

Public Guardian Regulation 2014

Explanatory notes for SL 2014 No. 105

made under the

Adoption Act 2009

Child Protection Act 1999

Commission for Children and Young People and Child Guardian Act 2000

Corrective Services Act 2006

Guardianship and Administration Act 2000

Legal Profession Act 2007

Public Guardian Act 2014

Queensland Civil and Administrative Tribunal Act 2009

Statutory Bodies Financial Arrangements Act 1982

Youth Justice Act 1992

General Outline

Short title

Public Guardian Regulation 2014

Authorising law

Section 328 of the *Adoption Act 2009*

Section 249 of the *Child Protection Act 1999*

Section 401 of the *Commission for Children and Young People and Child Guardian Act 2000*

Section 355 of the *Corrective Services Act 2006*

Section 252 of the *Guardianship and Administration Act 2000*

Section 715 of the *Legal Profession Act 2007*

Section 148 of the *Public Guardian Act 2014*

Section 242 of the *Queensland Civil and Administrative Tribunal Act 2009*

Section 78 of the *Statutory Bodies Financial Arrangements Act 1982*

Section 314 of the *Youth Justice Act 1992*

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 Roadmap for Queensland Child Protection*. The report outlines three tracks for reform including to reduce the

number of children and young people in the child protection system; revitalise child protection frontline services and family support, breaking the intergenerational cycle of abuse and neglect; and refocus oversight on learning, improving and taking responsibility.

Based on the third track for reform, the Commission found that the current layers of oversight were at the expense of delivering services to the public and reforms were needed which take into account and manage risk in new and different ways. The Commission noted the full suite of checks and balances within Government, including financial management and accountability, public service management and service delivery, standards of conduct and ethical behaviour, public accountability and performance audits of public sector entities. The Commission recommended that it was time to place appropriate levels of responsibility on each department responsible for child protection so as to avoid duplication and to use resources efficiently.

The Commission identified a number of shortcomings with the current approach to the Child Guardian role in Queensland and services delivered by community visitors, currently located in the Commission for Children and Young People and Child Guardian (CCYPCG). In particular, it was noted that the Child Guardian and community visitor roles do not have the required focus on facilitating young people's engagement and participation in decision-making through individual support and advocacy and, in the case of the community visitor program, has too wide an ambit.

To address these issues, the Commission recommended that the role of the Child Guardian (within 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.

The Commission also recommended improved and refined oversight of the child protection system that places appropriate responsibility on each department with child protection responsibilities and that avoids duplication and uses resources efficiently. Specific recommendations were made regarding the systemic oversight of the child protection system, complaints handling, the court system, child death review mechanisms, and administration of the working with children check scheme (blue card system).

On 16 December 2013, the Queensland Government released its response to the Commission's report, supporting the recommendations made by the Commission.

On 20 May 2014, Parliament passed the *Public Guardian Act 2014* (PG Act), the *Family and Child Commission Act 2014* (FCC Act) and the *Child Protection Reform Amendment Act 2014* (CPRA Act).

The PG Act implements the recommendations from the Commission to establish the new Office of the Public Guardian. The Office of the Public Guardian is an independent statutory body reporting to the Attorney-General and Minister for Justice, which combines the current Adult Guardian with refocused child advocacy and visit functions from CCYPCG.

The FCC Act implements the recommendations from the Commission to establish a new entity, the Family and Child Commission (FCC), which is a statutory body reporting to the Premier to provide systemic oversight for the child protection system and to transfer related CCYPCG systemic oversight and research functions to the new entity.

The CPRA Act implements other recommendations of the Commission relating to the oversight of the child protection system including: clarifying the leadership of the Childrens Court when constituted by Magistrates and District Court judges and the administration of the Court; providing a clear legislative framework in the *Child Protection Act 1999* (CP Act) to guide decision making about when a report about a child should be made to Child Safety, including a consolidated and consistent requirement for those professionals currently required by policy or legislation to mandatorily report as a first step to reduce the current levels of unsustainable demand on the child protection system; establishing a Child Death Review Panel under the CP Act to independently oversee the streamlined processes for the review of deaths of children known to Child Safety and some serious child injuries; and transferring administration of the working with children check (blue card system) to the Public Safety Business Agency (PSBA) under a stand alone Act (the *Working with Children (Risk Management and Screening) Act 2000* (WWC Act)).

The policy objectives of the Public Guardian Regulation 2014 (the Regulation) are to:

- ensure that the community visitor program, including the places which can be visited as a part of the program remains unchanged from those in the *Guardianship and Administration Act 2000* (GA Act) and *Guardianship and Administration Regulation* (GA Regulation) (provisions from the GA Act were replicated in the *Public Guardian Act 2014*);
- ensure that mail sent to and by the Public Guardian, community visitors (child) and child advocacy officers is classified as privileged mail under the *Corrective Services Act 2006* (CS Act);
- align the change of name of the *Commission for Children and Young People and Child Guardian Act 2000* to the WWC Act by renaming the *Commission for Children and Young People and Child Guardian Regulation 2011* (CCYPCG Regulation) to the *Working with Children (Risk Management and Screening) Regulation 2011* (WWC Regulation); and
- make consequential amendments to subordinate legislation as a result of abolishing the CCYPCG and transferring functions to other entities. The majority of these amendments are to change references to the Adult Guardian or Commissioner for CCYPCG and the respective legislation to the Public Guardian and the PG Act, FCC and FCC Act or the Chief Executive of the PSBA and the WWC Act. Amendments also reflect changes to the CP Act in relation to the reporting of a concern about a child to Child Safety

Achievement of policy objectives

Visitable sites for the adult community visitor program

The Regulation establishes a new Public Guardian Regulation, the making of which is authorised by section 146 of the *Public Guardian Act 2014* (PG Act).

The PG Act provides for a community visitor program to visit adults with impaired capacity for a matter at visitable sites. Section 39 of the PG Act provides a definition of visitable site which requires particular sites to be prescribed under a regulation.

The Regulation details places that are considered visitable sites under the PG Act, including a place other than a private dwelling house where a consumer lives where some sort of funding or service is provided for by particular government entities. The places prescribed in the Regulation are based upon those currently prescribed in the GA Regulation.

Privileged mail under the Corrective Services Act 2006

The Public Guardian will also administer a community visitor program for children under the Act (Chapter 4, Part 2). As a part of this program, community visitors (child) must visit corrective services facilities where children are staying. In addition, the Public Guardian will appoint child advocacy officers to undertake individual advocacy for children who are subject to an order, intervention or agreement under the CP Act.

Under the CS Act, an officer may open, search and censor a prisoner's ordinary mail, however, privileged mail must be opened and searched in the prisoner's presence and only if it is reasonably suspected that the mail contains something that may physically harm the person to whom it is addressed or something that is a prohibited thing under the Act. Privileged mail is defined as mail sent to, or by, a person prescribed under a regulation. The *Corrective Services Regulation 2006* (CS Regulation) provides a list of prescribed persons for the purposes of privileged mail.

The Regulation amends the CS Regulation to ensure that the Public Guardian, community visitors (child) and child advocacy officers are prescribed as persons for whom mail sent to, or by, is classified as privileged.

Consequential amendments

Consequential amendments are made to various regulations to reflect the transfer of CCYPCG functions to other entities. Amendments include changing the name of the CCYPCG Regulation to the WWC Regulation, which reflects the change in name of the primary legislation to which this regulation is subordinate.

In addition, consequential amendments are made to section 10 of the *Child Protection Regulation 2011* (CS Regulation) so that the section applies to all mandatory reporters to assist them in deciding what information should be provided to Child Safety when making a report about a child. Section 13G(2)(b) of the *Child Protection Reform Amendment Act 2014* requires that the information set out in the amended section 10 of the CS Regulation is to be included in a report, to the extent of a person's knowledge.

Consistency with policy objectives of authorising law

The regulation is consistent with the main objects of the *Public Guardian Act 2014*. All other amendments to regulation are consequential in nature and reflect the transfer of CCYPCG functions to other entities.

Inconsistency with policy objectives of other legislation

The regulation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

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

Benefits and costs of implementation

It is not anticipated that the State Government will incur additional costs as a result of this regulation. Costs of implementing the regulation will be met from the existing budget of the CCYPCG which will cease operation from 1 July 2014 when the new entities will commence operations.

Consistency with fundamental legislative principles

The proposed regulation is consistent with fundamental legislative principles.

Consultation

In light of extensive community consultation undertaken by the Commission in forming its recommendations and targeted consultation undertaken in relation to the three Acts, consultation was only undertaken in relation to the regulation with the Adult Guardian.

The Adult Guardian supports the inclusion of a prescribed definition of visitable sites for adults with impaired capacity for a matter in the *Public Guardian Regulation 2014*.