1). Section 99J of the Act is subject to section 220 of the *Queensland Civil and Administrative Tribunal Act 2009*.

Clause 200 amends section 99P(1) and section 99P(3) to provide that the Public Guardian may file or withdraw a review application on behalf of a child in its own right rather than requiring the permission of the President of the tribunal.

Clause 201 inserts new sections 108B - 108D.

Section 108B provides that the Public Guardian may appear in a proceeding on an application for a prescribed child protection order. If the Public Guardian intends to appear at a proceeding the Public Guardian must give written notice of the intention to the registrar of the court within a reasonable time before the hearing starts, however a failure to do so does not prevent the Public Guardian appearing at the hearing. The section also provides that a reference to the Public Guardian includes a reference to someone authorised in writing by the Public Guardian for this Part. A person who has been authorised by the Public Guardian must, if asked, produce evidence of the authority.

Section 108C provides that the Public Guardian’s role in a proceeding on an application for a prescribed child protection order for a child is to support the child by presenting the child’s views and wishes to the court and to make submissions, call witnesses and test evidence, including cross-examining witnesses. The section also clarifies that the Public Guardian’s role in the proceeding is not diminished even if a lawyer is also representing the child, that the Public Guardian is not a party to the proceeding, and that the Public Guardian’s role ends when the application is decided or withdrawn (this means the Public Guardian does not have a right of appeal).

Section 108D provides that if requested by the Public Guardian, the Childrens Court must give the Public Guardian access to a document or other information or thing

filed in the court registry or produced to the court or a party as if the Public Guardian were a party to the proceeding. The section also clarifies that, without limitation, the Public Guardian may make submissions about a document or other information or thing accessed.

Clause 202 inserts a new section 113(4) to clarify section 113 is subject to sections 108C and 108D. The section confirms that the Public Guardian's role in a proceeding on an application for an order for a child under section 108C and the Public Guardian's power to require access to documents and other information and things filed in the Children's Court under section 108D, is not subject to the discretion of the Children's Court or any other requirement contained in section 113 even though the Public Guardian is not considered a party to the proceedings.

Clause 203 inserts a new section 189AA to allow the Chief Executive (Child Safety) to make arrangements with the Public Guardian to make information about a person's affairs acquired in the administration of the Act available to the Public Guardian for the purposes of this Act. Arrangements may include provision for electronic transfer of information, including on a daily basis.

Section 189AA(2) clarifies that information about the identity of a person who, under section 186(1) of the Act notifies the Chief Executive (Child Safety), an authorised officer or a police officer that they suspect a child has been, is being or is likely to be harmed or an unborn child may be at risk of harm after the child is born, cannot be provided to the Public Guardian under this section. This section is not limited by and does not limit Chapter 5A (service delivery and information exchange).

Section 188 does not apply to information provided under this section. The effect of this section is to provide that the Public Guardian is not prohibited from using the information provided to the Public Guardian by arrangement or from disclosing or giving another person access to that information. It should be noted that Chapter 6 Part 4 of this Act contains provisions restricting the use, recording and disclosure of the information.

Clause 204 inserts a new definition in Schedule 3 to define 'Public Guardian'.

Part 3 Amendment of Commission for Children and Young People and Child Guardian Act 2000

Clause 205 provides that Part 3 amends the CCYPCG Act.

Clause 206 repeals Chapter 5 as responsibility for the community visitor program will sit with the Public Guardian.

Clause 207 repeals Chapter 10, Part 1 as the Public Guardian will take over this function of resolving disputes about reviewable decisions with the Chief Executive (Child Safety) and will have the ability to initiate reviews of reviewable decisions at the tribunal.

Clause 208 repeals section 391 and section 392 as the Public Guardian will now take over this role to refer complaints to agencies and have the ability to obtain feedback from agencies about outcomes of the complaint.

Clause 209 Repeals the definitions of ‘reviewable decision’, ‘community visitor’, ‘visitable home’ and ‘visitable site’ and amends the definitions of ‘carer’ and ‘staff member’ in Schedule 7.

Part 4 Amendment of Corrective Services Act 2006

Clause 210 provides that Part 4 amends the *Corrective Services Act 2006*.

Clause 211 amends the definition of ‘accredited visitor’ in Schedule 7 to include a community visitor (child) under this Act.

Part 5 Amendment of Disability Services Act 2006

Clause 212 provides that Part 5 amends the *Disability Services Act 2006*.

Clause 213 amends section 123E to replace the reference to the Adult Guardian with a reference to the Public Guardian in the definition of ‘short term approval’ for the purposes of Part 10A.

Clause 214 amends section 123I(d)(iii) to provide that a relevant service provider must ensure that a copy of the up to date policy about the use of a restrictive practices is available for inspection by a community visitor under this Act rather than a community visitor under the GA Act.

Clause 215 amends section 123O(1)(d)(i) to replace the reference to the Adult Guardian with a reference to the Public Guardian.

Clause 216 amends section 123ZK(6)(a) to replace the reference to the Adult Guardian with a reference to the Public Guardian.

Clause 217 replaces the existing section 123ZZF(3) with the new section 123ZZF(3) which states that if a relevant service provider is given a restrictive practice approval authorising the provider to use a restrictive practice at a visitable site as defined under section 39 of this Act, and there is no other restrictive practice approval in effect relating to the visitable site, then the relevant service provider must within the required period give notice to the Public Guardian. The effect of the subsection is to replace a requirement to give notice to the Chief Executive of the department in which the GA Act is administered, with a requirement to give notice to the Public Guardian under this Act. References to the Adult Guardian have been changed to the Public Guardian in this section.

This section also amends section 123ZZF(5) to replace the reference to the Chief Executive of the department in which the GA Act is administered with a reference to the Public Guardian and section 123ZZF(7) to replace the reference to the Adult Guardian in the definition of ‘limited restrictive practice approval’ with a reference to the Public Guardian.

Clause 218 omits sections 168(2)(d) and (e) and inserts new section 168(2)(d) to refer to the Public Guardian rather than the Chief Executive of the department in which the GA Act is administered or Adult Guardian.

Clause 219 repeals the definition of ‘Adult Guardian’ in Schedule 7 and defines ‘Public Guardian’ for the purposes of the Act.

In addition paragraphs (e) and (f) of the definition of ‘complaints agency’ in Schedule 7 are repealed with a new paragraph (e) inserted to include the Public Guardian as a complaints agency rather than the Adult Guardian and the Commissioner for Children and Young People and Child Guardian.

Part 6 Amendment of Domestic and Family Violence Protection Act 2012

Clause 220 provides that Part 6 amends the *Domestic and Family Violence Protection Act 2012*.

Clause 221 amends section 163 to replace references to the Adult Guardian with Public Guardian.

Clause 222 amends the schedule to replace the definition of ‘Adult Guardian’ with a definition of ‘Public Guardian’.

Part 7 Amendment of Forensic Disability Act 2011

Clause 223 provides that Part 7 amends the *Forensic Disability Act 2011*.

Clause 224 amends section 26(4)(b) to replace the reference to the Adult Guardian with a reference to the Public Guardian under this Act.

Part 8 Amendment of Guardianship and Administration Act 2000

Clause 225 provides that Part 8 amends the GA Act.

Clause 226 amends the long title to remove continuing the office of the Adult Guardian from the purposes of the GA Act.

Clause 227 omits section 7(f) and (i) and renumbers sections 7(g) and (h). These functions have been transferred from the GA Act to this Act.

Clause 228 inserts a new section 7A to provide that the GA Act is to be read in conjunction with this Act which provides for the Public Guardian and the community visitor (adult) program.

Clause 229 amends the various sections listed by replacing references to the Adult Guardian with references to the Public Guardian.

Clause 230 amends the heading of section 80ZJ to refer to the Public Guardian instead of the Adult Guardian.

Clause 231 repeals Chapter 8 as the Adult Guardian is abolished. Functions and powers of the Adult Guardian have transferred to this Act.

Clause 232 repeals Chapter 10 as the community visitor program is to be transferred to this Act, with responsibility for the program sitting with the Public Guardian.

Clause 233 amends section 246 to repeal and replace the definitions of ‘Adult Guardian’s delegate for an investigation’ and ‘relevant person’ for the purposes of Part 4 to refer to the Public Guardian and this Act and retain references to tribunal members, the Public Advocate and staff and guardians and administrators for the purpose of a relevant person definition.

Clause 234 amends section 247 to provide that this section also applies so that a person is not liable, civilly, criminally or under an administrative process, for disclosing to an official information about a person’s conduct that breaches this Act and amends the definition of ‘official’ to refer to the Public Guardian and staff and community visitor (adult) under this Act.

Clause 235 repeals section 248(3), renumbers the provision and inserts a new definition of ‘person’ taking out references to the Adult Guardian and other relevant staff, including community visitors who are now covered under this Act.

Clause 236 amends section 248A to replace the reference to the Adult Guardian with a reference to the Public Guardian under section 38 of this Act.

Clause 237 amends section 248B to refer to the giving of information to the Public Advocate under section 210A and removing references to the Adult Guardian.

Clause 238 replaces section 249(3)(i) with a new section 249(3)(i) to clarify that if a relevant person gains confidential information because of being a relevant person, or because of an opportunity given by being a relevant person, the person may also use the information in assisting the Public Guardian, the Public Advocate or a public service officer in the performance of functions under the Act, the POA Act or this Act.

Clause 239 repeals section 250, which is now included in section 140 of this Act.

Clause 240 replaces the definitions of ‘Adult Guardian’ and ‘Adult Guardian’s delegate for an investigation’ in Schedule 4 with definitions of ‘Public Guardian’ and ‘Public Guardian’s delegate for an investigation’.

Part 9 Amendment of Health Ombudsman Act 2013

Clause 241 provides that Part 9 amends the *Health Ombudsman Act 2013*.

Clause 242 amends section 30(d) to replace the reference to the CCYPCG with a reference to the Public Guardian under this Act.

Clause 243 omits the amendments to paragraph (d) of the definition of ‘complaints agency’ in Schedule 7 of the CCYPCG Act.

Part 10 Amendment of Integrity Act 2009

Clause 244 provides that Part 10 amends the *Integrity Act 2009*.

Clause 245 amends the entry for the GA Act to replace the Adult Guardian with the Public Guardian as the statutory office holder for section 72C of the Act.

Part 11 Amendment of Mental Health Act 2000

Clause 246 provides that Part 11 amends the *Mental Health Act 2000*.

Clause 247 amends section 342(4)(b) to replace references to the Adult Guardian and the Commissioner under the CCYPCG Act with the Public Guardian under this Act as an allied person under section 342, if the patient does not have capacity to choose an allied person.

Clause 248 amends section 349(4)(e) to replace the reference to a community visitor under the GA Act with a reference to a community visitor under this Act.

Clause 249 omits the definition of ‘Adult Guardian’ in the Schedule and inserts a definition of ‘Public Guardian’.

Part 12 Amendment of Ombudsman Act 2001

Clause 250 provides that Part 12 amends the *Ombudsman Act 2001*.

Clause 251 amends the definition of ‘complaints entity’ in schedule 3 by omitting the note listing the Adult Guardian under the GA Act as an example of a complaints entity, and inserting the Public Guardian under the this Act as an example of a complaints entity.

Part 13 Amendment of Powers of Attorney Act 1998

Clause 252 provides that Part 13 amends the POA Act.

Clause 253 amends section 6A(3) to remove references to the Adult Guardian and community visitors under the GA Act.

Clause 254 inserts a new section 6B to provide that the POA Act is to be read in conjunction with this Act.

Clause 255 amends sections 29(1)(d) and (2)(c) to replace the references to Adult Guardian with references to the Public Guardian.

Clause 256 amends section 63(2) to replace the reference to Adult Guardian with a reference to the Public Guardian.

Clause 257 omits section 74(3)(i) and inserts a new section 74(3)(i) to provide that confidential information may be used in assisting the Public Guardian, the Public Advocate or a public service officer in the performance of functions under the Act, the GA Act or this Act.

Clause 258 omits the *note* to section 85 and inserts a new *note* that under this Act the Public Guardian may audit the accounts.

Clause 259 amends section 110(3)(d) and (e) to replace the reference to Adult Guardian with a reference to Public Guardian.

Clause 260 amends section 121 to replace the reference to Adult Guardian with a reference to Public Guardian.

Clause 261 repeals the definition of ‘Adult Guardian’ and inserts a new definition of ‘Public Guardian’.

Part 14 Amendment of Public Service Act 2008

Clause 262 provides that Part 14 amends the *Public Service Act 2008*.

Clause 263 removes the entry for the Adult Guardian office in Schedule 1 and inserts a new entry for the office of the Public Guardian and the Public Guardian under this Act.

Part 15 Amendment of Public Trustee Act 1978

Clause 264 provides that Part 15 amends the *Public Trustee Act 1978*.

Clause 265 replaces the references to the Adult Guardian in section 63A with references to the Public Guardian and omits the *note* to section 63A(1).

Part 16 Amendment of Residential Services (Accreditation) Act 2002

Clause 266 provides that Part 16 amends the *Residential Services (Accreditation) Act 2002*.

Clause 267 amends section 177(3) to replace the GA Act with this Act in the definition of ‘prescribed Act’ for section 177(3).

Part 17 Amendment of Right to Information Act 2009

Clause 268 provides that Part 17 amends the *Right to Information Act 2009*.

Clause 269 amends Schedule 2, Part 2 by omitting item 10 and inserting a new item referring to the Public Guardian. This has the effect of providing that the Act does not apply to the Public Guardian in relation to an investigation or audit under this Act.

Part 18 Amendment of Youth Justice Act 1992

Clause 270 provides that Part 18 amends the *Youth Justice Act 1992*.

Clause 271 amends section 272(1) to replace the reference to community visitor with references to community visitor (child) or child advocacy officer.

Clause 272 amends sections 277(2), (3) and (6) to replace references to community visitor with references to community visitor (child) or child advocacy officer.

Clause 273 amends sections 282J(2), (3) and (6) to replace references to community visitor with references to community visitor (child) or child advocacy officer.

Clause 274 amends section 307(2) to replace references to community visitor with references to a community visitor (child) and child advocacy officer.

Clause 275 repeals the definition of 'community visitor' in Schedule 4 and inserts new definitions for 'child advocacy officer' and 'community visitor (child)'.

Schedule 1

Schedule 1 provides a dictionary for this Act.