Parliamentary Committees

Child Protection Reform Amendment Bill 2017

Report No. 45, 55th Parliament
Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee
September 2017

Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

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Acknowledgements

The committee would like to thank the communities of Mount Isa, Palm Island and Townsville, in particular the Kalkadoon people, the Manbarra and Bwgcolman people, and the Bindal and Wulgurukaba people, for sharing their views, experience and knowledge with the committee during its regional hearings and forums on the Bill.

The committee also acknowledges the assistance provided by the Department of Communities, Child Safety and Disability Services.

Contents

Glossary and abbreviations

AASW	Australian Association of Social Workers
Act	*Child Protection Act 1999*
ANTR Queensland	Australians for Native Title and Reconciliation - Queensland
ATSICHS	Aboriginal and Torres Strait Islander Community Health Service
ATSIWLSNQ	Aboriginal and Torres Strait Islander Women's Legal Service North Queensland
Bill	Child Protection Reform Amendment Bill 2017
Changing Tracks Action Plan	*Changing Tracks: An action plan for Aboriginal and Torres Strait Islander children and families 2017-19*
Chief executive	Chief executive of the Department of Communities, Child Safety and Disability Services
CLAN	Care Leavers Australasia Network
Commission of Inquiry	Queensland Child Protection Commission of Inquiry, led by the Honourable Tim Carmody QC
Commission Report	*Taking Responsibility: A Road Map for Queensland Child Protection*
committee	Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee
department	Department of Communities, Child Safety and Disability Services
Director of Litigation	Director of Child Protection Litigation
FCQ	Foster Care Queensland
FIN	Family Inclusion Network
independent entities	Independent Aboriginal and Torres Strait Islander entities
LAQ	Legal Aid Queensland
LGBTI Legal Service	Lesbian Gay Bisexual Trans Intersex Legal Service Inc.
Minister	Minister for Communities, Women and Youth, Minister for Child Safety and Minister for the Prevention of Domestic and Family Violence

Our Way Strategy	*Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and families – 2017 to 2037*
PeakCare	PeakCare Queensland
PCO	Permanent Care Order
PICC	Palm Island Community Company
QAI	Queensland Advocacy Incorporated
QATSICPP	Queensland Aboriginal and Torres Strait Islander Child Protection Peak
QFCC	Queensland Family and Child Commission
QLS	Queensland Law Society
QNMU	Queensland Nurses and Midwives' Union
TAIHS	Townsville Aboriginal and Islander Health Service
YAC	Youth Advocacy Centre

Note: All Acts are Queensland Acts, unless specified otherwise.

Chair's foreword

On behalf of the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee of the 55th Parliament, I present this report on the committee's examination of the Child Protection Reform Amendment Bill 2017 (the Bill).

The purpose of the Bill is to amend the *Child Protection Act 1999* to:

- promote positive long-term outcomes for children in the child protection system through timely decision making and decisive action towards either reunification with family or alternative long-term care
- promote the care and connection of Aboriginal or Torres Strait Islander children with their families, communities and culture, and
- provide a contemporary information-sharing regime for the child protection system.

The Bill would also implement other key reforms, as set out in the Government's *Supporting Families Changing Futures* program.

The committee's task was to consider the policy to be given effect by the Bill, and whether the Bill has sufficient regard to the fundamental legislative principles in the *Legislative Standards Act 1992*. The fundamental legislative principles include whether legislation has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

This report summarises the committee's examination of the Bill, including the views expressed in submissions and by witnesses at the committee's public hearings and forums, and information provided by the Department of Communities, Child Safety and Disability Services.

The committee has recommended that the Bill be passed.

On behalf of the committee, I would like to thank those individuals and organisations who lodged written submissions and appeared at the committee's public hearings and forums. In particular, I would like to acknowledge and thank QATSICPP, the Injilinji Aboriginal and Torres Strait Islanders Corporation, witnesses in Mount Isa and Townsville, and the Mayor and Councillors of Palm Island Aboriginal Shire Council and Palm Island community elders for their welcome and passionate advocacy of their community and culture.

The committee also wishes to acknowledge the assistance provided by the department, our Hansard reporters, Technical Scrutiny of Legislation Secretariat staff, the Parliament's Indigenous Liaison Officer, and the committee secretariat.

Finally, I would like to thank my fellow committee members for their contributions during the examination of the Bill.

I commend this report to the House.

Leanne Linard MP

Chair

Recommendation

The committee recommends that the Child Protection Reform Amendment Bill 2017 be passed.

1 Introduction

1.1 Role of the committee

The Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (the committee) is a portfolio committee of the Legislative Assembly.[1] The committee's areas of portfolio responsibility are:

- health and ambulance services
- communities, women, youth and child safety
- domestic and family violence prevention, and
- disability services and seniors.[2]

The committee is responsible for examining each Bill in its portfolio areas to consider:

- the policy to be given effect by the legislation, and
- the application of fundamental legislative principles.[3]

Further information about the committee's work can be found on its webpage.[4]

1.2 Referral and inquiry process

On 9 August 2017, the Minister for Communities, Women and Youth, Minister for Child Safety and Minister for the Prevention of Domestic and Family Violence introduced the Child Protection Reform Amendment Bill 2017 (the Bill) into the Legislative Assembly. The Bill was referred to the committee on 9 August 2017, and the committee was required to report to the Legislative Assembly by 28 September 2017.

During its examination of the Bill, the committee:

- invited submissions from stakeholders and the public. A list of the 30 submissions received and accepted by the committee is at **Appendix A**
- was briefed on the Bill by the Department of Communities, Child Safety and Disability Services (the department) on 23 August 2017 and 21 September 2017. A list of the witnesses who attended the public briefings is at **Appendix B**
- requested and received written advice from the department on the Bill, and
- held public hearings and forums in Brisbane, Mount Isa, Palm Island and Townsville. A list of the witnesses who attended the public hearings and forums is at **Appendix B**.

The material published in relation to this inquiry is available on the committee's webpage.[5]

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1 The committee was formerly the Health and Ambulance Services Committee, which was established on 27 March 2015 under the *Parliament of Queensland Act 2001* (the POQA) and the Standing Rules and Orders of the Legislative Assembly (Standing Orders). On 16 February 2016, the Parliament amended the Standing Orders, renaming the committee and expanding its areas of responsibility.

2 POQA, s 88 and Standing Orders, Standing Order 194 and schedule 6.

3 POQA, s 93 (1).

4 http://www.parliament.qld.gov.au/work-of-committees/committees/HCDSDFVPC

5 http://www.parliament.qld.gov.au/work-of-committees/committees/HCDSDFVPC

1.3 Policy objectives of the Bill

The Bill's objectives are to:

- promote positive long-term outcomes for children in the child protection system through timely decision making and decisive action towards either reunification with family or alternative long-term care
- promote the safe care and connection of Aboriginal and Torres Strait Islander children with their families, communities and cultures
- provide a contemporary information-sharing regime for the child protection and family support system, which is focused on children's safety and wellbeing, and
- support the implementation of other key reforms under the *Supporting Families Changing Futures* program and address identified legislative issues.[6]

1.4 Consultation on the Bill

The department advised that:

> *Targeted consultation was undertaken on consultation drafts of the Bill to identify any unintended consequences and test the practical effectiveness of the proposed amendments from May to July 2017. Feedback received during this consultation helped to refine the Bill.*[7]

Further consultation was also undertaken on a draft Bill with:

- the child and family reform Stakeholder Advisor Group, which includes key stakeholders from child protection and social services peak bodies, non-government service providers, Aboriginal and Torres Strait Islander organisations and academics
- the Queensland Family and Child Commission (QFCC), the Office of the Public Advocate, the Office of the Public Guardian and the Director of Child Protection Litigation (Director of Litigation), and
- legal stakeholders, eg the Queensland Law Society (QLS), the Queensland Bar Association and the Aboriginal and Torres Strait Islander Legal Service.

The department advised that:

> *Stakeholders generally supported the proposed amendments. Issues raised during consultation have either been addressed in the Bill, or will be considered as part of the broader reforms to be progressed at a later stage. Across non-government stakeholders … there was strong support for embedding the concept of permanency for a child throughout the [Child Protection Act 1999], and for the amendments to improve transition to independence planning for young people.*[8]

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend the Bill be passed. After examining the Bill, including its policy objectives, and consideration of the information provided by the department, submitters and witnesses, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends that the Child Protection Reform Amendment Bill 2017 be passed.

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6 Child Protection Reform Amendment Bill 2017, explanatory notes (explanatory notes), p 1.

7 Department of Communities, Child Safety and Disability Services (the department), *Correspondence – written briefing,* 17 August 2017, p 4.

8 Department, *Correspondence – written briefing*, 17 August 2017, p 5.

2 Background to the Bill

2.1 Current child protection system

The *Child Protection Act 1999* (the Act) provides for the child protection system in Queensland.

2.1.1 Principles for administration of Act

The purpose of the Act is to 'provide for the protection of children'. Consistent with Australia's commitment to the *United Nations Convention on the Rights of the Child,* the main principle guiding the administration of the Act is that the safety, wellbeing and best interests of the child are paramount (the paramount principle).[9]

The Act contains a number of other general principles for ensuring the safety, wellbeing and best interests of a child, including:

- a *child* (an individual under 18 years old) has a right to be protected from *harm* or risk of harm (*harm* is defined as any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing) [10]
- family and children's participation in decision-making, eg a family and child should have an opportunity to participate in decisions affecting them
- a preference for family preservation and reunification – a child's family has the primary responsibility for a child's care and protection, the preferred way of ensuring a child's safety and wellbeing is by supporting his or her family, and protective intervention should be to the minimum extent required. If a child is removed from the care of his or her parents, support should be provided to return the child home safely
- that, if a child does not have a *parent*[11] who is able and willing to protect the child, the State is responsible for protecting the child
- principles specific to Aboriginal and Torres Strait Islander children – Aboriginal and Torres Strait Islander children should be allowed to develop and maintain connection with family, culture, traditions, language and community, and decisions about the child should take this into account
- consultation with Aboriginal and Torres Strait Islander agencies in decision-making regarding Aboriginal and Torres Strait Islander children, and
- permanence – children should have stable, long-term living arrangements, where family preservation and reunification are not possible or not in the child's best interests.[12]

The paramount, and other general principles, apply to the administration of the Act, including all decisions and actions taken under the Act.

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9 *Child Protection Act 1999* (the Act), s 4 and 5A.

10 Act, s 8 to 11.

11 The term *parent of a child* is defined as the child's mother, father or someone else (other than the chief executive) having or exercising parental responsibility for the child. A parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child. A parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child - the Act, s 8 to 11.

12 Act, s 5B.

2.1.2 Statutory child protection system

The Act establishes the statutory child protection system, and makes provisions about:

- how people can raise concerns about children they believe to be in need of protection[13]
- how families can be offered help and support to better enable them to protect and care for their children, including intervention with parental agreement[14]
- the actions the department may take to assess and investigate concerns that a child may be in need of protection, including applying to a magistrates court for a temporary assessment order, court assessment order or temporary custody order[15]
- the measures that departmental or police officers may take to protect a child, including:
  - taking a child, at immediate risk of harm, into the custody of the chief executive[16]
  - moving a child who is under 12 years old to a safe place[17], or
  - taking appropriate action to protect an unborn child, eg by investigating and assessing the protection needs of the unborn child and offering help and support to the pregnant woman.[18]
- the development of a written case plan to meet a child's protection and care needs (eg providing assistance with the agreement of a child's family[19]

2.1.3 Child protection orders

If the chief executive determines a child protection order is required to protect the child's care and protection needs, he or she must refer the matter to the Director of Litigation to consider whether an application should be made to the Childrens Court for a child protection order.[20]

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13 Act, s 13A to 13J; the term *child in need of protection* is defined as a child who has suffered significant harm, is suffering significant harm, or is at unacceptable risk of suffering significant harm; and does not have a parent able and willing to protect the child from harm – Act, s 10.

14 Act, s 51Z to 51ZI.

15 Act, s 18 to 36.

A *temporary assessment order* is an order made by a magistrates court to authorise actions necessary as part of an investigation to assess whether a child is a child in need of protection, if the consent of the parent of the child to the actions has not been able to be obtained or it is not practicable to take steps to obtain the parent's consent. A temporary assessment order expires three business days after the order is made, or on an earlier stated time - Act s 23 to 36.

A *court assessment order* is an order made by a magistrates court to authorise actions necessary as part of an investigation to assess whether a child is in need of protection if the consent of a parent of the child has not been able to be obtained or it is not practicable to take steps to obtain the parent's consent, and more than three business days is necessary to complete the investigation and assessment. A court assessment order expires four weeks after the order is made, or on an earlier stated time - Act s 37 to 51.

A *temporary custody order* is an order made by a magistrates court to authorise the action necessary to ensure the immediate safety of a child while the chief executive decides the most appropriate action to meet a child's ongoing protection and care needs, eg applying for a child protection order. A temporary custody order expires three business days after it is made, or on an earlier stated time - Act s 51AA to 51AM.

16 Act, s 18; the term *custody* is defined as having the right to have the child's daily care and right and responsibility to make decisions about the child's daily care - Act s 12.

17 Act, s 21.

18 Act, s 21A.

19 Act, s 51A to 51ZA.

20 Department, *Correspondence – written briefing*, 17 August 2017, p 1.

The types of orders the Childrens Court may make to protect a child, include:

- an order granting custody of the child to a suitable person, other than the child's parents, who is a member of the child's family (eg auntie, uncle or grandparent) or the chief executive
- an order granting short-term *guardianship*[21] of the child to the chief executive (a short-term guardianship order) – a short-term guardianship order may be applied for, if the department is satisfied it can work with the child's family to help them to address the risks to the child, so the child can safely return home within the period of the order,[22] and
- an order granting long-term guardianship of the child (a long-term guardianship order) to:
  - a suitable person, other than the child's parents, who is a member of the child's family,
  - another suitable person, other than a member of the child's family, nominated by the chief executive, or
  - the chief executive.[23]

The Act provides that the Childrens Court must be satisfied of certain matters before making a child protection order, including that:

- the child is in need of protection and that the order is appropriate and desirable for the child's protection
- the protection sought cannot be provided by an order on less intrusive terms, and
- the child's views and wishes, as far as they are able to be ascertained, have been made known to the court.

Before making a long-term guardianship order, the court must be satisfied there is no parent able and willing to protect the child within the foreseeable future, or the child's needs for emotional security will be best met by making the order. A long-term guardianship order continues until a child is 18 years old.[24]

2.2 Queensland Child Protection Commission of Inquiry

On 1 July 2012, the then Government established the Queensland Child Protection Commission of Inquiry, led by the Honourable Tim Carmody QC (the Commission of Inquiry), to undertake a 'full and careful inquiry in an open and independent manner of Queensland's child protection system.[25]

On 28 June 2013, the Commission of Inquiry published its report, *Taking Responsibility: A Road Map for Queensland Child Protection* (the Commission Report).

The Commission of Inquiry concluded that the current child protection system was under stress and that — despite the hard work and good intentions of many and the large amounts of money invested in it since 2000 — it was not ensuring the safety, wellbeing and best interests of children as well as it should or could.

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21 The term *guardianship* means having the right to the child's daily care, the right and responsibility to make decisions about the child's daily care, and all the powers, rights and responsibilities in relation to the child that would otherwise have been vested in the person have parental responsibility about the long-term care, wellbeing and development of the child - Act, s 13.

22 Department, *Correspondence – written briefing*, 17 August 2017, p 1.

23 Act, s 61.

24 Department, *Correspondence – written briefing*, 17 August 2017, p 1.

25 Queensland Child Protection Commission of Inquiry (Commission of Inquiry), *Taking responsibility: A Roadmap for Queensland Child Protection*, June 2013, p 1.

The Commission of Inquiry identified three main causes of systemic failure:

- too little money spent on early intervention to support vulnerable families
- a widespread risk-averse culture that focuses too heavily on coercive instead of supportive strategies and overreacts to (or overcompensates for) hostile media and community scrutiny, and
- a tendency from all parts of society to shift responsibility onto Child Safety.[26]

The Commission Report made 121 recommendations, including specific changes to the Act, such as:

- amendments to forbid the making of consecutive short-term orders that together extend beyond two years, unless it is in the best interests of the child to make the orders (part of recommendation 13.4), and
- to make any necessary changes to the existing provisions for information exchange and confidentiality (recommendation 14.2).

In addition, the Commission of Inquiry recommended that the department review the Act (recommendation 14.1).[27]

2.3 Government's response to the Commission of Inquiry

In October 2016, the Queensland Government committed to implement the Commission of Inquiry's recommendations as part of the *Supporting Families Changing Futures* reforms, which set out how the Queensland Government will implement its 10-year child and family reform agenda.[28]

As part of its implementation of the Commission of Inquiry's recommendations, the department undertook a review of the Act between 2015 and 2017. The department advised the:

> *… review revealed that Queensland's child protection legislation is generally operating effectively, however, priority amendments and opportunities for broad legislative reform were identified.*[29]

The department advised that the *Child Protection Reform Amendment Act 2016* and *Director of Child Protection Litigation Act 2016* implemented certain of the Commission of Inquiry's recommendations. The Bill proposes to implement further priority reforms arising from the department's review of the Act.[30]

The department advised that 'further reforms arising from the review of the CPA [the Act] are being considered and will be advanced in 2018'.[31]

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26 Commission of Inquiry, *Taking responsibility: A Roadmap for Queensland Child Protection*, June 2013, p xi.

27 Commission of Inquiry, *Taking responsibility: A Roadmap for Queensland Child Protection*, June 2013, p xi; Explanatory notes, p 1.

28 Queensland Government, *Supporting Families Changing Futures – Advancing Queensland's child protection and family support reforms*, October 2016.

29 Explanatory notes, p 2.

30 Department, *Correspondence – written briefing*, 17 August 2017, p 2.

31 Department, *Correspondence – written briefing*, 17 August 2017, p 2.

2.4 Our way: A generational strategy for Aboriginal and Torres Strait Islander children and families

On 30 May 2017, the Queensland Government, in partnership with Family Matters and community organisations, launched *Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and families – 2017 to 2037* (Our Way Strategy).[32]

The department advised that the Our Way Strategy is guided by Aboriginal and Torres Strait Islander perspectives, and outlines a collaborative approach, across 20 years, to work differently together to improve the life opportunities for Queensland's vulnerable Aboriginal and Torres Strait Islander children and families.[33]

The Our Way Strategy, and its first three-year action plan *Changing Tracks: An action plan for Aboriginal and Torres Strait Islander children and families 2017-19* (Changing Tracks Action Plan), includes strategies and actions to promote self-determination of Aboriginal and Torres Strait Islander families and communities in the care and protection of their children.

The Changing Tracks Action Plan identified that in 2015-16:

- approximately 3,928 Aboriginal and Torres Strait Islander children and young people were on child protection orders in Queensland, representing approximately 41 per cent of all children and young people in the child protection system, and
- approximately 1,401 Aboriginal and Torres Strait Islander families were considered at risk of intervention by the department.

Some of the key outcomes and indicators set in the Our Way Strategy and Changing Tracks Action Plan, include:

- parents and families fully participate in decisions that relate to safety, wellbeing and belonging for themselves and their children
- more children live with kin, when they are unable to safely stay with their family
- the increasing rate of children entering the statutory child protection system has halted
- more Aboriginal and Torres Strait Islander children living in out-of-home care reunite with their parents and families, and
- young people transitioning to independence from out-of-home care experience the same level of support and success as their counterparts who live at home.

The department advised that the proposed amendments in the Bill '… will support the strategic intent of the Our Way strategy and Changing Tracks action plan'.[34]

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32 Queensland Government, *Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and families – 2017-2037, May 2017.*

33 Department, *Correspondence – written briefing*, 17 August 2017, pp 2 - 3.

34 Department, *Correspondence – written briefing*, 17 August 2017, p 3.

3 Examination of the Bill

3.1 Promoting positive long-term outcomes for children

The department advised that 'The amendments in the Bill focus on achieving timely, positive outcomes for children and young people and will provide these children and young people with a greater sense of certainty and stability in their lives'.[35] The Bill aims to achieve this by:

- amending the *paramount principle* for administering the Act
- inserting new permanency principles into the Act
- requiring all case plans to include goals and actions for achieving permanency
- preventing the courts from making or extending short-term protection orders where the combined total duration of an order or consecutive orders would exceed two years
- removing the need for a court to reconsider certain matters when varying or revoking a long-term guardianship order, or making a long-term guardianship order or a permanent care order
- requiring transition to independence to commence for a child in care at the age of 15 years, and
- requiring the chief executive to make available, as far as practicable, help to young people in their transition from care to independence up to the age of 25 years.[36]

3.1.1 Paramount and general principles for the administration Act

The Bill amends the *paramount principle* for the administration of the Act to refer to the safety, wellbeing and best interests of children both through childhood and for the rest of the child's life.[37]

The department stated that the 'amendment aims to achieve greater focus not only on immediate safety decision-making for children known to the system and in out-of-home care but to think about the longer term impacts for them across their life course'.[38]

Submitters' views and department's response

Submitters, including Foster Care Queensland (FCQ), Churches of Christ Care, PeakCare Queensland (PeakCare) and the Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) supported the proposed amendment to the paramount principle. They considered the amendment would ensure the consideration of the long-term interests of a child, as well as the child's immediate needs.[39]

The Australian Association of Social Workers (AASW), while acknowledging the importance of the long term well-being of a child, raised concerns about making definitive long-term decisions about a child at a given point in time, as family situations change, particularly if the right level of support and resources are provided.[40]

The Lesbian Gay Bisexual Trans Intersex Legal Service (LGBTI Legal Service) suggested that an additional general principle be included in the Act, which states that a child should have access to services that

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35 Department, *Correspondence – written briefing*, 17 August 2017, p 5.

36 Explanatory notes, p 3.

37 Child Protection Reform Amendment Bill 2017 (the Bill), cl 4 amends s 5A of the Act.

38 Megan Giles, Executive Director, Legislative Reforms, Department, *Public Briefing Transcript*, 23 August 2017, p 4.

39 See, for example, submissions 6, 7, 13, 15 and 29.

40 Australian Association of Social Workers (AASW), submission 18.

respect their differences and take into account a child's particular attributes, including sexual orientation and gender identity.[41]

The department stated that the '… amendment acknowledges the importance of considering the long-term safety, wellbeing and best interests of a child, as well as the more immediate circumstances throughout the administration of the CPA [the Act]'. The department clarified that the proposed amendments to the paramount principle:

> *… do not require a decision maker to definitively determine the long-term impacts of a decision for a child, but rather consider the possible immediate future and longer-term future impacts for a child.*[42]

In response to the LGBTI Legal Service's comments about children being given access to particular services, the department stated that the safety, wellbeing and best interests of an individual child will depend on the particular circumstances of an individual case. The department advised that the Act provides that the chief executive must provide, or help to provide, services that encourage children in their development into responsible adulthood.[43]

3.1.2 New permanency principles

The Bill amends the Act to include the following permanency principles for ensuring a child's wellbeing and best interests when making decisions, under the Act, about children who need ongoing intervention:

- **relational** – ongoing, positive, trusting and nurturing relationships with persons of significance to the child (eg the child's parents, siblings, extended family members and carers)
- **physical –** stable living arrangements, with connections to the child's community, that meet the child's developmental, educational, emotional, health, intellectual and physical needs (eg arrangements that provide for stable and continuous schooling), and
- **legal** – legal arrangements for the child's care that provide the child with a sense of permanence and long-term stability (eg a long-term guardianship order, a permanent care order (PCO) or an adoption order).

The Bill defines the term *permanency* as the experience of a child of having the things mentioned in the above principles. In addition, the Bill establishes a hierarchy of preferred care arrangements for best achieving permanency for a child to guide decision makers. The proposed hierarchy is as follows:

- **first preference** – is for the child to be cared for by the child's family
- **second preference** – is for the child to be cared for under the guardianship of a member of the child's family, other than a parent of the child, or another suitable person, and
- **third preference** – is for the child to be cared for under the guardianship of the chief executive.[44]

41 LGBTI Legal Service, submission 24.

42 Department, *Correspondence – response to submissions*, 19 September 2017, p 8.

43 Department, *Correspondence – response to submissions*, 19 September 2017, p 9.

44 Bill, cl 5 and 6 insert new s 5BA into, and omits s 5B(k) of, the Act.

Submitters' views and department's response

Submitters, such as the Queensland Family and Child Commission (QFCC), Churches of Christ Care, AASW, the Benevolent Society, PeakCare and QATSICPP, supported the proposed introduction of the permanency principles into the Act.[45]

The QFCC considered that the permanency principles could be further strengthened by including references to the maintenance of a child's relationships with their family of origin, reunification and shared care arrangements. The QFCC also recommended that the term 'trusting and nurturing' should be removed from the relational permanency principle, as they are subjective and may not be interpreted in the same way by different people.[46]

A number of submitters raised concerns that the proposed permanency principles may reduce the focus on the reunification of children with their families, and that parents will not be given adequate time and resources to help them meet their child's care and protection needs, prior to a child protection order being made.[47] AASW stated that reunification must remain the primary aim wherever possible, and a short-term order with intervention aimed at working towards reunification must be the first priority.[48]

The Aboriginal and Torres Strait Islander Women's Legal Service - North Queensland (ATSIWLSNQ) raised concerns about departmental practices, and considered that 'mixing the legal permanency principle with other principles [of the Act] has the potential to lead to confusion by departmental officers in terms of how an intervention progresses; whether steps will be taken to support parents and achieve permanency with a child's birth parents'.[49]

The department stated that the proposed definition of permanency for a child includes 'relational, physical and legal components', and that the Bill does not limit permanency to the making of a long-term child protection order for the child.[50]

In addition, the department stated that:

> *… the Bill explicitly outlines that for deciding whether an action or order best achieves permanency for a child; the first preference is for the child to be care for by the child's family, when it is safe to do so.*
>
> And
>
> *The second preference is for the child to be cared for by a person who is a member of the child's family, other than a parent of the child.*[51]

The department considered that 'This [approach] makes it clear, that enabling a child to remain or return to the care of their parents is the preferred option for achieving permanency for a child'.[52]

In relation to providing support to a child's parents and family, the department highlighted that the existing general principle at section 5B(c) of the Act, provides that the preferred way of ensuring a child's safety and wellbeing is through supporting the child's family. In addition, section 73 of the Act

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45 See, for example, submissions 6, 13, 15, 18, 19 and 29; Natalie Lewis, Chief Executive, Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP), *Public Forum Transcript*, 19 September 2017 (Palm Island), p 4.

46 Submissions 19 and 28.

47 See, for example, submissions 4, 6 and 27.

48 AASW, submission 18.

49 Aboriginal and Torres Strait Islander Women's Legal Service – North Queensland (ATSIWLSNQ), submission 28.

50 Department, *Correspondence – response to submissions*, 19 September 2017, pp 2 and 9.

51 Department, *Correspondence – response to submissions*, 19 September 2017, p 9.

52 Department, *Correspondence – response to submissions*, 19 September 2017, p 2.

requires the chief executive to take reasonable and practicable steps to help a child's family meet the child's protection and care needs.[53]

In response to QFCC's suggestion to remove the terms 'trusting and nurturing', the department stated that these words were included in the Bill following significant stakeholder feedback. The department stated that 'These words describe positive relationships that should be preserved to achieve permanency outcomes for a child'.[54]

3.1.3 Case planning

The Act provides that the chief executive must ensure a written case plan is developed for each child who the chief executive is satisfied is in need of protection and requires ongoing help under the Act.[55]

The department advised that 'A case plan is the key document for outlining how the child's care and protection needs will be met'.[56] A case plan may include:

- the goals to be achieved
- the living arrangements for a child
- the services to be provided to meet the child's protection and care needs
- a child's contact with their family group or other persons with whom the child is connected
- the arrangements for maintaining the child's ethnic and cultural identity, and
- a proposed review date for the plan.[57]

The Act provides that the chief executive must ensure that case planning is carried out in a way that encourages and facilities the participation of the child, the child's parents, other appropriate members of the child's family group (eg extended family or members of a clan, tribe or similar group) and, for an Aboriginal or Torres Strait Islander child, Aboriginal or Torres Strait Islander agencies or persons.[58]

As part of the case planning process the chief executive must convene, or have a private convenor convene, a family group meeting.[59]

The department stated that while case plans are required to be carried out in a way that prioritises a child's need for long-term stable care and community of relationships, there is currently no requirement for positive action for permanency planning to occur as part of a child's case plan.[60]

The Bill amends the Act to provide that all case plans must include goals and actions for achieving permanency for a child. In circumstances where reunification of a child with their parents is the goal, an alternative permanency goal would be required to meet the child's long-term stable care needs in the event that timely reunification is not possible. [61]

The department stated that 'These changes are designed to avoid the instability and uncertainty arising from a prolonged series of temporary care arrangements'.[62]

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53 Department, *Correspondence – response to submissions*, 19 September 2017, p 10.

54 Department, *Correspondence – response to submissions*, 19 September 2017, p 10.

55 Act, s 51A to 51C.

56 Explanatory notes, p 5.

57 Act, s 51B.

58 Act, s 51D.

59 Act, s 51H.

60 Explanatory notes, p 5.

61 Bill, cl 17 amends s 51B of the Act.

62 Explanatory notes, p 5.

The Bill also requires a case plan for an Aboriginal or Torres Strait Islander child to include details about how the child will be supported to develop and maintain connections with their family, community and culture.[63]

Submitters' views and department's response

A number of submitters supported the provision to require goals and actions for achieving permanency to be included in case plans.[64] The Benevolent Society supported the proposed amendments; however, it did not support a narrow focus on legal permanency at the expense of the consideration of the unique needs and interests of individual children and their circumstances.[65]

Legal Aid Queensland (LAQ), ATSIWLSNQ and QFCC raised concerns that the requirement to include an alternative permanency goal in a case plan, in case reunification is not possible, may damage the department's ability to work supportively with a child's parents, may be confusing for the parents and may be perceived as a threat to parents and affect family stability.[66]

The North Queensland Domestic and Family Violence Resource Centre posed the question 'If people think that they have lost their child, what is the point in working with the department to try to get the child back or doing things that they think will support them?'.[67]

AASW recommended that case plans should clearly outline how the department intends to work towards reunification.[68]

Queensland Advocacy Incorporated (QAI) submitted that case planning can discriminate against parents with a disability, as the routine protocols and processes for developing case plans do not adequately meet the needs of parents with disabilities.[69]

Other submitters raised the importance of ensuring families have access to appropriate services and support to meet their obligations under a case plan.[70] The Family Inclusion Network (FIN) and Micah Projects stated that people feel that permanency planning:

> *… is unfair because of the way in which services are provided, the long waiting lists and the access to eligibility to services for their children or for themselves. This period of time is going to lead to the removal of children over long period of times, particularly when their children are young and they will not have the opportunity to redress some of those inequities in that time frame.*[71]

In response, the department stated that operational policies and practice requirements for short-term child protection orders, include that a case plan for a child outlines how the department intends to work towards reunification of the child with their parents.

The department stated that the proposed requirement to include an alternative permanency goal is in line with the approach to permanency planning taken in other jurisdictions, recent research and

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63 Bill, cl 17 amends s 51B of the Act.

64 Submissions 7, 13, 15, 18 and 25.

65 The Benevolent Society, submission 13.

66 Submissions 11, 19 and 28.

67 Matthew Moss, Senior Worker and Co-facilitator, Men's Program, Respondent Court Worker, North Queensland Domestic and Family Violence Resource Centre, *Public Hearing Transcript*, 18 September 2017 (Mount Isa), p 35.

68 AASW, submission 18.

69 Queensland Advocacy Incorporated (QAI), submission 1.

70 Submissions 4, 18 and 21.

71 Karyn Walsh, Chief Executive Officer, Family Inclusion Network (FIN) and Micah Projects, *Public Hearing Transcript*, 15 September 2017 (Brisbane), p 12.

understanding of best practice and national work underway to improve permanency outcomes for children in care. The department advised that:

> *The amendment ensures contingency planning is transparent and accountable and enables a child's protection and care needs to be met including if the goals of the department's intervention are not able to be met.*[72]

In relation to submitters' comments about the availability of support, resources and accessibility, the department stated that case planning will continue to be tailored to the individual needs and circumstances of a particular child and their family.[73] The department also highlighted that the principles for exercising powers and making decisions under the Act include that if a parent needs help to participate in or understand a decision-making process, or to understand a statutory right, that help should be provided.[74]

3.1.4 Limiting total duration of successive short-term child protection orders

The Act provides that a child protection order must state the time when the order ends. If the order grants custody or short-term guardianship of the child (a short-term guardianship order), the orders duration must not be more than two years after the day it is made and, in any case ends when the child turns 18 years old. The Act provides that the Childrens Court may extend short-term guardianship orders.[75]

The department stated that 'Under this framework, a child may be subject to multiple short-term orders up to the age of 18 years'.[76]

The Commission of Inquiry expressed concern at the number of children and young people subject to multiple short-term orders, 'because this could indicate that many children are 'drifting' in care without achieving either reunification with the family or long-term out-of-home care'.

The Commission of Inquiry recommended the introduction of provisions to prohibit the courts from making one or more short-term orders that together extend beyond two years from the making of the first application for an order, unless it is in the best interests of the child (Recommendation 13.4).[77]

The Bill amends the Act to provide that a short-term guardianship order, and any subsequent short-term orders, cannot extend beyond a total of two years from the time the first order is made, unless the court is satisfied it is in the best interests of a child and that reunification of the child with their family is reasonably achievable within the longer stated time.[78]

The department stated that the provision '… enables the Court to make a longer order if it is in the best interests of the child' and '… this may include when a child's parent/s have demonstrated a willingness and ability to meet their child's protection and care needs but have not been able to sufficiently address all of the identified risk factors within a short-term period'.[79]

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72 Department, *Correspondence – response to submissions*, 19 September 2017, p 10.

73 Department, *Correspondence – response to submissions*, 19 September 2017, p 33.

74 Department, *Correspondence – response to submissions*, 19 September 2017, p 33.

75 Act, s 62.

76 Explanatory notes, p 5.

77 Commission of Inquiry, *Taking responsibility: A Roadmap for Queensland Child Protection*,, June 2013, p 460.

78 Bill, cl 34 inserts new s 62(2) into the Act.

79 Department, *Correspondence – response to submissions*, 19 September 2017, p 2.

The department advised:

> *It is anticipated that, as the court work reforms introduced in July 2016 by the Child Protection Reform Amendment Act 2016; the court case management framework; and the revised Childrens Court Rules 2016 are embedded in practice, combined with this amendment, the full intent of this [Commission of Inquiry] recommendation will be achieved.*[80]

Submitters' views and department's response

Submitters, including the Youth Advocacy Centre (YAC), LAQ and the QLS supported the proposed amendments, in principle. However, such submitters considered that the drafting of clause 62 of the Bill was unclear and could cause implementation issues.[81]

Anglicare Southern Queensland submitted that the reason why a court decides to make a short-term order which extends beyond two years, should include the discovery and/or recovery of family members that were previously unknown.[82]

A number of submitters suggested that the Bill be amended to include additional obligations or requirements when considering the making of child protection orders, including:

- providing that the Childrens Court must be satisfied that the department has made all reasonable efforts to provide support services to the child and family to achieve reunification, before granting a long-term order (eg a long-term guardianship order or a PCO)[83]
- an obligation on a child's birth parents to demonstrate to the courts their commitment to the best interests of the child, eg by completing a parenting course or drug rehabilitation program,[84] and
- providing that the court must be satisfied, before making a short-term order, that there is a clear and specific plan appropriate for achieving reunification within the time stated in the order.[85]

FCQ supported the proposed amendments 'as a step forward', however, it considered that children will still be subject to more interim orders while the legal system considers progressing to short term custody or long-term guardianship orders. FCQ raised concerns that this may lead to 'children sitting on lengthy interim orders and still not having permanency in a timely way'.[86]

FCQ recommended that the Bill should implement fully the Commission of Inquiry's recommendation 13.4, which recommended amendments to forbid the making of one or more short-term orders that together extend beyond two years from the making of the first application for an order. FCQ noted that the two-year period in the Bill commences on the date an order is made by the court, rather than the date of application for an order. [87]

FIN and Micah Projects, PeakCare, AASW, QATSICPP, LAQ and the Benevolent Society considered that the proposed two-year limit on short-term orders may be insufficient, particularly in regional or remote locations and for Aboriginal and Torres Strait Islander communities. Such submitters stated that many families need more time to access support services, address issues and take account of the

80 Explanatory notes, p 6.

81 Submissions 11, 20, 21 and 26.

82 Anglicare Southern Queensland, submission 2.

83 Submissions 11, 18, 26 and 29.

84 Soroptimists International Brisbane, submission 25.

85 Legal Aid Queensland (LAQ), submission 11.

86 Foster Care Queensland (FCQ), submission 7.

87 FCQ, submission 7.

complex factors that contribute to parents' progress in building their capacity to care for their children.[88]

In light of these concerns, FIN and Micah projects suggested that the proposed two-year period should be a guide, not a fixed statutory timeframe.[89] They considered that 'biological parents, if given access to resources and opportunities and services, can make change rather than just have a judgement on what they have achieved during a particular two-year period'.[90]

LAQ suggested that interim orders (eg orders put in place to protect a child during the adjournment of proceedings) should be excluded from the calculation of the two-year timeframe. LAQ stated that this is because parents are sometimes advised by child safety officers that effective work towards reunification cannot begin until final orders are made and this may become a protracted process due to court delays.[91]

FCQ considered that two years is enough time for the department to work with a family to either progress to a child returning to their parents or moving the child to a long-term guardianship order to meet the child's needs.[92]

In response to submitters' concerns about the impact on reunification of children with their parents, the department highlighted that the amendment provides that a short-term order may be longer than two years, if the court considers it is in the best interests of a child and that reunification with the child's family is reasonably achievable within the time stated in the order.

The department stated that 'there are a number of provisions in the CPA [the Act] that require the department to provide help and support to a child's parents to enable them to meet their child's protection and care needs'.[93] The Act also outlines the preference for intervention with parental agreement, when it is safe to do so, and includes 'the suite of temporary and short-term orders … which are utilised when the case plan goal for a child is to be reunified with their family'.[94]

The department also clarified that the proposed two-year period 'is not a time limit on how long a department can spend supporting a child's family to meet their protection and care needs'.[95]

In relation to concerns about delays in court proceedings (eg due to adjournments), and the inclusion of interim orders when calculating the proposed two-year period, the department clarified that any interim orders made prior to the first short-term child protection order are excluded from the two-year time frame by clause 34 of the Bill (amended section 62(5)). However, any interim orders made following the making of the first child protection order would be included in the proposed two-year timeframe.[96]

The department stated that:

> *Not including … interim orders [made after the first short-term order] within the total two year period may result in a child being subject to multiple short term orders that extend beyond two years and undermine achieving the policy intent of the amendment.*[97]

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88 Submissions 11, 13, 15, 18, 21 and 29.

89 FIN and Micah Projects, submission 21.

90 Karyn Walsh, FIN and Micah Projects, *Public Hearing Transcript*, 15 September 2017 (Brisbane), p 14.

91 LAQ, submission 11.

92 FCQ, submission 7.

93 Department, *Correspondence – response to submissions*, 19 September 2017, pp 25 – 28.

94 Department, *Correspondence – response to submissions*, 19 September 2017, pp 25 – 28.

95 Megan Giles, Department, *Public Briefing Transcript*, 21 September 2017, p 3.

96 Department, *Correspondence – response to submissions*, 19 September 2017, p 25.

97 Department, *Correspondence – response to submissions*, 19 September 2017, p 25.

The department stated that during its consultation, concerns were raised that proceedings before the court may be adjourned for a number of reasons and commencing the two-year period from when an application for an order is made, as suggested by FCQ, may have unintended consequences and result in adverse outcomes for the child.

The department also advised that the independent Director of Litigation and the internal departmental Office of the Child and Family Official Solicitor were established in 2016 'to improve the quality and timeliness of information and material provided to the Childrens Court and reduce the number of adjournments'. The department stated that as these reforms 'continue to embed, options to reduce the number of adjournments will be considered'.[98]

3.1.5 Variation of long-term guardianship

The Bill amends the Act to remove the need for a court to reconsider certain matters it has previously determined (eg whether a child is in need of protection and an order is appropriate and desirable for a child's protection), when considering an application to:

- vary or revoke a long-term guardianship order for a child
- make another long-term guardianship order for a child, or
- make a PCO for the child,

unless the court is satisfied that there are exceptional circumstances in the best interest of the child to do so.[99]

The department advised that 'These amendments respond to stakeholder feedback that an application for a more permanent type of long-term guardianship order may not be made if it requires these issues to be re-considered [by the courts]'. In addition, the department stated that the amendments:

> *… also aim to provide some reassurance for a child who is the subject of a variation or revocation proceeding that a Court's previous findings can be relied on and that the Court does not need to reconsider whether their needs for long-term stability and security outweigh the possibility that their parents may be able to meet their protective needs in the foreseeable future.*[100]

Submitter's views and department's response

The QLS considered that the proposed amendment should not limit the ability of the court to appropriately consider all relevant evidence in respect of applications to vary or revoke a long-term guardianship order generally. The QLS recommended that the proposed amendment should only apply to varying a long-term guardianship order to grant guardianship to a suitable person instead of the chief executive, or to make a PCO.

In response, the department stated that:

> *The provision in the Bill only applies in relation to an application to vary or revoke a long-term guardianship order granting guardianship of the child to the child executive and make a long-term order to another suitable person … or to revoke a long-term guardianship order for the child and make a permanent care order for the child in its place.*
>
> *Clause 36(6) of the Bill amends section 65 to insert a new subsection 65(5A) that applies when there is an existing long-term order for a child and an application is made to vary or revoke the order and make either a long-term order granting guardianship of the child or a PCO. The provision requires a court to rely on previous findings of fact in relation to specific matters identified in the provision.*

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98 Department, *Correspondence – response to submissions*, 19 September 2017, p 26.

99 Bill, cl 36 amends s 65 of the Act.

100 Department, *Correspondence – written briefing*, 17 August 2017, p 8.

The proposed amendment means that the following matters are not required to be re-litigated in these circumstances:

- *that the child is need of protection and the order is appropriate and desirable (section 59(1)(a))*
- *the protection sought to be achieved by the order is unlikely to be achieved by an order on less intrusive terms (section 59(1)(e))*
- *there is no parent able and willing to protect the child within the foreseeable future (section 59(6)(a), and*
- *matters that are not relevant to the application in section 59(7) and (8) of the CPA.*[101]

3.1.6 Transition to independence

The Bill clarifies the chief executive's responsibility to plan for, and to make available support and assistance, to assist a young person to transition from out-of-home care to independence. The Bill amends the Act to provide that:

- transition to independence planning must commence for a child who does not have a long-term guardian from the age of 15 years, and this must form part of the child's case plan[102], and
- the chief executive must, as far as practicable, ensure help is available to assist a young person, who has been a child in custody or under the guardianship of the chief executive, in their transition from care to independence up to the age of 25 years (eg help to access entitlements, appropriate accommodation, education and training, or legal advice).[103]

The department stated that the amendments '… recognise the fact that whilst the order for children and young people in out-of-home care expires on their 18th birthday they may require additional support as they transition into adulthood, just as people and young people in the community require that additional support after the age of 18'.[104]

Submitters' views and department's response

The proposed amendments were welcomed by a significant number of submitters, including the YAC, the CREATE Foundation, Uniting Care, Anglicare Southern Queensland, Care Leavers Australasia Network (CLAN) and the Queensland Nurses and Midwives' Union (QNMU).[105] The YAC stated that the proposed amendment:

… recognises the reality for most children whose parents continue to be there for them beyond the age of 18, as well as the neuroscience in relation to the development of the adult brain which is not finalised until around the mid-twenties.[106]

However, submitters raised concerns about the application of the proposed amendments only to young people who have been in the custody or under the guardianship of the chief executive, rather than all children in care, and the use of the term 'as far as practicable'.

Certain submitters proposed that the Bill should be amended to remove the term 'as far as practicable' and to provide that a young person has the right to receive support from government until the age of 25 years. While other submitters considered that young people who have been in care should have

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101 Department, *Correspondence – response to submissions*, 19 September 2017, p 18.

102 Bill, cl 17 amends s 51B of the Act.

103 Bill, cl 41 omits and inserts new s 75 into the Act.

104 Megan Giles, Department, *Public Briefing Transcript*, 23 August 2017, p 5.

105 Submissions 2, 3, 4, 17, 20 and 27.

106 Youth Advocacy Centre (YAC), submission 20.

priority access to government housing and that access to information in the chief executive's possession or control about the young person should be made available to them free of charge.[107]

Submitters also stated that the proposed transition to independence provisions need to be supported by appropriate resourcing to ensure that they translate into policy and practice.[108]

In response, the department stated that:

> *Clause 41 provides an extensive framework for making help and assistance available to a young person after care. Combined with the strengthened transition to independence planning requirements from when a child reaches the age of 15 as part of their case plan, these reforms aim to provide a young person leaving care with the opportunity to transition into adulthood to reach their full potential.*[109]

The department advised that the inclusion of the word 'as far as practicable' in the proposed amendment is consistent with current provisions throughout the Act and 'is a well accepted phrase in the legislature'. In addition, the department stated that:

> *The wording recognises that the particular help an individual child may require at a particular time may not be available or they may not be eligible or particular types of assistance.*[110]

In relation to comments about the need for appropriate resources and support, the department advised that the state-wide Next Steps program provides support and assistance to young people in care as they transition to independence up until the age of 21.[111]

In addition, the department advised that the Bill, in particular clause 43 which inserts new section 79A into the Act, would place obligations on long-term or permanent guardians to ensure that a child in their care is provided with appropriate help in the transition from being a child in care to independence. The department also stated that clause 40 of the Bill places an obligation on the chief executive to ensure a child is told about the obligations of their long-term or permanent guardian to provide support.[112]

The department also advised that 'All young people subject to a child protection order are eligible for the Commonwealth Government's Transition to Independent Living Allowance'.[113]

3.2 Permanent care orders

Currently, under the Act, a long-term guardianship order is the most permanent long-term care option for children in out-of-home care.

The department advised that, in light of concerns raised about the ability of long-term guardianship orders to provide sufficient stability, the Commission of Inquiry suggested the introduction of a new form of permanent order. The Commission of Inquiry suggested that the new order should be somewhere on the continuum between a long-term guardianship order and adoption.[114]

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107 Submissions 2, 13, 15, 17 and 27.

108 Submissions 4, 6 and 13.

109 Department, *Correspondence – response to submissions*, 19 September 2017, p 31.

110 Department, *Correspondence – response to submissions*, 19 September 2017, p 31.

111 Department, *Correspondence – response to submissions* 19 September 2017, p 30.

112 Department, *Correspondence – response to submissions*, 19 September 2017, p 29.

113 Department, *Correspondence – response to submissions*, 19 September 2017, p 30.

114 Explanatory notes, p 6.

The Bill introduces a new type of child protection order – a permanent care order (PCO), that will grant guardianship of a child to a suitable person (a permanent guardian) until the child turns 18 years of age.[115]

The department advised that:

> *We heard very clearly from children and young people in care and also from adults who were children and young people in out-of-home care that they really wanted a type of care option that gave them the certainty and stability that they themselves knew that their order could not continually be contested by a court, that they knew what their living arrangements were and where they would be until they were 18 and that they knew that they would not be subject to ongoing contested proceedings in the Childrens Court.*[116]

In addition, the department advised that '… unlike adoption, a permanent care order will not sever the child's legal relationship with their family or change a child's legal parentage or identity'.[117]

3.2.1 Court decisions to make a permanent care order

The Bill provides that the Childrens Court may only make a PCO, if it is satisfied that:

- the child is need of protection and the order is appropriate and desirable for the child's protection
- there is a case plan that includes living arrangements and contact arrangements for the child - a copy of the child's case plan must be filed with the court
- if the making of the order has been contested – a conference between the parties has been held, reasonable attempts have been made to hold or conference, or because of exceptional circumstances it would be inappropriate to hold a conference
- the child's wishes or views, if able to be ascertained, have been made known to the court
- the protection sought to be achieved by the order is unlikely to be achieved by an order on less intrusive terms
- there is no parent willing and able to protect the child within the foreseeable future or the child's need for emotional security will be best met in the long term by making the order
- the person named in the application is:
    - a suitable person for having guardianship of the child on a long-term basis
    - willing and able to meet the child's ongoing protection and care needs on a permanent basis, and
    - committed to preserving the child's identity, connection to the child's culture of origin, and the child's relationship with their birth family in accordance with the case plan, and
- the child has been in the care of the proposed guardian for a period of at least 12 months immediately before the making of the application for the order.

The court may however, make a PCO, despite the child not being in the care of the proposed guardian for at least 12 months, if the court is satisfied there are exceptional circumstances that justify making the order. [118]

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115 Bill, cl 25, 31 to 33, 36, 38, 40 and 42 and 45.

116 Megan Giles, Department, *Public Briefing Transcript*, 23 August 2017, p 13.

117 Department, *Correspondence – written briefing*, 17 August 2017, p 7.

118 Bill, cl 31 amends s 59 of the Act.

Before making an order, the court must also have regard to any report or recommendation made to the court by the chief executive about the proposed permanent guardian, including about their criminal history, domestic violence history or traffic history.

3.2.2 Varying or revoking a permanent care order

The department advised that a PCO is different to a long-term guardianship order, as it can only be varied or revoked on application to the Childrens Court by the Director of Litigation, upon referral from the department. The circumstances where an application to the courts may be made are also limited to where the Director of Litigation is satisfied that:

- the child has suffered significant harm, is suffering significant harm, or is at an unacceptable risk of suffering significant harm
- the child's permanent guardian is not able and willing to protect the child from harm, or
- the child's permanent guardian is not complying, in a significant way, with their obligations under the Act.

The Bill provides that the court may revoke a PCO only if it is satisfied it is in the best interests of the child and will promote the child's ongoing protection and care needs.[119]

3.2.3 Obligations on permanent guardians

The Bill provides that, under a PCO, long-term guardianship of a child is granted to a permanent guardian who has responsibility for meeting the child's daily care and long-term needs (eg enrolling a child in school) until the child reaches 18 years old. A permanent guardian must:

- as far as reasonably practicable, ensure the charter of rights for a child in care in Schedule 1 to the Act is complied with
- keep the department advised about where a child is living
- ensure that the child is provided with appropriate help to transition to independence
- to the extent that it is in the best interests of the child, preserve the child's connection to their culture of origin, and
- to the extent it is in the best interests of the child help maintain the child's relationships with their parents, family members and other persons of significance to the child.[120]

In addition, the Bill provides that a permanent guardian must notify the chief executive, if they reasonably believe their care of the child will end in the near future (eg due to a permanent guardian's health) or the child is no longer cared for by the permanent guardian (eg the relationship with the child has broken down and child is no longer able to live with the guardian).

On receipt of such a notice, the chief executive must review the child's protection and care needs and take any further action considered appropriate.[121]

The department advised that these obligations recognise the shift of:

> *… focus under a permanent care order from the department having the primary responsibility for the case management of a child … to the permanent guardian being the primary guardian for the child. It is more like a family structure in a family relationship.*[122]

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119 Bill, cl 38 inserts new s 65AA into the Act.

120 Bill, cl 43 inserts new s 79A into the Act.

121 Bill, cl 44 inserts new s 80A into the Act.

122 Megan Giles, Department, *Public Briefing Transcript*, 23 August 2017, p 5.

The Bill makes provision to enable a child or a member of a child's family to make a complaint to the department about a potential failure of a permanent guardian to comply with their obligations. The chief executive must also ensure a child is informed about the obligations of their guardian and their right to contact the department or the Public Guardian, at any time, if they consider these obligations are not being met. [123]

Submitters' views and department's response

FCQ considered that the introduction of PCOs is 'a significant and positive addition to the hierarchy of orders'. FCQ considered that PCOs would achieve two positive outcomes for children, which cannot be achieved by adoption:

- an order will allow for a child's connection with their siblings in the care of other guardians to continue and progress, and
- an order will provide that a guardian must ensure connection as part of a child's wellbeing and ensure that appropriate supports can be accessed to help deal with the significant trauma a child may have suffered.[124]

FCQ stated that 'Where we have children in very stable family based placements and where that stability can achieve permanency for children, the PCO will help to achieve that, as close to adoption as we can'.[125]

A number of submitters opposed the amendments.[126] For example, ATSIWLSNQ considered that PCOs were misconceived and would not achieve greater stability than existing long-term guardianship orders. The Benevolent Society did not support the proposed amendments 'as a way of driving down numbers of children in out-of-home care or associated costs of having children in care'. They also considered that PCOs would override the objectives of reunification.[127]

ATSIWLSNQ stated that 'Fundamentally, the child should remain with the family if at all possible and support should be built around that rather than putting children into care'.[128]

In addition, QAI raised concerns about the possible impact and unintended consequences of PCOs on parents with a disability.[129]

The department stated that the proposed amendments respond to feedback from children and young people about the need for improved permanency options. The department considered that 'The new order provides improved certainty and stability for the child, and will be the most appropriate order for a cohort of young people who are unable to return to the care of their parents'.[130]

The department stated that:

> *Introducing a permanent care order as an additional option in certain circumstances, provides a mechanism for a Childrens Court to put in place a more permanent family-like long-term arrangement for a child that establishes the child's carer as their legal guardian with*

123 Bill, cl 45 inserts new s 80B to 80E into the Act.

124 FCQ, submission 7.

125 Bryan Smith, Executive Director, FCQ, *Public Hearing Transcript*, 20 September 2017 (Townsville), p 2.

126 See, for example, submissions 28 and 29.

127 The Benevolent Society, submission 13.

128 Cathy Pereira, Principal Solicitor and Coordinator, ATSIWLSNQ, *Public Hearing Transcript*, 20 September 2017 (Townsville), p 13.

129 QAI, submission 1.

130 Department, *Correspondence – written briefing*, 17 August 2017, p 6.

> *responsibility for meeting all of their needs and making decisions for their day to day and long-term care, rather than the State.*[131]

Finally, the department stated that the Bill does not change the current approach whereby the chief executive must take steps that are reasonable and practicable to help a child's family meet the child's protection and care needs. The department advised that:

> *… unfortunately for some children, where there is no parent able and willing to protect the child within the foreseeable future, or the child's need for emotional security will be best met in the long-term by making the order, a long-term order is the most appropriate option for meeting their needs. … A PCO provides an option for providing permanency in these circumstances.*[132]

In addition to the above general comments, submitters raised the following specific concerns about the proposed introduction of PCOs.

Insufficient safeguards for making permanent care orders

Submitters raised concerns that the process for making PCOs lacks the rigorous checks and balances to first ensure that the child remaining or reuniting with a parent is not possible.[133]

Churches of Christ Care and the CREATE Foundation considered that the Bill should be amended to require the views of a child to be considered by the court when making a PCO; while FIN and Micah Projects considered that before making an order, the courts must be satisfied that family contact is supported and facilitated by carers and departmental staff, where it is safe to do so.[134]

In response, the department stated that:

> *The Bill includes safeguards for a child or young people subject to a permanent care order. Rather than applying the existing safeguards in the CPA [the ACT] that apply to long-term child protections currently available, these safeguards have been designed taking into consideration the intent of this type of order providing a permanent, family like arrangement for the child whilst protecting a child's rights and interests.*[135]

Permanent guardians

The QFCC recommended that the approval process for permanent guardians be strengthened to take into account the long-term risks associated with permanent care arrangements.[136]

PeakCare raised concerns that the obligations placed on permanent guardians, eg ensuring that the charter of rights of children is complied with, are caveated by the term 'as far as reasonably practicable'.[137]

PACT and FIN and Micah Projects raised the importance of ensuring that permanent guardians receive appropriate resources and financial support to meet their obligations under the Act.[138] CREATE Foundation highlighted that less intrusion from the department in a child's life, does not mean there should be a lack of support. CREATE Foundation also stated that 'They are not mutually exclusive.

131 Department, *Correspondence – response to submissions*, 19 September 2017, p 3.

132 Department, *Correspondence – response to submissions*, 19 September 2017, p 20.

133 PeakCare, submission 15.

134 Submissions 6, 17 and 21.

135 Department, *Correspondence – response to submissions*, 19 September 2017, p 3.

136 Queensland Family and Child Commission (QFCC), submission 19.

137 PeakCare, submission 15.

138 Submission 8 and 21.

Having the government less involved in your life as a carer or a young person should not mean that sometimes when you need it they can't stump up with some extra help'.[139]

In relation to the approval process for permanent guardians, the department advised that the Bill requires the Childrens Court to be satisfied about certain matters in relation to a permanent guardian before making a PCO, including that they are a *suitable person* for having guardianship of the child on a permanent basis.

The term *suitable person* is defined in the Child Protection Regulation 2011, as a person who:

- does not pose a risk to the child's safety
- is willing and able to care for the child in a way that meets the standards of care in the statement of standards
- is able and willing to protect the child from harm, and
- understands, and is committed to, the principles for administering the Act.

The department also highlighted that the Act enables the department to obtain information, including criminal history, domestic violence reports and traffic history information, which may be included in a report about a person to whom the court is considering granting custody or guardianship of a child.[140]

In relation to support and resources for permanent guardians, the department stated that the *Supporting Families Changing Futures* reforms include 'significant investment in state-wide Child and Family Connect services and enhanced Intensive Family Support Services'. The department also advised that the Queensland Government has committed $18.3 million over four years, as part of the Child Care Cost gap payment, to support foster and kinship carers and provide greater access to child care and kindergarten for children in care.[141]

In addition, the department advised that the Bill provides the chief executive with the discretion to pay an allowance to a child's permanent guardian for the child's care and maintenance and other support and towards expenses related to the child's care.[142]

The department stated that the inclusion of the term 'as far as practicable, is in line with provisions throughout the Act and 'recognises the complexity of complying with obligations at all times in relation to all children', eg in circumstances, where despite all reasonable efforts by a guardian, a child refuses to participate in contact with their family.[143]

Monitoring of care provided by permanent guardians

Submitters raised concerns about a lack of oversight of the care provided by permanent guardians and a child's living arrangements, once a PCO is made.[144]

The CREATE Foundation recommended that the Bill be amended to provide that in the first five years of a PCO, a child or young person must receive six-monthly visits from a Community Visitor from the Office of the Public Guardian. Similarly, QFCC suggested that children subject to PCOs should have some contact with child safety officers, community visitors, or other professionals, to build

139 Lucas Moore, Queensland Coordinator, CREATE Foundation, *Public Hearing Transcript*, 15 September 2017 (Brisbane), p 18.

140 Department, *Correspondence – response to submissions*, 19 September 2017, p 23; Act, s 95.

141 Department, *Correspondence – response to submissions*, 19 September 2017, p 23.

142 Department, *Correspondence – response to submissions*, 19 September 2017, p 24.

143 Department, *Correspondence – response to submissions*, 19 September 2017, p 19.

144 Submissions 17, 19 and 28.

relationships with those individuals or organisations who may provide assistance when making a complaint.[145]

CREATE Foundation sought clarification as to whether concerns about the care being provided to a child or young person by a permanent guardian will be considered a standard of care issue, or whether permanent guardians will be subject to child protection notifications in line with members of the general community.[146]

The YAC suggested that the Bill be amended to provide that a child may advise the chief executive that they are no longer being cared for and need assistance, and that the chief executive should be able to act on this advice.[147]

In response, the department stated that:

> *Limiting the involvement of government agencies in the child's life and creating a more family-like arrangement is one of the key policy objectives of creating PCOs and one of the differences between the current long-term child protection orders available under the CPA [the Act] and PCOs. The safeguards included in the Bill for PCOs have been designed talking into consideration the policy intent sought to be achieved through the creation of the new type of order, balanced with the need to protect a child's rights and interests. The safeguards included in the Bill are more robust than the protections in place for similar orders in New South Wales and Victoria.*[148]

The department advised that in New South Wales and Victoria, children subject to a PCO, or similar, are not considered to be in the statutory child protection system, and there are only limited, voluntary safeguards once an order is made.[149]

The department stated that whether a permanent guardian's care for a child will be treated as an 'intake', triggering an assessment of whether the child is in need of protection, or will be treated in an alternative way, will depend on the nature of the concern identified by the department.[150]

The department stated that 'A child who is subject to a PCO may contact the department at any time and ask for their case to be reviewed' and 'the Bill introduces a complaints framework … that enables a child who is the subject of a PCO, or a member of their family, to make a complaint to the chief executive, if they believe the permanent guardian is not complying with the guardian's obligations'.[151]

Applications to vary or revoke a permanent care order

A significant number of submitters considered that a child, or a child's parent, should be permitted to apply directly to the courts to vary or revoke a PCO.[152] The YAC stated that:

> *It is not appropriate that children who are subject to permanent care orders be the only children subject to child protection orders who are not able to directly seek the assistance of the courts in determining whether the order should continue.*[153]

On Palm Island, the committee heard that:

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145 Submissions 13, 17 and 19.

146 CREATE Foundation, submission 17.

147 YAC, submission 20.

148 Department, *Correspondence – response to submissions*, 19 September 2017, p 15.

149 Department, *Correspondence – response to* submissions, 19 September 2017, p 5.

150 Department, *Correspondence – response to submissions*, 19 September 2017, p 19.

151 Department, *Correspondence – response to submissions,* 19 September 2017, p 19.

152 Submissions 1, 11, 15, 20, 21, 26, 28 and 29; Cathy Pereira, ATSIWLSNQ, *Public Hearing Transcript*, 20 September 2017 (Townsville), p 15.

153 YAC, submission 20.

> *Whenever there is a construct within legislation that limits or silences the voices of children and, given our history, silences the voices, the rights and aspirations of parents and of community, I do not see how that can be in anybody's best interests.*[154]

LAQ stated that:

> *If this provision is implemented as written, a child who comes to Legal Aid and says, 'I'm very concerned'—for whatever reasons—'that it's not appropriate for me to be subject to a permanent care order anymore', the advice would have to be, 'This is not something that you can directly do anything about yourself'.*[155]

The YAC noted that while such proceedings would be rare, allowing a child to make an application to revoke or vary a PCO would be consistent with the broader aim of ensuring that children have a voice in decisions affecting them.[156]

The QLS considered that the permanent guardian should also be permitted to apply for an order to be revoked or varied, eg if there has been a breakdown in the relationship between the guardian and the child.[157]

In addition, the QLS recommended that consideration be given to enabling the Office of the Public Guardian to refer requests to vary or revoke an order from a child or, a child's parents, to the Director of Litigation for consideration as to whether to make an application to the courts.[158]

In response, the department stated that 'A PCO provides permanency and certainty for a child because the child or young person knows an application to revoke the order [may only be made] in limited circumstances'. The department also stated that restricting the making of applications to vary or revoke an order to the Director of Litigation, 'recognises the policy objective for this type of order to be permanent and distinguishing feature of this type of order from existing long-term orders under the CPA [the Act]'.[159]

The department advised that a child, or their parent, will be able to contact the department, if they have concerns or wish to make a complaint about a significant breach of a permanent guardian's obligations, eg if the child is not supported to maintain contact with their family. The department stated that 'In these circumstances, the department will attempt to resolve the issue or complaint'.[160]

In addition, the department stated that the chief executive must refer a matter to the Director of Litigation if satisfied the child's permanent guardian is not complying, in a significant way, with their obligations under the Act, and the order is no longer appropriate and desirable for promoting the child's safety, wellbeing and best interests.

The department stated that:

> *The requirement for a child or a member of the child's family to first raise an issue or make a complaint to the department rather than being able to make an application to vary or revoke a PCO is consistent with the intention for the order to be permanent. This approach enables the department to make reasonable efforts to resolve an issue or complaint before an application to the Childrens Court is made.*[161]

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154 Natalie Lewis, QATSICPP, *Public Forum Transcript*, 19 September 2017 (Palm Island), p 16.

155 Jen Glover, Acting Assistant Director, LAQ, *Public Hearing Transcript*, 15 September 2017 (Brisbane), p 6.

156 YAC, submission 20.

157 Submissions 1, 11, 15, 20, 21, 26 and 28.

158 QLS, submission 26.

159 Department, *Correspondence – response to submissions*, 19 September 2017, p 5.

160 Department, *Correspondence – response to submissions*, 19 September 2017, p 16.

161 Department, *Correspondence – response to submissions*, 19 September 2017, p 17.

In relation to QLS' proposed role for the Office of the Public Guardian, the department stated that 'The suggested approach is not consistent with the role and functions of the litigation director to make child protection applications on behalf of the State on referral from the department'. The department also highlighted that:

> *The Public Guardian is notified of applications for child protection orders, may appear in a proceeding on an application for an order for a child and may attend a Court ordered conference convened in relation to an application.*[162]

In addition, the department clarified that a child, or parent of the child, have the right to appeal against the court's decision to make a PCO.[163]

The committee notes an appeal is not an application for a review in these circumstances. Such a review can arise due to changed circumstances, and at a time beyond the period allowed for an appeal, and indeed many years after the initial determination.

Provision of information to children

The YAC and QLS proposed that the chief executive should be required to ensure that a child remains aware of the charter of rights for a child, the obligations of their permanent guardian and the role of the Public Guardian and the chief executive throughout their time in care. They considered that the material used to inform a child of their rights should change to meet the child's increasing capacity to understand and make choices about their lives.[164]

In response, the department stated that the Bill places obligations on the chief executive to ensure that a child, who is subject to a PCO, is told about: the charter of rights for a child in care and its effect; the obligations of their permanent guardian and about the respective roles of the public guardian and chief executive; and that they have the right to contact the chief executive if they have any questions or concerns about their protection and care needs.[165]

Concerns about complexity of complaints process

Submitters raised concerns about the complexity of the proposed complaints system, suggesting that the complaints mechanism for birth parents and children in care placed on PCOs is not accessible or impartial. It was suggested that simpler complaint and review options would be more helpful to children subject to PCOs, allowing them to raise concerns about their own care when necessary.[166]

Furthermore, one submitter suggested that the Bill should be amended to provide that a child, who is not satisfied with the way the department has dealt with their complaint, including a refusal to deal with the complaint, should have the right to ask the Public Guardian to review the matter.[167]

The department stated that the Bill provides a mechanism for a child or a member of a child's family to formally make a complaint to the department about the care provided to the child under a PCO. The Bill provides that unless a complaint is vexatious or trivial, the chief executive must take reasonable steps to resolve the complaint as soon as is reasonably practicable and provide the complaint with a response to a complaint.[168]

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162 Department, *Correspondence – response to submissions*, 19 September 2017, p 17.

163 Megan Giles, Department, *Public Briefing Transcript*, 21 September 2017, p 10.

164 Submissions 20 and 26; Janet Wight, Director, YAC, *Public Hearing Transcript*, 15 September 2017 (Brisbane), p 8.

165 Department, *Correspondence – response to submissions*, 19 September 2017, p 18.

166 Submissions 13, 19 and 20.

167 YAC, submission 20.

168 Department, *Correspondence – response to submissions*, 19 September 2017, p 5.

The department stated that 'It [the complaints mechanism] recognises the nature of a PCO, under which the permanent guardian has legal responsibility for the child's day to day and long term needs'.[169]

In addition, the department stated that a child who is the subject of a PCO is a *relevant child* under the *Public Guardian Act 2014* and, as such, the Public Guardian's child advocate functions apply in relation to the child.[170]

The department advised that the Bill also provides that a refusal to deal with a complaint about a permanent guardian is a reviewable decision, and the child may apply to the Queensland Civil and Administrative Tribunal to have a decision reviewed.[171]

3.2.4 Permanent care orders - Aboriginal and Torres Strait Islander children

The Bill proposes to introduce specific provisions in relation to applications for PCOs for Aboriginal or Torres Strait Islander children.

In deciding an application for a PCO, the Childrens Court must have proper regard to Aboriginal Tradition and Island custom relating to the child and the Child Placement Principle (see section 3.3.1 of this report). The court may only make an order, if it is satisfied that:

- the child's case plan includes appropriate details about how the child's connection with his or her culture, community or language group will be developed or maintained, and
- the decision to apply for an order has been made in consultation with the child, if the court considers consultation is appropriate.

In reaching a decision, the court may have regard to the views of an independent Aboriginal or Torres Strait Islander entity (independent entity) for the child or a member of the child's family.[172]

Submitters' views and department's response

During its public hearings and forums in Mount Isa, Palm Island and Townsville witnesses and community members raised significant concerns about the impact that PCOs may have on Aboriginal or Torres Strait Islander children and their communities.

Members of the Palm Island community told the committee that the language of permanency and the provisions around PCOs 'brings back the old thinking of the stolen generation'.[173] One Palm Island elder stated that:

> *When I think of permanency I instantly get a vision of despair. Permanency is taking that child and placing them somewhere else never to come back or never be reunited with their community or their family or their culture or where they connect. The concept of permanency in terms of how I see it is going to mean another lost generation here.*[174]

QATSICPP stated that the importance of kinship care should the primary option of Aboriginal and Torres Strait Islander children and young people and ought to be paramount to any decision regarding permanency. Members of the Palm Island community stated that 'taking a child from a parent or out of the community should be the very last option'.[175]

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169 Department, *Correspondence – response to submissions*, 19 September 2017, p 21.

170 Department, *Correspondence – response to submissions*, 19 September 2017, p 21.

171 Department, *Correspondence – response to submissions*, 19 September 2017, p 22.

172 Bill, cl 32 inserts new s 59A into the Act.

173 Rachel Atkinson, Chief Executive Officer, Palm Island Community Company (PICC), *Public Forum Transcript*, 19 September 2017 (Palm Island), p 5.

174 Rachel Atkinson, PICC, *Public Forum Transcript*, 19 September 2017 (Palm Island), p 5.

175 Elizabeth Clay, Private Capacity, *Public Forum Transcript*, 19 September 2017 (Palm Island), p 27.

The Injilinji Aboriginal and Torres Strait Islander Corporation for Children and Youth Services raised significant concerns about Aboriginal or Torres Strait Islander children being placed in non-Indigenous homes. They stated that children 'are losing their identity because they are going into non-Indigenous homes'.[176]

QATSICPP considered that PCOs are not sufficiently flexible or attuned for an Aboriginal or Torres Strait Islander child, whose stability is grounded in the permanence of their identity in connection with family, kin, culture and country. QATSICPP considered that:

> *… with the other amendments that are in place and with the existing provisions that pertain to, for example … a long-term guardianship order, permanency and stability of children can actually be achieved through those mechanisms.*[177]

QATSICPP also raised practical concerns about departmental failures to identify Aboriginal or Torres Strait Islander children and inadequate efforts to look for placement options with family or kin at each stage of the child practice continuum.[178]

They considered that there must be strict adherence to the Child Placement Principle when considering making a PCO for an Aboriginal or Torres Strait Islander child, and clear evidence presented to the court about the department's adherence to the principles. [179] Without this, QATSICPP considered that PCOs '… will be made in isolation of that decision about the impact on a child and on their community and family when a child is permanently removed from their care'. [180]

QATSICPP recommended that the Bill be amended to provide that the court may make a PCO for an Aboriginal or Torres Strait Islander child, only if the order is recommended by an Independent Aboriginal and Torres Strait Islander entity that has worked with the child and their family. QATSCIPP noted that a similar approach has been adopted in Victoria under the *Child, Youth and Families Act 2005* (Vic).[181]

QATSICPP considered that if there is true adherence to the Child Placement Principle, and best practice, there would never be the need to consider making a PCO for an Aboriginal or Torres Strait Islander child.[182]

In response, the department stated that the Bill provides additional safeguards which apply in relation to an application for a PCO for an Aboriginal or Torres Strait Islander child (eg the court must have regard to Aboriginal tradition and Island custom and the Child Placement Principle), while enabling a child who requires a long-term placement to have the option of a PCO.

The department advised that the Bill also provides that a court may only make a PCO for an Aboriginal or Torres Strait Islander child, if the case plan for the child includes appropriate details about how the child's connection with his or her culture, and community or language group, will be developed or maintained. The Bill also amends the Act to provide that a case plan for an Aboriginal or Torres Strait Islander child must be consistent with the connection principle (see Child Placement Principle – section 3.3.1 of this report).

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176 Sondra Ah Wing, Youth Support Worker, Injilinji Aboriginal and Torres Strait Islander Corporation for Children and Youth Services, *Public Hearing Transcript*, 18 September 2017 (Mount Isa), p 24.

177 Natalie Lewis, QATSICPP, *Public Forum Transcript*, 19 September 2017 (Palm Island), p 4.

178 QATSICPP, submission 29.

179 QATSICPP, submission 29.

180 Natalie Lewis, QATSICPP, *Public Forum Transcript*, 19 September 2017 (Palm Island), p 4.

181 QATSICPP, submission 29.

182 QATSICPP, submission 29.

The department noted that these provisions are in addition to the matters to which the Childrens Court must be satisfied under section 59 of the Act, which includes that the proposed guardian is committed to preserving the child's identity and connection to culture of origin and the child's relationship with members of their family in accordance with the case plan.[183]

Section 104 of the Act also requires the Childrens Court, in exercising its jurisdiction, to have regard to the additional principles in relation to Aboriginal or Torres Strait Islander children to the extent the principles are relevant, and when making a decision, to state the reasons for the decision.

The department also emphasised that a PCO may grant guardianship of a child to members of the child's family, language group or community.[184]

In relation to comments about departmental practice, the department stated that it:

> *… is working to improve child protection practice to better meet the needs of Aboriginal and Torres Strait Islander communities and ensure support and responses for Aboriginal and Torres Strait Islander children and families are more culturally appropriate; strongly evidenced based; [and] appropriate for local contexts.*[185]

The department highlighted the work it has undertaken, in partnership with Aboriginal and Torres Strait Islander organisations to trial three family-led decision making and shared practice models in Ipswich, Mount Isa, and Cairns and the Torres Strait Islands.

In addition, the department stated that the following amendments in the Bill are also aimed at improving practice and strengthening requirements:

- the placement principle – that, if a child is to be placed in care, the child has the right to be placed with a member of the child's family group
- the placement hierarchy (see section 3.3.1 of this report)
- the requirement that a case plan for an Aboriginal or Torres Strait Islander child be consistent with the connection principle, and
- the principle that a child should be able to maintain relationships with the child's parents and kin, if appropriate for the child.

The department noted QATSICPP's suggested amendment that a court be prohibited from making a PCO for an Aboriginal or Torres Strait Islander child, unless such an order is recommended by an independent entity. In response, the department stated that:

> *The role of the ATSI entity is to facilitate the meaningful participation of a child and the child's family, recognising that the child and child's family is the primary source of cultural knowledge in relation to the child. This differs from the existing role of recognised entities who provide cultural advice to the department.*
>
> *Clause 32 of the Bill (new section 59A) requires the Childrens Court when deciding whether to make a PCO for an Aboriginal or Torres Strait Islander child, to have proper regard to the child placement principles in relation to the child, and to Aboriginal tradition and custom relating to the child.*

183 Department, *Correspondence – response to submissions*, 19 September 2017, pp 11 – 14.

184 Department, *Correspondence – response to submissions* 19 September 2017, pp 11 – 14.

185 Department, *Correspondence – response to submissions*, 19 September 2017, pp 11 – 14.

The department stated that the court may inform itself of these matters by having regard to the views on an independent Aboriginal and Torres Strait Islander entity for the child (see section 3.3.2 of this report).[186]

The potential fundamental legislative principles issues raised by the introduction of PCOs are discussed in section 4 of this report.

3.3 Promoting safe care and connection of Aboriginal and Torres Strait Islander children with their families, communities and culture

The Act includes principles that Aboriginal and Torres Strait Islander children should be allowed to develop and maintain connections with their culture, tradition and community, and that the long-term effects on their identity and connection should be taken into account.[187]

The Act also provides for recognised entities (to be involved in, or to give advice in relation to, decisions by the departmental officers, the Director of Litigation and the Childrens Court about Aboriginal and Torres Strait Islander children).[188] In addition, the Act provides an order of priority of with whom an Aboriginal or Torres Strait Islander child should be placed, if the chief executive places the child in out-of-home care.[189]

As noted previously, in Queensland, of the approximately 9,000 children in care across the State, approximately 4,000 or 41 per cent are Aboriginal or Torres Strait Islander children.[190]

The department stated that the Bill seeks to address the overrepresentation of Aboriginal and Torres Strait Islander children in care, and to support the Our Way Strategy, by:

- adding new principles that recognise the right of Aboriginal and Torres Strait Islander people to self-determination and embedding the Child Placement Principle in the Act
- requiring case plans to include details about how an Aboriginal or Torres Strait Islander child will be supported to develop and maintain connections with their family, community and culture
- replacing existing recognised entities with independent Aboriginal and Torres Strait Islander entities (independent entities), tasked with facilitating the participation of children and their family in decision-making, and
- enabling the chief executive to delegate his or her functions and powers to Aboriginal and Torres Strait Islander entities.[191]

3.3.1 Principle of self-determination and Child Placement Principle

The Bill introduces a new principle to the administration of the Act which recognises the right of Aboriginal and Torres Strait Islander people to self-determination.

The Bill provides that the following additional principles apply for administering the Act in relation to Aboriginal or Torres Strait Islander children:

186 Department, *Correspondence – response to submissions*, 19 September 2017, pp 11 – 14.

187 Act, s 5C.

188 Explanatory notes, p 8.

189 Act, s 83.

190 Merrilyn Strohfeldt, Deputy Director-General, Service Delivery and Practice, Department, *Public Briefing Transcript*, 23 August 2017, p 8.

191 Explanatory notes, p 3.

- Aboriginal and Torres Strait Islander people have the right to self-determination, and
- the long-term effect of a decision on the child's identity and connection with the child's family and community must be taken into account.[192]

The department advised that the existing principle that the long-term effect of a decision on the child's identity and connection with the child's family and community must be taken into account would be retained.[193]

The department stated that:

> *The acknowledgement of this right to self-determination recognises the importance of Aboriginal and Torres Strait Islander children and their families participating in processes and the making of decisions that affect them.*[194]

The Bill also incorporates the five elements of the Child Placement Principle[195] into the Act:

- **prevention** – a child has the right to be brought up within the child's own family and community
- **partnership** – Aboriginal and Torres Strait Islander people have the right to participate in *significant decisions*[196] under the Act about Aboriginal and Torres Strait Islander children
- **placement** – if a child is to be placed in care, the child has a right to be placed with a member of the child's family group
- **participation** – that a child and the child's parents and family members have a right to participate, in an administrative or judicial process for making a significant decision about the child, and
- **connection** – that a child has a right to be supported to develop and maintain a connection with the child's family, community, culture, traditions and language, particularly when the child is in the care of a person who is not an Aboriginal or Torres Strait Islander person.[197]

The department stated that the Bill proposes to expressly incorporate the Child Placement Principle and fully embed it in the Act. The department stated that Queensland would be the first Australian jurisdiction to adopt this approach,[198] and advised that:

> *This will improve and strengthen the Child Placement Principle as a guiding framework for working with Aboriginal and Torres Strait Islander children and families across the continuum of the system through the domains of prevention, partnership, placement, participation and connection.*[199]

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192 Bill, cl 7 omits and inserts new s 5C into the Act.

193 Department, *Correspondence – written briefing*, 17 August 2017, p 10.

194 Department, *Correspondence – written briefing*, 17 August 2017, p 10.

195 The Child Placement Principle was developed by Aboriginal and Torres Strait Islander people in the late 1970s and was accepted in 1984 at a National Social Services Ministers' conference. States and territories agreed that Aboriginal and Torres Strait Islander children should be raised in their own families and communities and, if placed in out-of-home care for protective reasons, should be placed with Aboriginal and Torres Strait Islander carers.

196 The term *significant decision* is defined as a decision likely to have a significant impact on the child's life - Bill, cl 82 amends Schedule 3 to the Act.

197 Bill, cl 7 omits and inserts s 5C into the Act.

198 Megan Giles, Department, *Public Briefing Transcript*, 23 August 2017, p 5.

199 Department, *Correspondence – written briefing*, 17 August 2017, p 10.

The Bill provides that when making a *significant decision* about an Aboriginal or Torres Strait Islander child, the chief executive, Director of Litigation or an authorised officer must:

- have regard to the Child Placement Principle when making a significant decision about an Aboriginal or Torres Strait Islander child, and
- in consultation with the child and the child's family, arrange for an independent entity for the child to facilitate the participation of the child and the child's family in the decision-making process.

However, the requirement to arrange for an independent entity to facilitate participation does not apply, if complying:

- is not practicable because an independent entity for the child is not available or urgent action is required to protect the child
- is likely to have a significant adverse effect on the safety or psychological or emotional wellbeing of the child or any other person, or
- is otherwise not in the child's best interests.

The requirement also does not apply, if the child or the child's family does not consent to the independent entity's ongoing involvement in the decision-making process.

The Bill also provides that, as far as reasonably practicable, the chief executive, Director of Litigation or an authorised officer must, in performing a function under the Act involving an Aboriginal or Torres Strait Islander person (whether a child or not), perform the function in a way that allows the full participation of the person and the person's family group and in a place that is appropriate to Aboriginal tradition or Island custom.[200]

The Childrens Court would also be required to have regard to Aboriginal tradition and Island custom relating to the child and the Child Placement Principle, when exercising a power under the Act in relation to an Aboriginal or Torres Strait Islander child. The Bill provides that the court, in informing itself about these matters, may have regard to the views of an independent entity, the child or a member of the child's family.[201]

The Bill also provides that the chief executive must, if practicable, place an Aboriginal or Torres Strait Islander child with a member of the child's family group. However, if it is not practicable to place an Aboriginal or Torres Strait Islander child with a member of the child's family group, the following hierarchy of placement options applies.

The child must be placed, in hierarchical order, with either:

- a member of the child's community or language group
- another Aboriginal or Torres Strait Islander person who is compatible with the child's community or language group
- another Aboriginal or Torres Strait Islander person, or
- a person who lives near the child's family, community or language group and has a demonstrated capacity for ensuring the child's continuity of connection to kin, country and culture.[202]

200 Bill, cl 8 inserts new s 6AA into the Act.

201 Bill, cl 8 inserts new s 6AA and 6AB into the Act.

202 Bill, cl 46 amends s 83 of the Act.

Submitters' views and department's response

Submitters, including ATSIWLSNQ, QATSICPP, Australians for Native Title and Reconciliation Queensland (ANTR Queensland) and the Aboriginal and Torres Strait Islander Community Health Service Brisbane (ATSICHS), expressed strong support for the proposed additional principles for making decisions under the Act in relation to Aboriginal or Torres Strait Islander children.[203] QATSICPP stated:

> *… self-determination is something that should occur throughout the whole child protection decision-making continuum … By having self-determination, it really opens up that ability for Aboriginal and Torres Strait Islander people to be involved and fully participate, similar to the inclusion of the child placement principles.*[204]

However, ATSIWLSNQ raised concerns about the drafting of new section 6AA(3)(a)(i). The new section of the Act would provide that the requirement to arrange for an independent entity to facilitate the participation of the child and their family in the decision-making process, does not apply if the independent entity is not available or urgent action is required to protect the child. ATSIWLSNQ recommended that the provision be amended to read 'if the independent entity is not available and urgent action is required' to remove any risk of departmental officers 'deferring to convenience'.[205]

In relation to the proposed additional principles, ANTR Queensland recommended the inclusion of a non-exhaustive list of matters for consideration, to be determined by Aboriginal and Torres Strait Islander community members. ANTR Queensland considered this approach would provide clear guidance for decision makers to determine what is in the best interests of a child. ANTR Queensland noted that a similar approach had been adopted in Victoria, the Australian Capital Territory and the Northern Territory.[206]

QATSICPP recommended that the Bill be amended to require departmental officers to make a sworn statement of adherence to, and demonstration of the application of, the Child Placement Principle when making decisions about Aboriginal or Torres Strait Islander children, which should be provided to the court to inform its consideration of an application for an order.

Alternatively, QATSICPP recommended that the Bill be amended to replace references to the term 'have regard to the child placement principle' with 'provide active efforts in applying the child placement principles in relation to the child'. In addition, QATSICPP recommended that the Bill be amended to provide that the Childrens Court must 'be satisfied that active efforts have been made in relation to the child placement principle' when reaching a decision about an application for an order.

QATSICPP stated that a similar approach had been adopted in the *Indian Child Welfare Act 2016* in the United States of America. QATSICPP advised that 'active efforts' means affirmative, active, thorough and timely efforts intended to ensure the safe care and connection of Aboriginal and Torres Strait Islander children and young people.

QATSICPP considered that its proposed amendment would '… augment the existing safeguards, mitigate the potential adverse impact of poor practice and passive adherence to the child placement principles and alleviate some of the concerns expressed … regarding the introduction of a permanent care order'.[207]

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203 See, for example, submissions 6, 13, 14, 21, 28 and 29.

204 Candice Butler, Senior Practice Leader, QATSICPP, *Public Hearing Transcript*, 18 September 2017 (Mount Isa), p 6.

205 ATSIWLSNQ, submission 28.

206 Australians for Native Title and Reconciliation (ANTR) Queensland, submission 14.

207 QATSICPP, *Correspondence*, 20 September 2017.

In addition, QATSICPP questioned what constitutes the 'full participation of the child and family group in decision-making' as proposed in the Bill, and recommended that the term be defined in the Bill.[208]

ATSICHS, while supporting the proposed amendments, raised concerns that the amendments will not address the fundamental behavioural dynamic at the core of the growing discontent from Aboriginal and Torres Strait Islander families and communities. Churches of Christ Care stated that the proposed amendments must be accompanied by localised capacity building for Aboriginal and Torres Strait Islander communities and organisations.[209]

In response to ATSIWLSNQ concerns about the drafting of new section 6AA(3)(a)(i), the department stated that the use of the word 'or' instead of 'and' recognises that compliance with the provision may not be possible when either an urgent decision is required or an independent entity is not available. The department stated that the provision '… enables timely decision making in the best interests of the child'.[210]

The departmental acknowledged QATSICPP's comments about the importance of ensuring the implementation of the Child Placement Principle throughout the Act, particular in relation to the making of a child protection order. The department advised that:

> *The Bill requires the Childrens Court when exercising a power under the Act in relation to an Aboriginal or Torres Strait Islander child, which includes the making of a child protection order, to have regard to the Child Placement Principles in relation to the child. The court may inform itself about how the Child Placement Principles have been applied in any way it decided, including by having regard to the views of the child or independent Aboriginal or Torres Strait Islander entity for the child.*[211]

The department stated that 'It is inappropriate to further direct the court in how it has regard to the Child Placement Principle'. [212]

In addition, the department advised that the Bill requires the chief executive, Director of Litigation and authorised officers to have regard to the Child Placement Principle when making a significant decision about an Aboriginal or Torres Strait Islander child. [213]

The department considered that including a definition of 'full participation of the child and the family group' in the Bill, as suggested by QATSICPP, may have the unintended consequence of limiting the meaning of the phrase. The department stated that 'Guidance about the implementation of the requirement in this provision may be better included in policy and practice requirements rather than legislation'.

The department also acknowledged the 'critical importance of addressing the disproportionate representation of Aboriginal and Torres Strait Islander children in the child protection system'. The department stated that the Our Way Strategy and Changing Tracks Action Plan 'demonstrate a clear commitment to self-determination and go beyond the proposed amendments included in the Bill'.

In relation to resources and capacity building, the department stated that proposals to improve the safe care and connection of an Aboriginal or Torres Strait Islander child with culture, community and kin will be implemented in partnership with Aboriginal and Torres Strait Islander people and organisations.[214]

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208 QATSICPP, submission 29.

209 Submissions 6 and 23.

210 Department, *Correspondence – response to submissions,* 19 September 2017, p 36.

211 Department, *Correspondence – response to submissions*, 19 September 2017, p 37.

212 Department, *Correspondence – response to submissions*, 19 September 2017, p 37.

213 Department, *Correspondence – response to submissions*, 19 September 2017, p 37.

214 Department, *Correspondence – response to submissions*, 19 September 2017, p 37.

3.3.2 Cultural advice about Aboriginal and Torres Strait Islander children

The Act provides that the chief executive, Director of Litigation or an authorised officer:

- when making a *significant decision* about an Aboriginal or Torres Strait Islander child – must give an opportunity for a *recognised entity* for the child to participate in the decision-making process, and
- when making other decisions about an Aboriginal or Torres Strait Islander child – must consult with a recognised entity for the child before making a decision.

The Childrens Court is also required to have regard to the views of a recognised entity for a child when exercising powers under the Act in relation to an Aboriginal or Torres Strait Islander child.[215]

The Act provides that a recognised entity must consist of individuals, or be an individual, with appropriate knowledge of, or expertise in, child protection; and provide services to Aboriginal or Torres Strait Islander persons.

The Bill amends the Act to replace all references to a recognised entity with the term independent Aboriginal or Torres Strait Islander entity (independent entity).[216]

The department advised that the amendments will provide greater flexibility for a child's family to have an entity facilitate their participation in decision-making that has relevant and appropriate cultural authority for the child. The department stated that:

> *Whereas the main function of recognised entities is to provide advice in relation to decisions for Aboriginal and Torres Strait Islander children, the role of an independent Aboriginal or Torres Strait Islander entity for a child will be to facilitate the meaningful participation of the child and the child's family in decision making. This recognises that the child and the child's family is the primary source of cultural knowledge in relation to the child.*[217]

In addition, the Bill replaces the existing requirement to consult and give a recognised entity the opportunity to participate in the making of decisions, with a requirement to arrange for an independent entity to facilitate the participation of a child and the child's family in the decision-making process.[218]

The Bill provides that if the chief executive reasonably suspects that an unborn Aboriginal or Torres Strait Islander child may be in need of protection after they are born, he or she must arrange for an independent entity to facilitate the participation of the pregnant woman and the child's family in the decision-making process, including whether to offer support to the pregnant woman.[219]

Submitters' views and department's response

Submitters supported the proposed amendments and the policy intent to broaden the range of entities and individuals that may support a child, and their family, in participating in the decision-making process. Submitters also noted that the proposed amendments would align Queensland with similar legislation in Victoria and New South Wales.[220]

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215 Act, s 6.

216 The term *independent Aboriginal or Torres Strait Islander entity* for a child includes: an entity funded by the department to provide services (eg a recognised entity under the funded recognised entity program); individuals (eg a relative or kin for a particular child); or another person nominated by the child's family as having cultural authority for the child and their family – Bill, cl 8 omits and inserts new s 6 into the Act.

217 Department, *Correspondence – written briefing*, 17 August 2017, p 12.

218 Bill, cl 8 inserts new s 6AA into the Act.

219 Bill, cl 11 amends s 21A of the Act.

220 See, for example, submissions 13, 14, 19, 23 and 29.

QATSICPP stated that:

> *… we are very supportive of having the independent Aboriginal and Torres Strait Islander entity, because it will allow the new role to really go out into the community and to sit with family and really understand and build those cultural connections and identify who is connected to whom and also participate in a way that is meaningful for community.*[221]

QATSICPP considered that an independent entity should be the initial source of information and advocacy for families regarding their rights and the provision of support.[222]

Members of the Elders Advisor Group on Palm Island raised the importance of independent entities being from the same community, as the child and family they are supporting.[223] Similarly, the Mayor of Palm Island Aboriginal Shire Council, Mayor Alfred Lacey, highlighted the importance of establishing a community based model.[224]

The Townsville Aboriginal and Islander Health Service (TAIHS), an existing recognised entity under the Act, stated that:

> *The independent entity that has been dedicated by the family would be the perfect person to make the last and final decision [about a child], but that is in support of the recognised entity's participation as well and the department's involvement.*[225]

On Palm Island, the committee heard from the community that the elders advisory group and the local community justice group could fulfil the role of an independent entity.[226]

The QFCC recommended that guidance be produced on how to decide whether an independent entity is appropriate to provide cultural advice in relation to a child, and on timeframes for consultation and an entity's capacity to provide cultural advice. In addition, the Benevolent Society suggested the Queensland Government review its resourcing of independent entities.[227]

In response, the department stated that:

> *… the bill is deliberately intended to be broad, so that it [an independent entity] could include in a particular case an elder or a significant family member for the child and their family. It is not intended to limit it to an entity that is funded by a government … It could be a person who is significant in the child's life.*[228]
>
> And
>
> *It would be hard to imagine how the role [of an independent entity] could be performed by someone who is not in the same community as the child and family, given the role of the independent entity is to facilitate the participation of the child and family in the decision-making.*[229]

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221 Candice Butler, QATSICPP, *Public Hearing Transcript*, 18 September 2017 (Mount Isa), p 3.

222 QATSICPP, submission 29.

223 Palm Island, Elders Advisory Group, *Public Forum Transcript*, 19 September 2017 (Palm Island), p 8.

224 Mayor Alfred Lacey, Palm Island Aboriginal Shire Council, *Public Forum Transcript,* 19 September 2017 (Palm Island), p 10.

225 Karen Mann, Townsville Aboriginal and Islander Health Service, *Public Hearing Transcript*, 20 September 2017 (Townsville), p 23.

226 Rachel Atkinson, PICC, *Public Forum Transcript*, 19 September 2017 (Palm Island), P 15.

227 Submissions 13 and 19.

228 Megan Giles, Department, *Public Briefing Transcript*, 21 September 2017, p 9.

229 Megan Giles, Department, *Public Briefing Transcript*, 21 September 2017, p 9.

In addition, the department stated that:

> *The main function of the independent Aboriginal or Torres Strait Islander entity is to facilitate the meaningful participation of a child and the child's processes under the CPA [the Act], recognising that the child and the child's family is the primary source of knowledge in relation to the child.*
>
> *The Bill specifically requires the chief executive, litigation director and authorised officer to arrange for an independent Aboriginal or Torres Strait Islander entity for the child to facilitate the participation of the child and the child's family in the decision-making process.*[230]

In relation to QFCC's comments about additional guidance in relation to reaching decisions about independent entities, the department highlighted the proposed provisions in the Bill, eg that the chief executive must be satisfied the entity provides services to Aboriginal or Torres Strait Islander persons or is a representative of the child's community or language group.

The department also referred to the requirement for the independent entity to be a suitable person to perform the functions. In addition, the department stated that:

> *Further criteria for defining who is a suitable person can be prescribed by regulation should the provisions in the Bill be passed. Operational policies and practice requirements will guide decision making to support the implementation of provisions.*[231]

3.3.3 Delegation of chief executive's functions or powers

The Bill introduces provisions to enable the chief executive to delegate one or more of the chief executive's functions or powers in relation to an Aboriginal and Torres Strait Islander child. The chief executive may only delegate a function or power to a person (a prescribed delegate):

- if the person is an Aboriginal or Torres Strait Islander person, who is the chief executive of an appropriate Aboriginal and Torres Strait Islander entity and has a current positive prescribed notice (ie a blue card), and
- the chief executive is reasonably satisfied the person is appropriately qualified and is a suitable person to perform the function or power.

Before delegating a function or power, the chief executive must, to the extent it is safe, possible and practicable to do so, seek the views of the child and their parents. The Bill also provides that the delegation does not take effect until the person accepts the delegation in writing.[232]

The department advised that the amendment:

> *… was widely supported by stakeholders during consultation undertaken as part of the review of the CPA [the Act]*
>
> And
>
> *… will support the implementation of the Our Way strategy and Changing Tracks action plan' and 'these amendments are modelled on section 18 to 18D of the Children, Youth and Families Act 2005 (Vic).*[233]

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230 Department, *Correspondence – response to submissions*, 19 September 2017, p 38.

231 Department, *Correspondence – response to submissions*, 19 September 2017, p 39.

232 Bill, cl 48 inserts new s 184BA to 184BI into the Act.

233 Department, *Correspondence – written briefing,* 17 August 2017, p 12.

The Bill includes a number of safeguards aimed at preventing the inappropriate delegation of functions or powers, including:

- the chief executive remains liable for the actions of the delegate
- laws apply to the delegate as if the delegate was the chief executive and decisions made by a delegate will be reviewable
- the chief executive will continue to able to exercise a delegated function or power, and in circumstances where the chief executive and delegate each exercise a function in a way that is inconsistent, the performance of the function by the chief executive prevails
- the delegation ends automatically if the delegate stops being the chief executive of an appropriate Aboriginal or Torres Strait Island entity or ceases to hold a blue card, and
- the chief executive may request information about a child from the delegate and may revoke a delegation at any time.[234]

The department stated that:

> *The enabling of the delegation by the chief executive to appropriate Aboriginal or Torres Strait Islander entities will enable community-controlled organisations to take a significant role in child safety, supporting the child and child's family in a culturally appropriate way.*[235]

Submitters' views and department's response

The proposed amendments to enable the chief executive to delegate functions or powers in relation to an Aboriginal or Torres Strait Islander child were supported by a number of submitters.[236]

In support of the delegation of functions, the Palm Island Community Company (PICC) stated 'Give the solution and the responsibility back to the communities and it will help heal and start to strengthen communities'.[237] The PICC considered that:

> *… the government has to shift their power. When you look at the history of child protection, they have not got it right. We still have an overrepresentation of Aboriginal children in care. The government needs to say, 'We have not done it right and we need to shift our thinking and our power structure and hand some of that … to entities within this community.*[238]

Mayor Alfred Lacey, Palm Island Aboriginal Shire Council stated:

> *I think we have to move away from that one size fits all. What works in another community does not necessarily work here. It is giving the community an opportunity and empowering the community to be decision-makers around implementing a new child protection system.*[239]

Councillor Deniece Geia, Palm Island Aboriginal Shire Council echoed these sentiments, and stated:

> *We want to be able to manage our own affairs. Like the Mayor said this morning, we want to be in the driver's seat. We already have the tools. Give us more resources … We can do the recognised entity. We have our own services, facilities for our youth, our children. We can do it.*

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234 Bill, cl 48 inserts new s 148D and 148BF into the Act.

235 Department, *Correspondence – written briefing*, 17 August 2017, p 13.

236 Submissions 6, 8, 13, 14, 15, 28 and 29.

237 Rachel Atkinson, PICC, *Public Forum Transcript*, 19 September 2017 (Palm Island), p 15.

238 Rachel Atkinson, PICC, *Public Forum Transcript*, 19 September 2017 (Palm Island), p 13.

239 Mayor Alfred Lacey, Palm Island Aboriginal Shire Council, *Public Forum Transcript*, 19 September 2017 (Palm Island), p 10.

That is what we talk about when you raise it in the Bill about self-determination. It is a culturally appropriate way of doing business around child protection.[240]

ANTR Queensland recommended that appropriate long-term funding be put in place to support the delegation of functions and powers to entities. They also recommended that a timescale be put in place for the transfer of powers to an entity, as their capacity and expertise increases and the required resources are provided.[241]

The QFCC suggested that, similar to Victoria, the department trial the delegation of functions to Aboriginal and Torres Strait Islander entities. The QFCC recommended that the department implement programs to build the capacity of Aboriginal or Torres Strait Islander community controlled organisations to take on the delegated functions. In addition, QFCC recommended that the requirement for an entity to hold a positive current prescribed notice (ie a blue card) should be reviewed in light of the QFCC Blue Card and Foster Care System Review reports. [242]

The AASW raised questions about what will constitute a prescribed delegate, how quality assurance and the review of the effectiveness of prescribed delegates will be undertaken, and what resources and training will be provided to delegates to ensure they can undertake the role effectively.[243]

In response, the department stated that:

The suitability to be an entity to accept a delegation will depend on the functions and powers being delegated.

An appropriate Aboriginal or Torres Strait entity is defined in new section 148BA (clause 48). The entity must have a function of providing services to Aboriginal persons or Torres Strait Islanders; and must include individuals who have appropriate knowledge of, or expertise in, child protection.

Before making a delegation, the chief executive must be satisfied of the matters provided for in the new section 148BB (clause 48 of the Bill). Further criteria for defining who is a s 'suitable person' can be prescribed in regulation.

The department stated that it '… will continue to work with non-government parties to develop an operational framework to support the implementation of the delegation power'.[244]

In relation to the requirement for blue cards, the department advised that the implementation of the proposed amendments will take into consideration relevant recommendations in the QFCC Blue Card and Foster Care System Review reports.[245]

3.4 Information sharing regime

The Act provides for the exchange of information about a child and their family between *prescribed entities* (eg the chief executive, public guardian, adult corrective services and the Police Commissioner) and *service providers* (a person providing a service to children or families or a recognised entity), while protecting the confidentiality of the information.[246]

The current information exchange provisions include the establishment of the SCAN (Suspected Child Abuse and Neglect) system.

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240 Councillor Deniece Geia, Palm Island Aboriginal Shire Council, *Public Forum Transcript*, 19 September 2017 (Palm Island), p 32.

241 ANTR Queensland, submission 14.

242 QFCC, submission 19.

243 AASW, submission 18.

244 Department, *Correspondence – response to submissions*, 19 September 2017, p 41.

245 Department, *Correspondence – response to submissions*, 19 September 2017, p 42.

246 Act, s 159A.

The department stated that 'The provisions [of the Act] enable broad sharing of relevant information, without the consent of the person about whom the information concerns, for specific purposes'.[247]

For example, *relevant information* may be shared to enable an authorised officer to investigate an allegation or harm to a child, help the chief executive respond to the health, educational or care needs of a child, or offer help and support to a child and their family.[248]

The Commission of Inquiry recommended necessary changes be made to existing provisions for information exchange and confidentiality (Recommendation 14.2). In addition, the department stated that during its review of the Act it identified that the 'current provisions are complex, often result in confusion and [the Act is] interpreted narrowly' and 'the Bill redrafts the existing provisions to more simply provide for information sharing within the current parameters in the CPA [the Act]'.[249]

3.4.1 New principle – obtaining consent

The Bill introduces a new principle in relation to information sharing. The new principle provides that whenever safe, possible and practicable, consent should be obtained before:

- providing or planning to provide a service to a child or child's family to decrease the likelihood of the child becoming a child in need of protection, or
- disclosing personal information about a person to someone else.

However, the existing principle that a child's safety, wellbeing and best interests take precedence over the protection of an individual's privacy would be retained.[250]

3.4.2 Specialist service providers

The Bill introduces a new category of *specialist service providers*, defined as a non-Government entity, other than a licensee funded by the State or Commonwealth, to provide a service to a child in need of protection, or a child who may become a child in need of protection, if preventative support is not given to the child or the child's family.[251]

The department advised it is intended that specialist service providers would include 'new and expanded family support services funded by the Queensland Government, such as Family and Child Connect and Intensive Family Support Services'.[252]

The Bill would enable specialist service providers to share relevant information with each other and with other service providers for particular purposes about a child, a child's family, a pregnant woman or unborn child, including to:

- assess or respond to the health, educational or care needs of a child to decrease the likelihood of the child becoming a child in need of protection
- provide or offer to provide services to a child or the child's family to decrease the likelihood of the child becoming a child in need of protection, and
- assess the care needs and provide services to a child in need of protection.[253]

247 Department, *Correspondence – written briefing*, 17 August 2017, p 13.

248 Act, s 159C.

249 Department, *Correspondence – written briefing*, 17 August 2017, p 13.

250 Bill, cl 53 amends s 159B(f), (g) and (h) of the Act.

251 Bill, cl 62 omits and inserts new s 159M into the Act.

252 Department, *Correspondence – written briefing*, 17 August 2017, p 13.

253 Bill, cl 62 omits and inserts s 159M to 159MF.

The department stated that the amendments will:

> *… enable information sharing to continue when, for example, a family moves from one part of the state to another where different service providers are operating.*
>
> And
>
> *… enable a service provider previously working with a family to provide preventative support, to share information with another service provider that begins to work with the family because the child is now in need of protection.*[254]

Submitters' views and department's response

Submitters, such as Uniting Care, Churches of Christ Care and the Queensland Police Union of Employees, supported the proposed information sharing provisions.[255] Churches of Christ Care considered that information sharing 'will allow non-government providers to develop a full picture of a family's history to more effectively target work with families to protect children'.[256]

The Benevolent Society recommended that safeguards be developed to protect the privacy of children and their families and to ensure information is shared solely for the purpose of assisting and supporting the child and their family.[257]

FIN and Micah Projects considered that the sharing of opinion-based information, rather than factual information, ought to be very limited. They also stated that the proposed information sharing provisions must be grounded in clear ethical guidelines to avoid bias and to maintain professional standards.[258]

The department stated that it '… is aware of the important and complex balance between information sharing, information privacy and information security in providing child safety services'.[259]

The department advised that safeguards are provided in the proposed amendments that limit the sharing of information to particular purposes, and that persons who receive information will be subject to the existing confidentiality provisions in the Act, which prevent the further use or disclosure of the information for other purposes.

In addition, specialist service providers, funded by the department, are contractually required to comply with the information privacy principles in the *Information Privacy Act 2009*, including those relating to the retention and storage of personal information. Funded service providers are also required to be accredited and audited against the department's Human Services Quality Framework, which includes a standard for dealing with information storage and retention.[260]

3.4.3 Information about a pregnant woman or unborn child

The Act provides that the chief executive must take appropriate action where he or she reasonably believes that an unborn child will be in need of protection after birth. Provisions are made in the Act to enable the chief executive and authorised officers to gather information to investigate and assess a pregnant woman's circumstances and/or offer help and support to the pregnant woman.[261]

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254 Department, *Correspondence – written briefing*, 17 August 2017, p 14.

255 Submissions 6 and 22.

256 Churches of Christ Care, submission 6.

257 The Benevolent Society, submission 13.

258 FIN and Micah Projects, submission 21.

259 Department, *Correspondence – written briefing*, 17 August 2017, p 14.

260 Department, *Correspondence – written briefing*, 17 August 2017, p 14.

261 Act, s 5A and 21A.

The department advised that:

> *… some uncertainty has been reported as to whether they [the chief executive or authorised officer] can give information to other entities [such as hospitals], and whether other entities can share information with each other, without the consent of the pregnant woman.*

The department stated that currently if consent cannot be obtained from a woman, or it is unsafe to seek consent, the chief executive may be prevented from adequately meeting his or her statutory duties.[262]

The Bill amends the Act to permit entities to share information with each other in order to decide whether to inform the department that an unborn child may be in need of protection after their birth. The Bill also permits entities to share information with the department to enable it to investigate and assess whether an unborn child will be in need of protection after birth, and the department may share information with entities to help them decide whether and what information to give the department.

In addition, the Bill provides that information may be shared to enable help and support to be offered to a pregnant woman.[263] The department stated that 'A pregnant woman will still be able to decide whether or not to accept an offer of help or support'.[264]

Submitters' views and department's response

The AASW supported the proposed amendments to facilitate the sharing of information in relation to unborn children. The AASW recommended, however, that a process needs to be established to ensure a child is not 'unreasonably removed at birth'.[265]

QAI considered that sharing information about an unborn child and pregnant woman, is a breach of their rights and liberties, including their right to privacy and confidentiality.[266]

In response, the department stated that section 21A of the Act requires the chief executive to take appropriate action when he or she reasonably believes that an unborn child may be in need of protection after birth. The purpose of any action taken under section 21A must be to reduce the likelihood of the child needing protection after birth. The Act enables the chief executive and authorised officers to gather information for these purposes.[267]

The department stated that:

> *Barriers to sharing relevant information about a pregnant woman and an unborn child may prevent the department engaging effectively with and supporting a pregnant woman and her family, or otherwise limit the ability of the department to meet the statutory obligation in section 21A.*[268]

262 Explanatory notes, p 12.

263 Bill, cl 62 inserts new s 159MA.

264 Department, *Correspondence – written briefing*, 17 August 2017, p 14.

265 AASW, submission 18.

266 QAI, submission 1.

267 Department, *Correspondence – response to submissions*, 19 September 2017, p 43.

268 Department, *Correspondence – response to submissions*, 19 September 2017, p 42.

3.4.4 Other information sharing provisions

The Bill would introduce other information sharing provisions into the Act. The amendments would:

- enable a child to be given information about their time in care that includes information about a third party, eg a sibling or carer – except in specified circumstances, eg if the chief executive reasonably believes the disclosure of the information is likely to adversely affect the safety or psychological or emotional wellbeing of any persons[269]
- allow the chief executive to give information about a deceased child to the parent of the child or another person acting on behalf of the child - except in specified circumstances, eg if the chief executive reasonably believes the disclosure of the information is likely to adversely affect the safety or psychological or emotional wellbeing of any person[270]
- require the chief executive to give information to the police commissioner, if it is in relation to an investigation being carried out by a police officer following the death of a child and on written application from the police commissioner, including information about a notifier of harm to a child[271]
- enable the chief executive to share information with interstate and New Zealand child welfare authorities to enable them to perform their functions under their child protection laws,[272] and
- enable the chief executive to authorise people to have access to information for key research activities with safeguards to prevent the information being published in a way that can lead to the identification of anyone it relates to.[273]

Submitters' views and department's response

PACT supported the proposal to give information about a deceased child to the police for investigation, and considered that information should also be given to the police to enable them to intervene to prevent death or injury of a child.[274]

The AASW, CREATE Foundation, CLAN and PeakCare supported the proposed amendments to enable a child to be given information about their time in care. The AASW suggested that provisions about how such information is recorded and stored should be reviewed.[275]

CLAN noted the proposed safeguards to be put in place to prevent the sharing of information about a third party, and requested that they only be used in exceptional circumstances and not used as an excuse to prevent care leavers accessing information. CLAN also requested further clarity about the process to be established for providing this information to care leavers.[276] CLAN stated that that care leavers should be '… able to access their records … unredacted and … quickly'.[277]

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269 Bill, cl 71 inserts new s 188C into the Act.

270 Bill, cl 71 inserts new s 188D into the Act.

271 Bill, cl 71 inserts new s 188E into the Act.

272 Bill, cl 72 inserts new s 189AB into the Act.

273 Bill, cl 73 omits and inserts new s 189B into the Act.

274 PACT, submission 8.

275 Submissions 15, 17, 18 and 27.

276 Submissions 18 and 27.

277 Leonie Sheedy, Chief Executive Officer, Care Leavers Australasia Network (CLAN), *Public Hearing Transcript*, 15 September 2017 (Brisbane), p 17.

While supporting the intent of the provision, PeakCare sought further information about whether the proposals will meet the identity, pragmatic and other information needs of children and young people in care, and care leavers.[278]

The department advised that:

> *The intent of this amendment is to enable the department to provide information to people about their personal history, care and circumstances.*
>
> *The exception to providing this information in section 188C(3) provides safeguards to avoid adverse effects to the safety or psychological or emotional wellbeing of any person through the disclosure of information under the provision, and otherwise protect privilege; the identity of a notifier of harm to a child; or a record of confidential therapeutic counselling.*[279]

In addition, the department stated that it has established an administrative release scheme for providing care leavers with access to care history summary statements free of charge. The department also advised that a person who has been in care may make an application, under the *Information Privacy Act 2009,* for documents to the extent that they contain the individual's personal information.[280]

The YAC and QLS stated that the chief executive should not be permitted to authorise researchers to make direct contact with children as part of undertaking research activities.

In response, the department stated that:

> *Access by researchers to child protection information, Child Safety staff, carers and clients is important to strengthen the evidence base for developing policy, programs and practice in child protection. The lived experience of children, families and carers provides contextual information to inform this evidence.*
>
> *All research projects require approval by the chief executive to ensure sensitive information about clients is appropriately protected. Strict ethical, consent and confidentiality requirements are enforced as part of the approval process for all research applications. Procedures to address any difficulties that may arise for research participants must be agreed to. All decisions made under the Act must be made according to the principle that the safety, wellbeing and best interests of the child are paramount.*[281]

3.4.5 Guidelines

The Bill provides that the chief executive must make guidelines for sharing and dealing with information under the Act. The guidelines are to provide guidance on when information should be shared and on the secure use, storage, retention and disposal of information.[282]

The department stated that:

> *The guideline will explain the requirements under the CPA [the Act] and other relevant legislation, as well as practical requirements about how personal information is to be treated, including requirements for the secure storage, retention and disposal of information.*[283]

The chief executive would be required to publish the guidelines on the department's website.

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278 AASW, submission 18.

279 Department, *Correspondence – response to submissions*, 19 September 2017, p 46.

280 Department, *Correspondence – response to submissions*, 19 September 2017, p 46.

281 Department, *Correspondence – response to submissions*, 19 September 2017, p 48.

282 Bill, cl 54 omits and inserts new s 159C into the Act.

283 Department, *Correspondence – written briefing*, 17 August 2017, p 14.

Submitters' views and department's response

The QNMU recommended that the information sharing guidelines and provisions about the secure, use, storage, retention and disposal of information be developed as per national and internal standards.[284]

The QLS and LAQ questioned how the guidelines would be enforced and the accountability mechanisms envisaged for those organisations and individuals who share information about a child.[285] LAQ considered that 'There is a risk that these factors [a lack of accountability] may make children and families reluctant to share information with support services, thereby decreasing safety'.[286]

In response, the department advised that 'The information sharing guidelines will be in accordance with the provisions in the CPA [the Act] and other applicable legislative requirements including the *Information Privacy Act 2009* and other relevant privacy requirements'.[287]

In addition, the department stated:

> *The purpose of the information sharing guidelines is to support people and organisations that share information under the CPA [the Act] by providing practical plain English explanations.*
>
> *The requirement for the chief executive to make guidelines recognises the legislative provisions that enable information sharing are often complex and difficult to understand.*
>
> *The guideline must be consistent with the CPA [the Act] which provides for the confidentiality of information and associated enforcement of those requirements.*[288]

3.4.6 Legal professional privilege

A number of submitters, including the YAC, LAQ and QLS, raised concerns that community legal centres would fall under the definition of a *specialist service provider* and *prescribed entity*, and this could result in circumstances where they are compelled to breach legal professional privilege by providing information about children and their families that they are assisting to the department.[289]

LAQ stated that:

> *The potential unintended consequence of that would be, if people feel uncertain about whether they can trust that the information they are giving is going to be protected by privilege, that might lead to them being less likely to seek legal help from a community legal centre. For some parents, older children or young people who want and need legal help, that is a really unfortunate outcome, because for some of those people community legal centres are the best and most appropriate legal service for them to seek support from.*[290]

The department confirmed that community legal centres would fall within the definition of *specialist service provider* under the Bill, if they are funded by the State or the Commonwealth to provide a service to a *relevant child*[291] or the family of a relevant child.

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284 QNMU, submissions 3.

285 Submissions 11 and 26.

286 LAQ, submission 11.

287 Department, *Correspondence – response to submissions*, 19 September 2017, p 42.

288 Department, *Correspondence – response to submissions*, 19 September 2017, p 42.

289 Submissions 11, 20 and 26.

290 Jen Glover, Acting Assistant Director, LAQ, *Public Hearing Transcript*, 15 September 2017 (Brisbane), p 5.

291 The term *relevant child* is defined as a child in need of protection or a child who may become a child in need of protection if preventative support is not given to the child or the child's family - Act, s 159AB.

The department advised:

> *However, all of the information sharing amendments in the Bill that apply to "specialist service providers" are enabling only and do not compel the sharing or disclosure of information. This is consistent with the current information sharing provisions in Chapter 5A of the CPA [the Act].*[292]

In addition, the department stated that 'To address the issue raised by some stakeholders … clause 66 of the Bill proposes to amend section 159R of the CPA [the Act] to specifically provide that disclosure of information under the relevant chapter does not waive, or otherwise effect, a privilege a person may claim in relation to the information under another Act or Law'.[293]

However, LAQ stated that:

> *We do not believe that the protections for lawyers who disclose privileged information [at clause 66] adequately addresses the impact of the proposed amendments, which means that children and families who obtain legal advice from a community legal centre will have diminished assurance about the scope of their legal professional privileged as compared to children and families who seek legal advice from private law firms.*[294]

The YAC also considered that the provision at clause 66 did not address the impact of the proposed provisions on lawyers who, in order to comply with an obligation to provide information, would be breaching legal professional privilege. The YAC stated that clause 66 '… is saying that the information remains privileged when is has been passed on, but that is not the same thing as saying that the lawyer does not have to pass it [the information] on in the first place'.[295]

The department stated that 'It is our intent and our understanding that clause 66 would, in effect, protect any legal professional privilege that exists on information held by a community legal service'.[296]

3.5 Other amendments

The Bill proposes other amendments to implement reforms under the Government's *Supporting Families Changing Futures Program*, including to:

- clarify that an authorised officer may apply for a temporary custody order for a child to ensure a child's immediate safety after the chief executive has referred a matter relating to the child to the Director of Litigation[297]
- amend the definition of medical *treatment* to clarify that a medical practitioner may vaccinate a child in the chief executive's custody[298]
- extend the prohibition against publishing information about a child witness in criminal proceedings to include knowingly publishing information about a child who is, or is reasonably likely to be, a witness in a proceeding for a sexual or violent offence, and clarify that the protections apply to all proceedings in the criminal process, not just those involving the examination of a witness[299]
- clarify that section 194(2)(d) of the Act, which permits the publication of identifying information about a child by the police commissioner, or chief executive of another public

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292 Department, *Correspondence – response to submissions*, 19 September 2017, p 6.

293 Department, *Correspondence – response to submissions*, 19 September 2017, p 6.

294 LAQ, submission 11.

295 Janet Wight, YAC, *Public Hearing Transcript*, 15 September 2017 (Brisbane), p 9.

296 Megan Giles, Department, *Public Briefing Transcript*, 21 September 2017, p 3.

297 Bill, cl 15 and 16 amend s 51AB(2) and 51AE(b) of the Act.

298 Bill, cl 47 amends s 97 of the Act.

299 Bill, cl 74 amends s 193(1) to (3) of the Act.

sector unit, for the purpose of investigating a complaint, may be relied upon to issue a child abduction or amber alert when a child is missing from out-of-home care[300]

- clarify that an intervention with parental agreement can only be considered, if the child will not be placed at immediate risk of harm if that child's parent or parents withdraw their agreement[301]
- clarify that, under an intervention with parental agreement, the case plan must include details about what is expected of a child's parents and the chief executive in carrying out the intervention,[302] and
- clarify that a court may have regard to a decision to end an intervention with parental agreement when considering making a child protection order.[303]

3.6 Concerns raised about existing provisions in relation to the blue card system

During its regional hearings and forums, the committee heard concerns about the application of the existing rules in relation to the granting of blue cards.

In particular, the committee heard that the existing rules may prevent potential carers in communities, in particular rural and remote and Aboriginal and Torres Strait Islander communities, from obtaining a blue card due to what were seen as minor, historical criminal offences.

On Palm Island, the committee also heard about the difficulties experienced by grandparents in obtaining blue cards in order to care for their grandchildren due to other family members living in their household who have committed criminal offences.

The committee noted that the Legal Affairs and Community Safety Committee was examining a Bill – the Working with Children Legislation (Indigenous Communities) Amendment Bill 2017, which had the objective of resolving some of the perceived issues around blue cards.

The committee, therefore, resolved to provide the Legal Affairs and Community Safety Committee with the evidence it received during its regional hearings and forums about the current impact that the blue card provisions may be having on the child protection system, for its consideration.

300 Bill, cl 75 amends s 194(2)(d) of the Act.

301 Bill, cl 28 inserts new s 51ZB(2) into the Act.

302 Bill, cl 29, inserts new s 51ZC(2) into the Act.

303 Bill, cl 31 amends s 59(2) of the Act.

4 Compliance with the *Legislative Standards Act 1992*

4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to the:

- rights and liberties of individuals, and
- institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following potential fundamental legislative principles issues to the attention of the Legislative Assembly.

4.1.1 Rights and liberties of individuals

4.1.1.1 Clause 62 – information sharing

Clause 62 of the Bill inserts the following new information sharing provisions into the Act:

- new section 159MA – Sharing information – reporting suspicion to the chief executive
- new section 159MB – Sharing information – assessment or investigation
- new section 159MC – Sharing information – assessing care needs and planning services
- new section 159MD – Sharing information – decreasing likelihood of child becoming in need of protection, and
- new section 159ME – Sharing information – facilitating participation of child or child's family.

The proposed amendments raise potential fundamental legislative principles issues in relation to a child and their family's right to privacy and confidentiality.

A relevant factor when considering whether legislation has sufficient regard to the rights and liberties of individuals, in accordance with section 4(2)(a) of the *Legislative Standards Act 1992*, is the reasonableness and fairness of treatment of individuals, including their right to privacy and confidentiality.

The explanatory notes state:

> *This amendment is necessary to enable the reformed child protection service system to better identify, assess and respond to child protection concerns and to enable particular non-government service providers to coordinate and deliver critical services to protect children and support families to reduce the likelihood of children becoming in need of protection.*
>
> *In recent years, child death review processes have highlighted the importance of sharing relevant information between government entities and non-government service providers for the purposes of protecting children.*
>
> *The Royal Commission into Institutional Responses to Child Sexual Abuse and national work being led by the Child and Family Secretaries group has also highlighted the need for broad and enabling information sharing regimes.*[304]

[304] Explanatory notes, p 17.

Committee comment

The committee considers that, on balance, the proposed amendments have sufficient regard to the rights and liberties of individuals.

In reaching this view, the committee had regard to the policy intent of enabling appropriate information sharing between government and non-government entities for the purpose of protecting children and reducing the likelihood that children will become children in need of protection.

The committee also notes the proposed safeguards and limitations on the exercising of the information sharing provision provided for in the Bill, including penalties of up to two years imprisonment or a maximum of 100 penalty units for inappropriate use or disclosure of information.

4.1.1.2 Clause 71 - chief executive must give police commissioner information about a deceased child

Clause 71 of the Bill inserts new section 188E into the Act to provide that chief executive must give information to the police commissioner, where a police officer is investigating the death of a child and the police commissioner, by written notice, asks the chief executive to provide stated information about the child. The information to be provided under this provision may include information about a notifier of harm to a child.

The Bill provides that the provision of information to the police commissioner is authorised despite the provisions of any other Act or law, including a law imposing an obligation to maintain confidentiality about the information.

As stated above, a relevant factor when considering whether legislation has sufficient regard to the rights and liberties of individuals, in accordance with section 4(2)(a) of the *Legislative Standards Act 1992*, is the reasonableness and fairness of treatment of individuals, including their right to privacy and confidentiality.

The proposed amendment raises potential fundamental legislative principles issues, as it would compel the chief executive to provide information about a deceased child in circumstances where disclosure would be in breach of another law or Act, which requires the information to remain confidential.

The explanatory notes state:

> *This amendment is necessary to enable the chief executive to disclose information that may be essential to assist the police commissioner to undertake a well-informed and comprehensive criminal investigation and prosecution following the death of a child. The inability of the department to provide information about a notifier of harm may hinder the investigation of a child's death.* [305]

Committee comment

The committee notes that the proposed provision includes safeguards and limitations on the exercise of the power, including that the chief executive may only provide information where he or she receives a written request from the police commissioner. In addition, where the chief executive provides information to the police commissioner, that identifies a notifier of harm, the chief executive must inform the commissioner, so the police may deal with the information appropriately and manage any risks to the notifier of harm.

In addition, the committee also notes the policy intent of the provision, to protect children and prosecute those who have committed a criminal offence in relation to a child, by assisting the police commissioner with a criminal investigation and prosecution following the death of a child.

[305] Explanatory notes, p 19.

Accordingly, the committee considers that, on balance, the proposed provisions at new section 188E of the Act have sufficient regard to the rights and liberties of individuals.

4.1.1.3 Clause 73 – access to information for prescribed research

Clause 73 replaces existing section 189B of the Act to permit the chief executive to authorise a person to access information relating to, or acquired in, the administration of the Act, for the purpose of carrying out *prescribed research*. The Bill provides that the information may be sourced from a departmental officer or a *client* (a child to whom the Act applies).

The term *prescribed research* is defined as research carried out for any of the following purposes:

- a purpose the chief executive is satisfied is consistent with his or her functions under the Act
- evaluating interventions and services, or designing or projecting current and future interventions and services, in relation to children who are, or who have been, in need of protection or who may become in need of protection, and
- deciding whether a department should make a payment under a funding arrangement that requires outcomes to be monitored, verified or evaluated.[306]

The explanatory notes state:

> *The section retains the current provisions regarding regulating research but is amended to make it clear the chief executive can authorise access to identifying information about a person where the chief executive is satisfied that it is reasonably necessary for the research and that the information will not be published in a way that could be expected to result in the identification of the person it relates to.*[307]

A relevant factor when considering whether legislation has sufficient regard to the rights and liberties of individuals, in accordance with section 4(2)(a) of the *Legislative Standards Act 1992*, is the reasonableness and fairness of treatment of individuals, including their right to privacy and confidentiality.

The proposed amendment may raise potential fundamental legislative principles issues, as it may lead to personal and private information of a person, including a child, to be accessed by a person for research purposes. Subject to the chief executive's authorisation, the proposed amendments may lead to a researcher contacting a child directly, in order to ask the child if they would like to participate in the prescribed research.

The explanatory notes state that the proposed amendment is necessary:

> *… to enable the department to participate in whole-of-government and national research and analytical projects to assess and improve life outcomes for children who have been in out-of-home care and to pilot innovative investment approaches to deliver new and improved services to children and families.*[308]

Committee comment

The committee considers that, on balance, the proposed amendments have sufficient regard to the rights and liberties of individuals.

306 Bill, cl 73 omits and inserts new s 189B into the Act.

307 Explanatory notes, p 18.

308 Explanatory notes, p 18.

In reaching this view, the committee had regard to the policy intent of improving services for children, and their families, and the proposed safeguards and limitations on the exercising of the provision provided for in the Bill. The proposed safeguards and limitations included that:

- the chief executive would only be able to provide information for research that is consistent with his or her functions under the Act or for other prescribed research projects
- the chief executive would only be able to provide information where he or she is satisfied that research information will not be published in a way that can be reasonably expected to result in the identification of individuals
- the chief executive may provide information to a person subject to the conditions he or she considers appropriate, and penalties up to a maximum of 100 penalty units apply to breaches of those conditions, and
- researchers would only be permitted to use or disclose information to the extent authorised by the chief executive and penalties of up to two years imprisonment or a maximum of 100 penalty units would apply to inappropriate use or disclosure of information.[309]

4.1.1.4 Clauses 25, 31 to 33, 36, 38, 40 and 42 to 45 – permanent care orders

Clauses 25, 31 to 33, 36, 38, 40 and 42 to 45 of the Bill provide for the making of permanent care orders (PCO) under the Act. A PCO grants guardianship of a child to a suitable person, other than a parent of the child, or to the chief executive until the child turns 18 years old.

The explanatory notes state that the amendment is necessary to provide for the permanency needs of children in out-of-home care, where reunification with their family is not possible.

The explanatory notes also acknowledge that the making of a PCO will restrict the rights of biological parents:

> *The parents will no longer have the rights given to a parent by law. With the possible exception of some limited contact with the child, the biological parents will have no ability to make decisions for, or about, or exercise parental responsibility for the child. Further, only the litigation director will be able to apply to court to vary or revoke the order.*[310]

The proposed approach raises potential fundamental legislative principles issues under section 4(3)(b) of the *Legislative Standards Act 1992*, which provides that whether legislation has sufficient regard to rights and liberties of an individual depends on whether the legislation is consistent with natural justice.

The principles of natural justice have been developed by the common law and incorporate the following three principles: something should not be done to a person that will deprive them of some right, interest or legitimate expectation of a benefit without the person being given an adequate opportunity to present their case to the decision-maker; the decision-maker must be unbiased; and procedural fairness should be afforded to the person.[311]

The proposed PCO provisions raise the issue of whether the Bill is consistent with the principles of natural justice. In particular, the Bill excludes a child or the child's parents from the right to apply to vary or revoke a PCO.

Submitters, including the QLS and LAQ commented that the Bill should not exclude the child from being able to apply to vary or revoke a PCO, or to revoke a PCO and make another child protection order in its place. As drafted, the Bill limits this right to the Director of Litigation.

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309 Bill, cl 73 inserts new s 189B into the Act.

310 Explanatory notes, p 21.

311 Office of the Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 25.

The QLS observed that the decision to make a PCO is not able to be reviewed by the court, or may only be reviewed in limited circumstances. It suggested that:

> …*consideration be given to whether it may be appropriate in some of these instances for there to be an ability to seek leave of the court to make such applications, if the existence of exceptional circumstances relevant to promoting the child's safety, wellbeing and best interests can be demonstrated by the applicant*.[312]

The explanatory notes state a number of safeguards are included in the Bill into relation to PCOs:

- a PCO may only be made by the Childrens Court and only in the absence of a parent in limited circumstances
- new permanency principles in the Bill which state a preference for a child to be cared for by their family, and that permanency options will only be pursued where it has been determined that the reunification with family is not reasonably achievable in a timeframe appropriate for the child's age and circumstances
- any application for a PCO will have been preceded by detailed case planning under the Act, in which the parents will have been given the opportunity to be active participants
- a court may make a PCO only where it is satisfied the proposed guardian is committed to preserving the child's relationship with their birth family in accordance with the case plan
- a PCO will not permanently end a biological parent's legal rights and responsibilities in the same way as an adoption order, eg the order will only last until the child is 18 years old and no new birth certificate naming the guardian as the child's parent will be issued
- a child, or a member of the child's family, will be permitted to contact the department if they have concerns about a significant breach of a permanent guardian's obligations, eg in relation to contact.

The chief executive may then decide to refer the matter to the Director of Litigation, if there has been a serious breach of the permanent guardian's obligations that cannot be resolved through other means and that the PCO is no longer appropriate to promote a child's protection, wellbeing or best interests, and

- a permanent guardian for a child must keep the chief executive informed of where the child is living and notify the chief executive, if a child ceases to be in their care, or if the guardian reasonably believes their care of the child will end in the near future.[313]

Committee comment

The committee brings the potentially significant fundamental legislative principle issues raised by the proposed amendments in relation to PCOs to the attention of the Legislative Assembly.

4.2 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* requires that explanatory notes be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information the explanatory notes should contain.

Explanatory notes were tabled with the introduction of the Bill. The explanatory notes are detailed and contained the information required by Part 4 of the *Legislative Standards Act 1992*, and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

312 Queensland Law Society, submission 26, p 3.

313 Explanatory notes, pp 21 and 22.

Appendix A – List of submissions

Sub #	Submitter
001	Queensland Advocacy Incorporated
002	Anglicare Southern Queensland
003	Queensland Nurses and Midwives' Union
004	Uniting Care Queensland
005	Queensland Network of Alcohol and Other Drug Agencies Ltd
006	Churches of Christ Care - Queensland
007	Foster Care Queensland
008	Protect All Children Today Inc.
009	Women's Legal Service
010	Royal Australasian College of Physicians
011	Legal Aid Queensland
012	Torres and Cape Hospital and Health Service
013	The Benevolent Society
014	Australians for Native Title and Reconciliation - Queensland
015	PeakCare Queensland Inc.
016	Queensland Catholic Education Commission
017	CREATE Foundation
018	Australian Association of Social Workers
019	Queensland Family and Child Commission
020	Youth Advocacy Centre Inc.
021	Family Inclusion Network and MICAH Projects
022	Queensland Police Union of Employees
023	Aboriginal and Torres Strait Islander Community Health Service Brisbane Limited
024	LGBTI Legal Service Inc.
025	Soroptimist International Brisbane Inc.
026	Queensland Law Society

027	Care Leavers Australasia Network
028	Aboriginal and Torres Strait Islander Women's Legal Service NQ Inc.
029	Queensland Aboriginal and Torres Strait Islander Child Protection Peak
030	Queensland Council of Social Service

Appendix B – List of witnesses at public briefings, hearings and forum

Public briefing – 23 August 2017

Department of Communities, Child Safety and Disability Services

- Ms Merrilyn Strohfeldt, Deputy Director-General, Service Delivery and Practice
- Ms Megan Giles, Executive Director, Legislative Reforms

Public hearing – 15 September 2017

Legal Aid Queensland

- Ms Jen Glover, Acting Assistant Director
- Ms Toni Bell, Acting Director, Family Law and Civil Justice Services
- Ms Jessica Dean, Acting Principal Lawyer, Children and Young People

Youth Advocacy Centre

- Ms Janet Wight, Director

Family Inclusion Network and Micah Projects

- Ms Karyn Walsh, Chief Executive Officer
- Ms Sue Edwards, Coordinator

CREATE Foundation

- Mr Lucas Moore, Queensland Coordinator

Care Leavers Australasia Network

- Ms Leonie Sheedy, Chief Executive Officer
- Ms Natalie Wallace, Counsellor/Royal Commission Administrator

Public hearing – 18 September 2017 – Mount Isa

Queensland Aboriginal and Torres Strait Islander Child Protection Peak

- Ms Candice Butler, Senior Practice Leader

Community Justice Group

- Father Mick Lowcock, Chairperson

Queensland Police Service

- Detective Inspector Anne Vogler
- Detective Acting Senior Sergeant David Hall

Injilinji Aboriginal and Torres Strait Islander Corporation for Children and Youth Services

- Ms Sondra Ah Wing, Youth Support Worker
- Mr Marshall Bennett, Youth Support Worker
- Ms Sharn Fogarty, Youth Support Worker
- Mr Gary Cummins, Youth Support Worker

North Queensland Domestic and Family Violence Resource Centre

- Mr Matthew Moss, Senior Worker and Co-facilitator, Men's Program, Respondent Court Worker

Department of Communities, Child Safety and Disability Services

- Mr Phillip Brooks, Regional Director, Child Family and Community Services, Mount Isa and Gulf Child Safety Centre

Public forum – 19 September 2017 – Palm Island

Palm Island Aboriginal Shire Council

- Mayor Alfred Lacey
- Councillor Roy Prior
- Councillor Deniece Geia

Palm Island Community Company

- Ms Rachel Atkinson, Chief Executive Officer
- Ms Elsa Morton, Coordinator

Queensland Aboriginal and Torres Strait Islander Child Protection Peak

- Ms Natalie Lewis, Chief Executive Officer

Elders Advisory Group

- Ms Luella Bligh, Elder and Member

Palm Island Community Justice Group

- Ms Rosina Norman, Elder and Member
- Mr Robert Friday, Elder and Member

Private capacity

- Ms Winnie Obah
- Ms Elizabeth Clay
- Mr Frank Conway
- Mr Barry
- Ms Theresa Creed
- Ms Delena Foster

Palm Island Family Wellbeing Centre

- Ms Diane Foster

Public hearing – 20 September 2017 – Townsville

Foster Care Queensland

- Mr Bryan Smith, Executive Director

Aboriginal and Torres Strait Islander Women's Legal Service North Queensland

- Ms Cathy Pereira, Principal Solicitor and Coordinator

Queensland Aboriginal and Torres Strait Islander Child Protection Peak

- Ms Nadia Currie, Operations Manager
- Mr Lenny Dahlen, Member Engagement and Partnerships Coordinator

Townsville Aboriginal and Islander Health Service

- Ms Karen Mann
- Ms Jody Martin
- Ms Nina Shibasaki
- Ms Jo Stout

North Queensland Community Services

- Ms Topsy Tapin

Public briefing – 21 September 2017 - Brisbane

Department of Communities, Child Safety and Disability Services

- Ms Merrilyn Strohfeldt, Deputy Director-General, Service Delivery and Practice
- Ms Megan Giles, Executive Director, Legislative Reforms