

PUBLIC GUARDIAN BILL 2014

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Jarrod Bleijie MP

Title of the Bill

Public Guardian Bill 2014

Objectives of the Amendments

Minor and technical amendments are required to correct minor drafting errors and unintentional omissions, or provide clarification on sections of the Public Guardian Bill 2014 (the Bill) and ensure there are no unintended consequences arising from the Bill.

Achievement of the Objectives

The objectives will be achieved by making amendments to the Bill as follows:

- including child advocacy officers as accredited visitors under the *Corrective Services Act 2006*;
- making child advocacy officers subject to the directions of staff at corrective services facilities and youth detention centres when visiting the facility or centre;
- including the Family Responsibilities Commission as a prescribed entity under clause 84 of the Bill;
- clarifying that the Public Guardian can make copies of court file documents accessed under clause 201, new section 108D of the *Child Protection Act 1999*;
- removing the application of the information exchange framework related to the Public Guardian's child advocate functions to separate representatives;

- clarify that for an authorised mental health service to be defined as a visitable site for the adult community visitor program, it must provide inpatient services which is consistent with the current definition in subordinate legislation;
- ensuring that the definition of power of attorney in clause 17 is the same as that in clause 12(2) of the Bill;
- consequential amendments to the *Queensland Civil and Administrative Tribunal Act 2009* to reflect renumbering of the *Disability Services Act 2006* that has been made as a part of the *Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2014*; and
- consequential amendments to the *Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2014* to change references from the Adult Guardian to the Public Guardian.

Alternative Ways of Achieving Policy Objectives

There is no alternative way to achieve the policy objectives.

Estimated Cost for Government Implementation

There are no costs associated with the amendments.

Consistency with Fundamental Legislative Principles

The amendments are consistent with fundamental legislative principles.

Consultation

Consultation in relation to the proposed amendments was undertaken with the Adult Guardian and Legal Aid Queensland.

NOTES ON PROVISIONS

Clause 1 amends clause 2 of the Bill to provide that the new Chapter 8, part 15A – amendments to the *Queensland Civil and Administrative Tribunal Act 2009* does not commence on 1 July like the majority of the Bill.

Clause 2 amends clause 2 of the Bill to provide that the new Chapter 8, part 15A – amendments to the *Queensland Civil and Administrative Tribunal Act 2009* commences on commencement of the *Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2014* which will be on proclamation. This is because the amendments to the *Queensland Civil and Administrative Tribunal Act 2009* are consequential to the *Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2014*.

Clause 3 amends clause 17 to insert a fourth definition of a power of attorney. A power of attorney can also mean a similar document under the law of another jurisdiction.

Clause 4 amends clause 39 to clarify that a visitable site that is an authorised mental health service under the *Mental Health Act 2000* must provide inpatient services to be a visitable site under the Bill.

Clause 5 inserts a new clause 76A into the Bill to provide that the exercise of child advocate powers under clauses 74 and 76 when visiting a relevant child in a corrective services facility, are subject to the direction or procedure given or made by the chief executive (corrective services) to facilitate the effective and efficient management of corrective services.

In addition, clause 76A provides that the exercise of child advocate powers under clauses 74 and 76 when visiting a relevant child in a youth detention centre, are subject to the direction of the chief executive (youth justice) for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres.

Clause 6 inserts new clause 83A into the Bill to make it clear that Chapter 4, Part 4 – Information Exchange does not apply to information about a child and the child's circumstances in the possession or control of the chief executive officer of Legal Aid Queensland if the information has been obtained by a person acting as a separate representative under the *Child Protection Act 1999* and the person was appointed by Legal Aid Queensland to separately represent the child.

Clause 7 amends clause 84 of the Bill to include the Family Responsibilities Commission as a prescribed entity under the Bill.

Clause 8 omits clause 85(4).

Clause 9 renumbers clause 85(5) to 85(4).

Clause 10 renumbers clause 85(6) to 85(5).

Clause 11 renumbers clause 85(7) to 85(6).

Clause 12 renumbers clause 85(8) to 85(7).

Clause 13 amends clause 201, new section 108D – Access, to clarify that the Public Guardian may access a document and make copies of the document if a party to the proceedings may also access the document.

Clause 14 amends clause 211 which amends Schedule 4 of the *Corrective Services Act 2006* – Dictionary, to include a child advocacy officer as an accredited visitor under that Act.

Clause 15 inserts a new Part 5A – Amendment of Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2014 (RP Act) after clause 219 of the Bill.

New clause 219A provides that this Part amends the RP Act.

New clause 219B amends section 16 of the RP Act which amends section 123O(1)(d) of the *Disability Services Act 2006*. The clause changes references to the Adult Guardian to the Public Guardian.

New clause 219C amends section 17 of the RP Act which amends sections 123OA(1)(a) and 123OA(2)(a) of the *Disability Services Act 2006*. The clause changes references to the Adult Guardian to the Public Guardian.

New clause 219D amends section 22 of the RP Act which inserts new section 123ZCA into the *Disability Services Act 2006*. The clause changes references to the Adult Guardian to the Public Guardian.

New clause 219E amends section 36 of the RP Act which inserts new section 123ZZK into the *Disability Services Act 2006*. The clause changes references to the Adult Guardian to the Public Guardian.

New clause 219F amends section 46 of the RP Act which amends section 80ZH of the *Guardianship and Administration Act 2000*. The clause changes references to the Adult Guardian to the Public Guardian.

New clause 219G amends section 47 of the RP Act which replaces sections 80ZI and 80ZJ of the *Guardianship and Administration Act 2000*. The clause changes references to the Adult Guardian to the Public Guardian.

New clause 219H amends section 48 of the RP Act which amends section 80ZK of the *Guardianship and Administration Act 2000*. The clause changes references to the Adult Guardian to the Public Guardian.

New clause 219I amends section 49 of the RP Act which amends section 80ZM of the *Guardianship and Administration Act 2000*. The clause changes references to the Adult Guardian to the Public Guardian.

Clause 16 inserts new Part 15A – Amendment of the Queensland Civil and Administrative Tribunal Act 2009 (QCAT Act) after clause 265.

New clause 265A provides that this Part amends the QCAT Act.

New clause 265B amends section 46 of the QCAT Act to reflect numbering changes of sections in the *Disability Services Act 2006* as a result of the RP Act.

Clause 17 amends the long title of the Bill to include the RP Act.

Clause 18 amends the long title of the Bill to include the QCAT Act.