COMMUNITY SUPPORT AND SERVICES COMMITTEE

Members present:
Ms CP McMillan MP—Chair
Mr SA Bennett MP
Mr MC Berkman MP (virtual)
Mr JM Krause MP
Ms CL Lui MP (virtual)
Mr RCJ Skelton MP (virtual)

Staff present:
Ms L Pretty—Acting Committee Secretary
Dr A Beem—Inquiry Secretary

PUBLIC HEARING—INQUIRY INTO THE CHILD PROTECTION REFORM AND OTHER LEGISLATION AMENDMENT BILL 2021

TRANSCRIPT OF PROCEEDINGS

FRIDAY, 15 OCTOBER 2021

Brisbane

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The committee met at 9.02 am.

CHAIR: Good morning, I declare open this public hearing for the Community Support and Services Committee's inquiry into the Child Protection Reform and Other Legislation Amendment Bill 2021. I would like to respectfully acknowledge the traditional custodians of the land on which we meet this morning and pay my respects to elders past, present and emerging. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander people, whose lands, winds and waters we all now share. I also acknowledge Cynthia Lui as a First Nations Torres Strait Islander woman.

On 15 September 2021 the Child Protection Reform and Other Legislation Amendment Bill 2021 was referred to this committee for examination, with a reporting date of 12 November 2021. My name is Corrine McMillan, the member for Mansfield and chair of this committee. Mr Stephen Bennett, my esteemed colleague the member for Burnett, is the deputy chair. The other committee members here this morning are Mr Jon Krause, the member for Scenic Rim—lovely to have Jon here; Mr Michael Berkman, the member for Maiwar, who is on teleconference; and Ms Cynthia Lui, member for Cook, who is also joining us via teleconference between flights. As you can imagine, we finished parliament yesterday and she has a very long trip home to the Far North. Mr Robert Skelton, member for Nicklin, is also joining us via teleconference.

The purpose of today's hearing is to assist the committee with its inquiry into the Child Protection Reform and Other Legislation Amendment Bill 2021. I ask that any responses to questions taken on notice today are provided to the committee by Friday, 22 October 2021. The committee's proceedings are proceedings of this Queensland parliament and are subject to the standing rules and orders of the parliament. The proceedings are being recorded by Hansard—thank you, Hansard, as always—and broadcast live on the parliament's website. Media may be present and will be subject to my direction at all times. The media rules endorsed by the committee are available from committee staff if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings by media and images may also appear on the parliament's website or on social media pages. I ask everyone present to turn mobile phones off or to silent mode.

Finally, while the current COVID-19 restrictions for South-East Queensland remain in force, we will be adhering to limits on the number of people present in the hearing room today. I endorse everybody's ability to remove their mask when seated, but when moving around the room or when moving around the parliamentary precinct masks must be worn. I thank everyone for their understanding. The program for today has been published on the committee's webpage and there are hard copies available from committee staff.

FOLEY, Mr Andrew, Acting State Coordinator, Create Foundation

McDOWALL, Dr Joseph, Executive Director (Research), Create Foundation

SHIELDS, Mr Jake, Young Consultant, Create Foundation

CHAIR: It gives me great honour to welcome representatives from Create Foundation. Good morning and thank you for appearing before our committee today. I invite you to make a brief opening statement, after which committee members I am sure will have questions for you.

Dr McDowall: If permitted, we would like to begin an opening statement from Jake as the young consultant. He will give our introduction.

Mr Shields: Firstly, I would like to acknowledge the traditional custodians of the land and pay my respects to elders past, present and emerging. Good morning. I am a young consultant with Create Foundation in Queensland. Create is the peak body representing the voices of children and young people with a care experience. I am 25 and I grew up in foster care and residential care. Today I am presenting with Create's head of research, Dr Joseph McDowall, and Andrew Foley, the state coordinator for Create in Queensland.

Participation is fundamentally important for young people in care. They need to know that they are being listened to and they need to know that they have a say. As a kid in care I sometimes felt like a puppet and not in control about decisions in my life. No child or young person should feel like that. When I was in care I stopped going to my case plan meetings because I was not included in decisions that were being made and I felt like they were always telling me what I was doing wrong.

My last child safety officer was good. He showed me that I could take charge and gave me the power over my own case plans, family contact and transition plan for leaving care. He told me I could have a say and encouraged me to get involved. Through Create I have met with ministers and directors-general, been a part of advocacy and development of the Next Step After Care program, given feedback in the development of the Sortli app for young people transitioning to adulthood and been given ongoing participation opportunities in the Navigate Your Health program and much more. It is important that young people are given an opportunity to have a say in their lives and in the system.

This legislation is positive because it means young people have a legislated right to meaningful and ongoing opportunities to participate in decisions within the care system. The key is ensuring that this positive legislation is actually put into practice on the ground. We need to see every child safety officer listening to and engaging with young people and involving young people in decisions about their lives. Every regional service centre, residential care house and organisation needs to take young people's participation seriously. I dream of every young person having a smile on their face knowing that they have control over their own life. Create has released a best practice guide to participation that shows what this legislation can look like in practice across the sector. I want to end with five words: nothing about us without us. Thank you.

CHAIR: Jake, can I thank you sincerely for that incredibly moving opening statement. On behalf of the committee can I thank you just for taking the time to do this and to share with us your personal story. Can I also congratulate you on behalf of our committee. We are incredibly proud of you as a young man and as a young person who has experienced life in care and we absolutely adore the fact that you are the young man that you are today. Congratulations. You should be very proud of yourself.

Mr Shields: Thank you.

Mr BENNETT: In your submission you talk about the need for more engagement with youth. I guess my question is about the programs that are already available—the Queensland Youth Strategy, the new Youth Engagement Charter and the Youth Engagement Panel. Has Create had much involvement in these? 2017 was the hubs launch, 2019 was the engagement charter and more recently was the Youth Engagement Panel, which I think was launched last year. We are very keen to see a youth voice on legislative reforms and we are really excited about this bill, but I am interested in your thoughts.

Mr Foley: I cannot speak so much about the overall strategy in Queensland, but certainly there are opportunities for young people in care to continue to have a voice through Create—through meetings with directors-general, through meetings with ministers, through meetings with regional directors at a service centre level and that sort of thing. Also, a number of Create young people with a care experience are involved in things like the QFCC youth council and those sorts of bodies of work. We are keen to see this increase and to see this legislation put into practice, to see this at a residential level. Do they have a youth advisory group that is guiding that practice in the residential care house? Do they have a youth advisory group guiding at a regional level that regional directors and regional executive directors are listening to? I probably cannot comment too much in regard to wider Queensland, but certainly we are keen to see this fleshed out in practice on the ground at that level.

Mr BENNETT: I do not mean to badger you, but when you say you cannot talk to it, it does not matter what side of government you are on; we want engagement with youth and we want success. I would have thought Create would have been integral in these existing programs and strategies. I met with a lot of your members out and about when I was doing other roles. Is it that you are not involved in those strategies or you have not seen them?

Mr Foley: We will promote some of those bigger, wider things to our young people and encourage them to get involved. I do not know, Joseph, if you want to contribute.

Mr BENNETT: If you have already commented—

Mr Foley: That is okay. We have a very limited staff so our focus is very much within the child protection system and reforms around that.

Dr McDowall: I must say that I am not all that aware of these new developments. What we are focusing on is the real participation that affects the lives of young people in care. We have done research recently, in the report that I wrote in 2018, where we talked to 304 young people in care in

Queensland, and what they were telling us over and over is that the areas that already exist for their participation are not being utilised. The critical thing is, say, family group conferencing where these official meetings are being held within the department, the planning process, case planning, transition planning, cultural support planning. We know from our research that just over half the young people know anything about a case plan. This is their case plan. This is their life that is being organised. They have to be part of that. That is what participation means—that they are actually involved in making those decisions.

With regard to transition planning, only 40 per cent of the 17-year-olds who are about to leave know anything about a transition plan. This is their future. Where are they going to go? Where are they going to live? What are they going to do when they turn 18 and they are out of the system? That is something they need to be involved in. Our official records seem to suggest that there are lots of plans around—people have plans—but the problem is that the young people do not know about them. That is participation: they get involved in the process so that they are contributing and at the end of it they have a copy of the plan and they know what is going on.

That is where we are focusing in terms of our participation—really at the grassroots level, with the family group meetings. That is a really important meeting where all the key people who are related to that young person come together. However, the young people tell us they do not want to go to that—Jake mentioned that he did not go—because the overwhelming factor is that they never feel like people are listening to them, that they are not being heard. There again, that is something we can address through our best practices guide, to actually treat the young people with respect and listen to what they are saying. We do not always do what they say—we are not slavishly following what they recommend—but at least we acknowledge their contribution and show how we are responding to it.

Mr BENNETT: Your submission talks around a lot of participation issues. These are my words: I think the changes that are in the bill are really exciting, I must say.

Dr McDowall: Definitely.

Mr BENNETT: Would you talk to that a little bit? Are there further amendments that you would like to see within that space if we had a choice?

Dr McDowall: I think the bill is fantastic. It is all-encompassing. It is an amazing process to try to get through. As Andrew said, it is great to have something in legislation that pins it down and says, 'Hey, this is important and this is serious,' so now we have it on the books that it has to happen, but the crunch will be the next step, which is saying, 'Well, how are we going to make it happen?' That is policy. We need evidence based policy developed that will ensure that these opportunities not only are provided for young people but also there is some monitoring process to make sure it is being done. How are we going to know? It is very widespread. It is not just certain sectors that are supposed to do this; this is across the board. How are we going to monitor the various groups to ensure this is happening adequately? I think that is a role that Create would like to play down the track—that we can keep talking to young people and find out how things are going and how the changes that are being made are being implemented, to see how that is working through the system.

CHAIR: Dr McDowall, the suggestions you make and the advice you provide are really helpful. My question follows on from that of the deputy chair. My background is 25 years in education, 13 as a school leader. I have often been very conscious of the context when I have been working with children in care or even children who are living with their biological parents. In the context where I have disciplined a student or there has been some particular issue that requires support for students et cetera, I have always been very conscious that in the room has been a whole range of adults—the carers or the parents, the guidance officer, possibly some adults from a foundation like yours, and perhaps a QPS officer—and then the sole young person sitting in that room of adults. Jake, I have always worked hard to try to address that dynamic which is really tough for a young person. I can only imagine that that would be even tougher for a young person in care. Can you talk to us about how we might better manage this room full of adults and then the one young person in care and talking about them and their plan? How do we help change that dynamic or how do we support you better in that context?

Mr Shields: This is with school?

CHAIR: It can be with school or just generally with plans that happen. I am conscious that you are the only young person. Can we do better? Can we engage a good friend of yours who is of similar age? How do we monitor that?

Mr Shields: I think you are right: a room full of adults and only the one young person can be quite overwhelming. I think or you to be able to get the best outcome for the young person, you have to firstly get them to engage. Invite them to the meeting or the plan that they are needing to attend

first. That is showing that they can have a say. Actually listen to them and, like you said, if they feel uncomfortable, allow a friend or close family member or someone like that to attend. Basically, if you allow the young person to decide who is in that room, you cannot go wrong with that. If they say, for example, 'I want my mum, my dad, two people from the department, and my support workers,' then that is all you have in that room. Again, allow the young person to feel empowered. If a young person says, 'I want you to sit here, you sit here, you sit here,' type thing, I do not see how you could go much wrong there. It would then allow the young person to feel in control and then allow the young person to feel comfortable because that room is filled with people who the young person wants it to be filled with. You will get the biggest response from them if the young person knows that the people in that room will listen to them and will respect what they say and follow up. You will get a lot out of that young person, I would say, yes.

CHAIR: Jake, I have a question from left field. You are a very capable, competent, fine young man. Would you have appreciated the opportunity from time to time to chair those meetings as a young teenager?

Mr Shields: Yes. I would have loved to have more control over my meetings and the ability to decide who was in the room and potentially even run it, yes. As I said to Andrew yesterday, it would have been a great ego boost. Young people will feel like, 'I am just a young person; my voice is not important. I am in a room of people that will voice their opinion for me. I am just the one in the background,' when they need to be front and centre leading the show. It is just fortunate that I was always one to go into a room and make sure everyone in that room knew I was there.

CHAIR: Very good. Exceptional.

Mr KRAUSE: Jake, thanks for coming in to talk to us. Very well done. It was great to hear what you had to say. It would have taken a fair bit of courage, too, I imagine. It took me years to have courage to speak up in these committees, so you are doing pretty well.

Mr Shields: Thank you.

Mr KRAUSE: Dr McDowall, thank you for your contribution as well. I do not have any questions for you. I think you have nailed it. I have been in an experience as a local member where we have seen children within the child safety system who are not listened to when it is as clear as day that they really should be, and it does not often lead to the best outcomes. Thank you for your comments as well. Chair, I do not have any questions. I just wanted to say those few things.

CHAIR: Thank you, member. It is really wonderful for young people like Jake to hear those comments.

Dr McDowall: If I may add to what Jake has said, just to promote our best practices guide for participation, our second principle in that guide says that we should engage with children and young people to develop meaningful and respectful relationships. What you proposed in terms of allowing the young person to have some control over that meeting, to feel like they are being respected, that it is meaningful, is applying that principle. I think that would be a wonderful outcome.

CHAIR: Certainly checking with the young person about the agenda and having an opportunity also for the young person to determine that agenda I think is how good meetings should run, regardless of who is participating. I am conscious we have the member for Cook on the phone. As a First Nations woman, I know that the member for Cook will have some really important questions for you.

Ms LUI: Jake, can I start by saying that your voice is important. I thank you for your courage today. I thank you for your courage because your voice today is what is going to make a meaningful difference in, as you talk about, moving forward. Thank you. I am getting a bit emotional. My question follows on from that of the member for Mansfield and chair. In your opinion, can government achieve successful implementation of the reforms proposed by this bill? I have taken on board things that you have said around a monitoring process, the evidence base and making young people feel more empowered, which I feel is an important aspect of this bill. When this goes through, do you feel confident that we will be able to achieve successful reform?

CHAIR: The question was to Jake; is that right, Cynthia?

Ms LUI: The first bit was to Jake, yes, but anyone on the panel can answer.

Mr Shields: What part of the question was to me?

CHAIR: The question was: should the bill be passed, do you feel the government is capable of implementing these reforms? Have I got it there, Cynthia?

Ms LUI: Yes.

Mr Shields: I think once the bill is passed, yes, the government can do what it says. If not, young people will make sure we get heard either way.

CHAIR: Very good.

Mr Foley: I think a lot needs to be done in promoting and supporting practice on the ground. It is good legislation in terms of participation, but it is really about implementing it on the ground—every residential care service, every NGO, every service centre. There are really key promotional strategies and engagement strategies in this. I echo what Jake says that, yes, we can do it, but it needs to be owned by everyone and really implemented across the board.

CHAIR: I take what Jake said. It has been my experience with young people that once young people realise their role in this process they will keep us honest and they will ensure they do have a voice, as long as they know the context of this reform. Jake, you were going to say something?

Mr Shields: I always say that if the world had an endless amount of money and you wanted to get information out to young people, get a plane with the big banner on the back of it and fly that around the place; you will get the message across then. Once the bill gets passed, if young people are not told about it then no-one is going to know about it. It will be something that will be passed and no-one knows about it. I think it should be that every young person in care should then be told that and it should be told by whoever they feel comfortable with. For me, a lot of the time if I was told something by one person it could have resulted in something different if I was told by another person. I think it should also be told by someone they enjoy spending time with or they can relate to.

Dr McDowall: I just want to add to what Jake said. Certainly let the young people know but also make sure the caseworkers know. A big problem is that a lot of the workers are so strapped in terms of their commitments that they are not getting the messages about the innovations that are happening. For example, in Queensland we are allowing young people to stay with their carers until they are 19. Everywhere else it is becoming 21—not in New South Wales, but many other states are now taking that on board. Queensland is 19, but so many caseworkers we have spoken to are not even aware that that is a possibility. We have to get the message out to our team, the people on the ground who are working with the young people, so that they know what is expected. They can then have all sorts of suggestions about how they can do it but at least have the attitude that this is what we are going to try.

CHAIR: Yes, absolutely.

Mr BERKMAN: I want to quickly touch on the four specific considerations you have raised in your submission. I think they are all really sound points to raise. There has been a lot of focus on the policy and the implementation processes that flow from this legislation. My question, though, is: are you content that those four particular considerations can be adequately dealt with in that non-legislative way after this bill is passed? Specifically, I would point to the consideration around participation in court. Does that, in your view, require further legislative reform or could it be dealt with through policies and implementation guidelines later?

Mr Foley: I think it is mentioned in the submission around the recommendation in Carmody around young people having a direct voice in the court processes. It is interesting that this legislation lists all of the beautiful ways young people can participate, and really quite robustly articulates that, but then says that this does not apply to court. I think that needs to be addressed. Young people need a voice in that court process. There needs to be ongoing and meaningful participation at an individual level and also at a systemic level through that process, because once again it can be decisions made about them without them. That is not participation. I think we recommend that that needs to be addressed in legislation as per the recommendations in Carmody.

CHAIR: Thank you, Andrew. Member for Maiwar, thank you. That was a great question and a significant question for us as legislators. Sadly and unfortunately, our time has come to an end. On behalf of the committee, I thank you, Andrew, for your time and you, Dr McDowall, for the great work and research you have been doing. Jake, we are absolutely in awe of your achievements and what you have been able to do today. Please do not underestimate how powerful your being here and talking to our committee is in terms of shaping the legislation that will affect all young people in care in Queensland. Thank you sincerely. I will ask our secretariat to write to you to give you an indication of when the bill will be debated. I am sure the committee would love to have your support in the gallery on the day or evening that the bill is debated and possibly passed. We would love to have you there for that momentous occasion. Thank you for your contribution.

WEGENER, Mr Lindsay, Executive Director, PeakCare Queensland

CHAIR: Lindsay, it is lovely to see you again. Good morning and thank you sincerely for giving up your time and for appearing before our committee this morning. I ask you to make an opening statement, after which we will have some questions.

Mr Wegener: I am appearing before you today in my role as Executive Director of PeakCare Queensland, a not-for-profit peak body for child and family services in Queensland that provides an independent and impartial voice representing and promoting matters of interest to the non-government sector. Echoing the sentiments included within our submission, on behalf of PeakCare I would like to congratulate the Queensland government on the proposed bill, which we consider is a positive step in strengthening our child protection system. In particular, I wish to express our support for the proposed amendments to improved adherence to the Aboriginal and Torres Strait Islander Child Placement Principle and to better protect the human rights and entitlements of children and young people who interact with the child protection system.

While we are broadly supportive of the proposed amendments, I would like to highlight for your consideration a selection of key opportunities to strengthen the bill which we have detailed in the body of our submission. Firstly, in relation to broadening the purpose of the Child Protection Act to include supporting families caring for children, we do not support the inclusion of the term 'practicable' or 'to the extent that it is appropriate' and recommend that they be removed or significantly reframed.

Support for families is and always should be an integral part of the child protection system, especially in supporting the goal of family reunification following the removal of children from their parents' care and, even when this may not be possible, in assisting children to maintain and become reconciled with whatever will become of their future relationships with their parents and extended family members—grandparents, aunties and uncles, siblings including those who were born and those yet to be born, and others.

Secondly, PeakCare considers there is an opportunity to better define what the term 'best interests' means. The current lack of definition provides too much subjectivity and discretion in determining what 'best interests' could mean in a policy and practice setting. It can lead to poorer decision-making and outcomes for children and young people if their interests are simply pitted against the interests of their parents and families. In reality, the best interests of children are most often achieved when the best interests of their parents and families are also being met. The respective best interests are usually integral to each other. Without a proper definition being rigorously applied, the best interests of a child can become the excuse for inaction rather than the reason for action.

Thirdly, PeakCare recommends the committee consider the requirement for active efforts in relation to the Aboriginal and Torres Strait Islander Child Placement Principle be expanded to include a requirement preventing the court from making a decision unless it is satisfied that the chief executive or delegated decision-maker has made, and can evidence, active efforts to comply with this principle.

Finally, we note that the proposed changes to criminal history screening provisions will not address the existing systemic issues and barriers being experienced in relation to the current criminal history screening approach. More work is needed from government, with the support of the sector, to get this balance right for children, young people and the dedicated family members, carers and workers who support them. I thank you for the opportunity to present PeakCare's views to the committee.

May I say something following on from the discussion earlier, because I think it was a fascinating discussion? Jake's comments were of course incredibly good. With the questions that you asked about young people chairing committees and so on, I have certainly had that experience in running organisations myself where young people have been invited to do so. As you were asking the question, I recalled one young man who was probably about 13 who was given that invitation and chaired a committee. I have never seen such an impressive PowerPoint display in my life. He absolutely managed that meeting beautifully. He was very clear about what he wanted. He put in an enormous amount of work with this PowerPoint display that proudly said, 'These are the decisions that have been made. This is what I have done. This is now what you need to do. This is what I want to see happen in my future,' and took responsibility for that. There were people there from the department, the organisation I worked for, carers, his family and extended family members. He commanded an audience and he took control of it beautifully.

Other young people may not have been quite as forthright as him, but other ways in which we did that were incredibly important. I never recorded case notes for young people I worked for. It was their life. I got them to do it and said, 'It is your life. You record them.' I would have whiteboards set up and I would have instruments set up for them to record it. For me, it meant that I understood what

they took from a meeting I had with them and what their understanding of it was. It was a good chance again for them to take power over decisions in their life and let me know what it was that they understood about what had been decided.

I think all of those approaches are incredibly important. It is a skill that comes to experienced people in being able to be creative in how they give young people a voice and provide the avenues for them to participate and take ownership of their own lives.

CHAIR: Thank you, Mr Wegener. I could not agree with you more. I know that when young people are afforded that opportunity to lead they never disappoint.

Mr BENNETT: From your submission, Lindsay, I am curious about the conversation about a framework that you aspire to. Without trying to be argumentative, I take it from your comments about 'piecemeal' legislation that, as people get involved in this, child protection is incredibly complex and it is an evolving situation. Could you talk to the committee about how your view of the framework should eventuate, as opposed to your comments about this possibly being another 'piecemeal'—I am not trying to be argumentative by using that word—

Mr Wegener: No, and I do not think this is piecemeal. I think we need an overarching view led by and expressed by government and mostly with bipartisan support. I do not actually think there are fundamental disagreements between political parties about families and the wellbeing of families and children.

Mr BENNETT: Of course not.

Mr Wegener: When there is legislation, how does that actually enhance that? How does that fit within the philosophies that we have about families and the importance of families and how children are best raised in our society and so on? I think anytime there is legislation we should be looking at how it is located within a broader view of our society and how society as a whole can shape and inform families.

It is not relevant to this—it is about different legislation—but we support raising the age of criminal responsibility. Irrespective of whatever views may be held about that, we did write something on our Facebook page and had hundreds and hundreds of comments listed that were frightening. They were about 'bring back the lash'; 'bring back death penalties'; bring back all these kinds of dreadful things. The comments were incredibly racist and quite shocking. They were from across Australia and there were hundreds and hundreds.

It saddened us because, irrespective of whatever policy views are held about that matter, no-one wants to be seen as being driven by those kinds of views or wanting to appease people who have those kinds of views. I think sometimes, in an overarching sense, governments could do more to say that we do not adhere to those kinds of dreadful views that some people may have. Brisbane is soon to host an Olympics and will be presenting a face to the world. We certainly cannot afford to present a face to the world where we are seen as condoning those kinds of views.

I think that is what I mean. Whatever legislation we are looking at, we have to see that it is consistent with our values as a society. How does it fit with how we want social policies that reinforce notions of families and how they are valued and, in particular, and where it is of particular relevance to child protection, how we view Aboriginal and Torres Strait Islander peoples and the value we place on their contribution to the fabric of our society and their traditional ownership of the land? I think we have a long way to go to entrench that within our communities' values.

Mr BENNETT: Thanks again for your submission, Lindsay.

CHAIR: While we have you before us, I wanted to talk with you about your perspective on the charter of rights and its application to children. Can you talk to the committee a little about that and share with us your advice and advocacy?

Mr Wegener: We think there can be more work done because there are some rights and entitlements that all children have, irrespective of whatever their contact is with the child protection system. There are some rights and entitlements that they hold that are quite specific to those children during their engagement with the child protection system and beyond that if they are in the care of the state.

We think there is probably room there to unpack that a little and look at those rights that really apply to all children and state that those are rights that apply to all children irrespective of their status and then delineate those that are quite specific to those rights and entitlements when children are in the care of the state. At the moment in the proposal we think it is a little bit loose and not clearly distinguished in that way. We think it could be improved by making some of those distinctions.

CHAIR: Can you be a little more specific for us? Could you give us a couple of examples?

Mr Wegener: All children have a human right to—and it is expressed in some ways in the human rights legislation—education, for example. The distinctions really are about their rights as a child in care to access education that is meaningful to their situation. If they are in care they are going to have particular considerations that apply to them that are different to other children. It is about heightening the added rights and entitlements they have to education when they are in care. By that I mean that their lives have been disrupted. They have experienced trauma. If a child is in care they have experienced trauma—not only from possibly whatever the trauma was associated with the reasons for them entering care but also coming into care is traumatic. There are some rights that those children have to ensure the education provisions cater for that. That is extraordinary. That is over and above the right to education that all children have. It is a right and an entitlement to ensure that the education system is responding to their particular needs—the impact of trauma and so on. It is trying to distinguish between those rights that apply to all children and those that are specific to those who experience contact with the child protection system.

CHAIR: That certainly is a great example. It also confuses me somewhat in the sense that my belief is that the education system should be responsive regardless of whether the child has been in care, whether the child has experience with the criminal justice system, whether the child has lived a difficult life in a war-torn country and has come to us as a refugee et cetera. I am just thinking how that is different to beliefs now about young people and all of the different experiences or situations or contexts they come to us from.

Mr Wegener: I appreciate what you are saying. It is really saying: what is the distinction? Because this is about child protection, what is it about child protection that means there are additional rights and entitlements that those children should have? Aboriginal and Torres Strait Islander children would be another good example.

CHAIR: Absolutely.

Mr Wegener: Aboriginal and Torres Strait Islander children have the same rights as any Queensland child has, but there are some rights that are specific to their culture and those obligations. If they are in care, there are some additional rights and entitlements that they should have because of their experience entering care. There are some added entitlements that they have to ensure their cultural safety is maintained or renewed during their contact with the child protection system. Sometimes I do not think that is made specific enough.

I would certainly strongly recommend the submission prepared by QATSICPP. In unpacking the child placement principle they start to capture some of that—what it means to be an Aboriginal or Torres Strait Islander child and the added obligations that are placed on those children and their encounters with the child protection system.

CHAIR: That is a very good point.

Mr BENNETT: I will make a bit of a statement and then ask you to comment, if you do not mind. In your submission you talk about not supporting the use of the word 'practicable', and you also mentioned this in your opening statement. Is there some acknowledgement that every case is somewhat different and complicated to some degree and that reunification sometimes is not an option? In picking out the word 'practicable' and wanting that changed, is it probably the best wording? We have to give CSOs and other people some flexibility because I do not think we can pigeonhole things in the way we word legislation. I would welcome your comments on that.

Mr Wegener: I think the problem is the way we word legislation because it confines too much. Our concern is that, even in scenarios where a child may never return to their parent as their primary carer, there is still support that is needed for that child and family to reconcile what their relationship is in the future. They may never become their primary carer again, but for most children in care they will have a relationship of some kind. That can be through contact. Even when it is not contact, for a child to understand who they are they need to know about their family and need to have that understanding. It is not just with their parents; we are talking about extended family members—aunties, uncles, grandparents and cousins but very importantly siblings. They may be the siblings in existence today and also those yet to be born.

Whilst a child may enter care and may never be reunified with their parents, there is still an absolute need for that child to understand the circumstances of why they came into care, understand their family, hear stories of their family and reconcile whatever their relationship is going to be going into the future. We think that needs work done with the families to do that.

We are also very conscious that most children who leave care make their way back to their own families. Sometimes that is through choice and sometimes that is through lack of choice and options, but that is what happens. We have to be very aware that that is where they are going to go when they leave care. When they age out of care, that is where they are likely to go. If there is conflict, it is better to have that worked out well and truly before that happens.

Even in the most extreme circumstances—I will give you an example that I can draw on from my experience of a man who was jailed for incest with his daughter. What was really important for that young woman was to at some point hear from her father his unreserved apology for what he did. He needed to take responsibility for what he did; otherwise she was left feeling like she was somehow responsible or had the guilt of that to wear on herself, which was what was occurring. What was incredibly important—and that father did do it—was that he took responsibility for it. He was jailed, but he took responsibility for it and with assisted communication with his daughter assisted her to see that she was not the person responsible. That was important for her wellbeing. That meant work with the father to prepare him, assist him and work with him to be able to do that.

Our concern is that where it becomes a catchphrase like 'wherever possible' or 'practicable' or 'to the extent possible' it becomes an excuse to not do it. We do not think it ends. The work with their family does not end when a child enters care. It does not end. There is a whole new phase and a whole new layer of work that still needs to occur with their family. That is an extreme circumstance where the man was jailed and he will never have the care of his daughter again. In many instances, the children will return to their family's care. It is important that that work with their families continues.

The child protection system tends to deal with children as individual widgets, and that is not the case; they usually have siblings. That means that you cannot deal with them as just one person; you need to be thinking in terms of families. It is usually siblings that are born today or not yet born that will also be involved at some point with the child protection system at some level.

CHAIR: I am taking from your response that you suggest that the government needs to do that work better and have a more concerted strategy around that continual engagement with the biological family?

Mr Wegener: Yes, I think so. There are limitations. As the member for Burnett said, it is about what we want to legislate and what needs to come through other mechanisms. One of the dangers with legislation in some ways is that it sometimes confines people in their thinking as well. We do not want to do that. Legislation is to set the tone, to set the direction, to give people the powers and authorities they need but also to limit the powers and authorities they need. It should not hamper creativity and hamper approaches that people may use, because it is a good thing.

Certainly one of the things that we applaud in this is the emphasis placed on participation and so on. If a caseworker was to say, 'We gave them the opportunity to participate but they did not take up that opportunity,' that is a nonsense. If they say, 'We gave them that because the legislation said we had to,' that is the wrong answer in my mind. You are giving them that opportunity because that will lead to the best outcomes for the child. That is why you are doing it. If people are trying to comply with what is in legislation because that is the only reason they are complying with it, that is what I view as the tail wagging the dog. It is not a good outcome. If people are going to pursue these things, they are going to need to pursue them because their understanding of it, their culture and what they see as good practice is why they are doing that, and then it will work. It is how to send those messages. Legislation can certainly contribute to setting the tone for that, but it is not the only thing that will happen. It has to be many other things that happen along with that: education and training, experience, wisdom and so on.

CHAIR: Of course. Sadly, our time has come to an end. Thank you sincerely for giving up your time. The committee appreciates the expertise that you bring to this bill and certainly your experience is well regarded. The bill will be a better piece of legislation because of that. Thank you so much for your time.

LEWIS, Ms Natalie, Commissioner, Queensland Family and Child Commission

CHAIR: Thank you for giving us your valuable time this morning. I will hand over to you, Commissioner, to make an opening statement, after which our committee will have some pertinent questions for you.

Ms Lewis: Can I start by acknowledging that we meet on the lands of the Jagera and Turrbal people. Can I pay my respects to elders both past and present, bearing in mind the criticality of the role of Aboriginal and Torres Strait Islander people in raising strong, connected children.

I want to acknowledge the work undertaken by the department to develop this bill. It certainly represents their commitment to reform and to achieving a contemporary, effective and efficient child protection system. I also note that the consultation process for this particular piece of legislation has been comprehensive and collaborative and I am happy to report that the vast majority of the feedback provided by the QFCC and many other stakeholders has been incorporated into this version of the bill.

I certainly strongly support the recognition of additional rights within the charter and welcome the amendments to promote meaningful participation of children and young people in the decisions that most profoundly affect their lives. The QFCC asserts that the child placement principle is a key legislative and operational safeguard for the rights, including the cultural rights, of Aboriginal and Torres Strait Islander children and young people who are involved in or at risk of entering the child protection system. Effective operation of the child placement principle is contingent on active efforts to redress the structural inequity that produces disproportionate disadvantage across Aboriginal and Torres Strait Islander communities and certainly in their interactions with statutory systems. Accordingly, the QFCC certainly recognises the significance of the introduction of the concept of active efforts in this bill.

The incorporation of active efforts is a legislative standard that enables a necessary shift from passive regard to active, timely, thorough and purposeful adherence to the principles. It creates an expectation to give full effect to the principle—to not simply do the bare minimum but what is required to ensure that Aboriginal and Torres Strait Islander children are safe, are connected to kin, country and culture, and experience the full enjoyment of their rights.

We do, however, have one outstanding issue. The QFCC does hold concerns that the prevention element as described within the child placement principle in the existing legislation does not reflect the broad intent. Section 5C(2)(a) of the Child Protection Act defines prevention as being 'a child has the right to be brought up within the child's own family and community'. That is certainly true. However, at present the current wording of the prevention element excludes an important aspect: the entitlement to access the services and supports that families require to enable children to be raised safely and thrive at home within their families. Expanding the definition of the prevention principle to include this aspect should not increase involvement of children in the tertiary child protection system. Indeed, it is critically important for minimising child protection involvement and upholding the rights of Aboriginal and Torres Strait Islander children.

The full prevention element as articulated by SNAICC and agreed by all jurisdictions under the National Framework for Protecting Australia's Children recognises that protecting the rights of children to be brought up in their families requires them to have access to a full range of culturally safe and quality universal and targeted supports. The narrow focus of the current definition is not consistent with the policy intent and the understanding of the prevention element as it is expressed in national policy. It is certainly not consistent with the expression in the Queensland government's Our Way strategy, the publications or practice resources produced by SNAICC or QATSICPP that currently guide implementation of the child placement principle in Queensland and across the country.

The Child Safety Practice Manual itself reflects the broad definition. The manual defines the prevention element as protecting children's rights to grow up in family, community and culture by redressing the causes of child protection intervention. It asserts that the first element of the child placement principle is the most critically important for minimising child protection involvement and for upholding the rights of Aboriginal and Torres Strait Islander children to grow up within their own family and communities.

According to the Child Safety Practice Manual, the prevention element encompasses primary prevention activities that improve the health and wellbeing of children, early intervention or secondary activities that provide family support services for children and families, and also tertiary or statutory intervention for families where maltreatment has been identified and aims to prevent it from recurring. The proposal around adding the service requirement into that particular definition is certainly not at odds with the department's child protection manual.

A small amendment to section 5C(2)(a) of the Child Protection Act would address the ambiguity and inconsistency in interpretation, it would address the incongruence between legislation and practice and it would more clearly communicate the intent of the principle and conform to the nationally accepted definition, one that all jurisdictions signed up to three years ago. It will also certainly match the description of the element within the department's policy and practice.

I acknowledge that the department has responded to our concerns with a concern around net widening, but the application of the principles implies that a child and their family are already interacting with or are subject to involvement with the department. Application of the principle is not the basis on which the department becomes involved with a family. It is not why a department is involved; it guides how they interact with families. Where concerns warrant involvement of the department, application of the principle when expressed in its entirety creates a positive obligation on the department to actively facilitate access to the supports needed to address any concerns they have to ensure above all the paramount principle is upheld—that is, the safety and wellbeing of children. Where a child is deemed safe to remain at home without the need for support, no additional onus or impost is placed upon the department—there is no further action or intervention required—and so no net is widened.

In conclusion, the QFCC respectfully requests that due consideration is given to amendment of section 5C(2)(a) of the Child Protection Act to strengthen the description of the prevention element to include the words 'by redressing causes of child protection intervention'. This small amendment—seven words—will go a long way to having a significant impact in achieving adherence to the intent of the child placement principle in promoting the safety and wellbeing of Aboriginal and Torres Strait Islander children. Thank you.

CHAIR: Thank you, Commissioner. Your feedback has been incredibly comprehensive. You make some very valid points around that proposed amendment. Deputy Chair?

Mr BENNETT: There is a lot to consider there. Thank you for that very detailed introduction. I want to talk a little bit off subject in your submission about the blue card and how we are proposing to broaden it to capture the domestic violence elements. I am also reading some concerns into that. I think blue cards are not perfect by any means but are very important in the impact they have, particularly in communities where employment can be stifled if you do not have that. Would you talk to the committee about some of the concerns you raised in your submission about the use of the domestic violence element on the blue card screening?

Ms Lewis: Certainly the proposed amendments conclude the recommendation that was made by the QFCC with regard to domestic and family violence information in the consideration of blue card suitability. An important point within that recommendation was that it was going to be incredibly important that that assessment be conducted by somebody with suitable experience through a multidisciplinary approach to safeguard against unintended consequences such as having a disproportionate impact on particular communities. For example, with the domestic and family violence information, I think it is really important to make sure that in implementing that we recognise that quite often victims of domestic and family violence are in police records at some point named as a perpetrator of domestic and family violence, so I think that is a really important nuance in the consideration of suitability. That is why the QFCC has been quite clear about the level of expertise that is required in making those determinations, so they can take all of those things into account.

Mr BENNETT: I am not trying to put you on the spot: so the expertise in your opinion is not there?

Ms Lewis: There is a level of expertise that exists, but I think it takes a multidisciplinary approach to assess a particular record in the context of risk to an individual child. Those circumstances change and the risk changes. There is not a threshold about having a certain number of police contacts in regard to domestic and family violence that translates into exactly the same level of risk for every single child. We do not necessarily believe that that is a matter for law in terms of further amendment, but certainly we have an ongoing interest around the implementation to make sure the recommendation remains true to the intent. We are a part of the blue card implementation reference group, so that is an opportunity for us to monitor implementation, which we know with any piece of legislation is absolutely critical.

Mr BENNETT: I am really championing that cause. The risk has been raised previously that domestic violence orders can be taken out maliciously or can be weaponised in a dispute in a case of alleged domestic violence. Do we see any concerns with that? That is probably what you are talking to—I am not trying to put words in your mouth—around a skilled person being able to navigate what might not be relevant as opposed to what is relevant.

Ms Lewis: Absolutely, but it is also about being able to seek further information to get the appropriate context. It is about talking to the applicant and talking to other people who are involved in that particular context of care for a child to actually understand what that history might have been. Sometimes things written on paper in terms of records about a particular dispute have not been tested—have not had the benefit of input from both parties, per se. I think it is really important that we are able to interrogate that information and faithfully translate that to the context for a particular child so that we really are considering, in terms of blue card suitability, the risk that exists for a particular child, not a particular standard that we have sitting in our own heads about what constitutes safe or unsafe.

Mr BENNETT: The bill as it reads is done? There is nothing that you are proposing for amendment in the bill—just to be conscious that these other issues are relevant? Would that be a fair comment?

Ms Lewis: It is absolutely an implementation issue.

Mr BENNETT: I just wanted to be clear. Thank you.

Ms LUI: Thank you, Natalie, for your contribution today. I really appreciate your time. In terms of the child placement principle, your submission expresses concerns that the prevention element is not addressed in the bill. I was wondering if you could expand on that.

Ms Lewis: Certainly. As it reads in the act at the moment, the prevention element speaks about a child's right to grow up in their family and community, which is certainly not contested. However, in the national definition and in other material that guides practice there is another really important aspect to that definition, and that is around equitable access to the types of supports and services that children and families need in order for them to stay safely at home. I think that is a really important aspect to incorporate in the bill, particularly in the context of active efforts. I think being required to demonstrate what steps are undertaken to provide access to the types of supports that create safety and stability for a child is really important information, particularly for courts in consideration of orders.

Ms LUI: You mentioned equitable access. My background is in child protection. I now look after one of the vast regions in Far North Queensland, looking after many of the remote Aboriginal and Torres Strait Islanders gathered throughout FNQ. I know at times remoteness can be a huge factor in delivering the type of support we want to deliver. What are your views on how we can achieve equitable access for those remote and regional parts?

Ms Lewis: That is a great question. It has been a challenge obviously for decades. There are clearly issues with service equity and access in remote parts of Queensland. Some of the discussions we have had with the department and certainly with stakeholders in the sector have been that there is a very firm commitment to approach program design, procurement and commissioning in a different way going forward. I believe that the more opportunity we provide for local communities to define the types of services their families need to exercise some control over the types of outcomes that should be delivered the better. Also there is a role in monitoring around performance so that communities are having a meaningful and active role in determining the types of supports, the quality and the scale of services that are required.

Ms LUI: Do I have time for one more question?

CHAIR: Absolutely. Member for Cook, we are making your contribution a priority whilst we have the commissioner here.

Ms LUI: Thank you. We have heard from the previous speaker about his views around 'best interest' not being clearly defined. I was wondering if you had any comments around the definition of 'best interest'?

Ms Lewis: Yes. In terms of best interest—and I think sometimes this is more an issue around interpretation than implementation—we do see that it has been applied quite subjectively. I think that the grounding of the best interest principle in the United Nations Convention on the Rights of the Child provides much clearer guidance as it is written there with the types of things that constitute the best interest of individual children.

The onus of articulating precisely what constitutes best interest in a particular decision is not an unreasonable requirement of child safety officers. Whether that is making applications or in any written material, I think it should be effectively communicated beyond just saying, 'The decision was made because it's in the best interests of the child.' Even when we think about later down the track, the application of the best interest principle is not just at a point in time; the obligation is that we make decisions in the best interests of the child for the duration of that child's life. I think we owe it to children and young people to be able to articulate the basis on which we have made decisions.

Mr BENNETT: I would really like to flesh out some of the matters regarding the issues of kin within this and, for the committee's benefit, some who are not traditional owners would probably appreciate your comments.

Ms Lewis: We certainly welcome the amendments to expand or to clarify the meaning of 'kin'. QATSICPP in their submission—I thought they were appearing today, but perhaps not. The definition of 'Aboriginal kin' that has been presented by QATSICPP is strong. I think that is where we certainly should be heading. What we have seen over time in the application of the term 'kin' is a bit of a departure from what we would conceptualise as cultural kin. Merely having a relationship—it might have been the football coach for a particular child—does not make you kin, particularly in a cultural context. The amendments that specify the cultural nature of that bond or the legitimacy of the kinship relationship are incredibly important. It certainly recognises that there are other forms of care for children.

I believe that unless an Aboriginal or Torres Strait Islander child is placed legitimately with someone with a cultural connection through kinship, there remains an onus to ensure the connection to culture and kin for that child. We cannot take for granted that just because under a broader definition of kin we have placed an Aboriginal child, suddenly that absolves that responsibility to meet their cultural needs, and I think in the past that is what has happened. These amendments will make sure that that distinction between the cultural nature of those connections is preserved and privileged through the application of the act.

CHAIR: In summary, you believe we have that aspect of the bill correct?

Ms Lewis: Mm-hmm.

CHAIR: Are there any further considerations we should make in relation to that particular issue?

Ms Lewis: I think the bill suffices, but it is as if it operates as a floor, not the ceiling, if that makes sense. Through implementation there needs to be quite a bit of effort in terms of training around processes in the mapping and identification of kin, around the engagement of cultural authority—not generic cultural advice but cultural authority—which is vested within the family to confirm that cultural relationship or kinship relationship of a particular child. Those things I think can be addressed in practice and through training. I do not think we will achieve it unless we recognise the importance of engaging Aboriginal and Torres Strait Islander people with cultural authority to confirm those appointments of kin.

CHAIR: I certainly concur with the member for Burnett: those of us who are non-Indigenous people really appreciate your support in helping us to understand some of that context, so thank you.

Mr BERKMAN: Thanks very much for your time today, Commissioner. It has been really helpful already to hear from you. In your answer to one of the member for Cook's questions you referred to the proposed amendment to strengthen the prevention element. You did touch very briefly on the way that would impact the courts' consideration of these issues. We heard from the Create Foundation a little earlier. They made a suggestion that we might consider further legislative amendment to ensure those principles of participation apply in all processes where decisions will affect children and young people, including in courts and tribunals. Do you have a view on that suggestion? I think it is a slightly different issue from the one you addressed in your answer earlier. Do you have a view on Create Foundation's suggestion?

Ms Lewis: Thank you for your question. I think there is certainly merit in considering extending that provision in terms of consideration around decision-making to courts and tribunals. I think currently we should focus on the translation of legislation into practice in the context of child safety. I think we can do a lot to improve the quality of implementation of the child placement principle. I think there are other non-legislative ways to raise awareness with magistrates around the operationalisation of the child placement principle—around what a demonstrated active effort looks like in adhering to the prevention element, for example. I think we can start to raise the bar a little around what implementation looks like at its best in order to operate as an appropriate safeguard. I think we can potentially achieve that without that particular legislative amendment.

Mr BERKMAN: That certainly reflects what the Create Foundation otherwise said around the need for implementation and policy to make sure these changes actually mean something on the ground. Thanks very much.

Mr BENNETT: I have exhausted the questions on this bill, but in the couple of minutes you have left I would love to hear what other work you are working on as a commissioner.

CHAIR: There we go. The deputy chair has requested a quick briefing, so thank you.

Mr KRAUSE: Nothing like being put on the spot!

Ms Lewis: It might take more than a couple of minutes. I am sure if you would like to contact our office we could organise a comprehensive briefing.

Mr BENNETT: We have oversight of the commission as well. It is always good to hear from you if we get the opportunity.

CHAIR: In fact, we will take you up on that, Commissioner. We will make a time to connect, which we have had on our list of things to do for some time. Commissioner, could you give us a quick briefing as to how you are travelling?

Ms Lewis: Absolutely. I think we are travelling well. We are doing some really great work around repositioning the rights of the child in all of the work of the QFCC. Since we last spoke we have released the first piece in a series of a three-year program of work that is focused on the drivers and dynamics of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care. We have released the first piece of work, which is called Principle Focus, which is that initial piece that really examines what are the dynamics, what creates over-representation and how we propose to monitor it. Also significant to this particular bill, it monitors the efficacy of the child placement principle operating as an appropriate safeguard for the rights of Aboriginal and Torres Strait Islander children.

CHAIR: Commissioner, thank you. We do know the busy schedule that you have. We very much appreciate your contribution as we deliberate on this bill and the submissions that we have received. Thanks for your great contribution. We look forward to catching up soon.

Ms Lewis: Thank you very much.

De CAMPO, Ms Natalie, Senior Policy Solicitor, Queensland Law Society

GRANT, Ms Kate, Legal Practitioner (Family Law Section), Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd; Deputy Chair, Queensland Law Society's Children's Law Committee

GREENWOOD, Ms Kate, Barrister, Prevention, Early Intervention and Community Legal Education Officer, Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd

SHEARER, Ms Elizabeth, President, Queensland Law Society

CHAIR: Good morning. I welcome representatives from the Aboriginal and Torres Strait Islander Legal Service and the Queensland Law Society. It is great you are here and the committee appreciates the time you have given this morning for this very important bill. I invite you to make a brief opening statement and then we will have some questions.

Ms Shearer: Thank you for inviting the Queensland Law Society to attend this morning. In opening, I would like to acknowledge the traditional owners and custodians of the land on which we are meeting this morning—the Turrbal and Jagera people—and pay deep respect to elders past, present and emerging. At the outset, the QLS would like to acknowledge the disproportionate number of Aboriginal and Torres Strait Islander children in the child protection system. In Queensland, as you no doubt are aware, Aboriginal and Torres Strait Islander children are 8.5 times more likely to be placed in out-of-home care than non-Indigenous children, so we strongly support the measures in the bill designed to reduce the over-representation of Aboriginal and Torres Strait Islander children in the child protection system and to facilitate and maintain their connection to family, community, culture and country.

We are broadly supportive of the amendments in the bill and the policy intent behind the bill. In particular, we support the amendments to the Child Protection Act to include a focus on promoting the safety of children and, to the extent it is possible, supporting families in caring for children. We also support the amendments requiring a decision-maker to make active efforts to apply the Aboriginal and Torres Strait Islander Child Placement Principle when making a decision relevant to a First Nations child.

Notwithstanding this support, we have some concerns about a number of the proposed amendments, including the new powers conferred on the chief executive officer to request domestic violence information, as well as the amendments that allow an applicant to ask for an appeal of a temporary assessment order or a temporary custody order without serving the other party. We also have concerns around the certainty of the phrase 'active efforts' and what is required of a decision-maker to ensure they make such active efforts when they make a decision relating to an Aboriginal or Torres Strait Islander child.

With respect to the new powers conferred on the chief executive to request domestic violence information, we acknowledge the importance of ensuring that children are placed in safe homes and not exposed to any violence, but the practical effect of that clause may be that capable and appropriate carers are refused a blue card if they have been a party to a domestic violence order, including where mutual orders by consent may have been made. The existence of a domestic violence order in itself may not accurately reflect a level of risk. There are a range of human rights that can also be relevant and must properly be considered. For example, children's rights may be limited by the refusal of a blue card to a potential carer, particularly if the child is Aboriginal and Torres Strait Islander and cannot be placed in a kinship care arrangement because of an existing or previous domestic violence order.

Given all of this, the decision should sufficiently articulate how the domestic violence information has been assessed in determining a carer's capacity to provide a safe environment. We are not opposed to that information being obtained, but we are cautious that it should be used appropriately and not to rule people out of the system where really there is no risk basis for that. That is all I have for the opening statement.

CHAIR: Thank you. Would anyone else like to make some comments before we begin, or are you happy for us to proceed to questions?

Ms Greenwood: Chair, you are very familiar with the Aboriginal and Torres Strait Islander Legal Service. I simply point out that we are bringing close to 50 years of experience from across the state. One of our chief areas of practice is in family law and in particular in child protection law, and that is because of the over-representation of Aboriginal and Torres Strait Islander children in the child

protection system. Our focus is also on protecting our clients' rights to connection to kin, culture and country, and obviously the way that the child protection system is currently practised invokes all of those issues.

Kate Grant is our child protection lawyer. She forbids me from calling her an expert but I will get that in somehow. In particular, she would like to speak about the importance of the placement principles, the active efforts and the lessons we learned from the United States. QATSICPP have written quite an extensive submission on this. We fully support that submission—in particular, the principles that they have extracted and which Kate will also touch upon. In our submission, those could usefully be included in a regulation in order to help amplify what that should look like. That essentially in brief is our opening statement.

CHAIR: Thank you, Ms Greenwood. I did not mean to put you on the spot but, having worked with you in the past, I knew you would have a contribution to make prior to our questioning. Ms Grant, do you want to make a comment?

Mr KRAUSE: As an expert?

Ms Grant: I am not an expert. I am going to address in detail any questions you might have in regards to the submissions—in particular, the active efforts and our caution around placing that into legislation without embedding some guidelines and protocols on how that might be done. I will also address clause 24. I am open to addressing those straightaway or I can answer questions if you choose.

Mr BENNETT: It is important that we get it on the record in the time we have.

CHAIR: Absolutely. Ms Grant, I ask you to make that contribution whilst we have you and we have the time.

Ms Grant: In reference to clause 12, we support the proposed amendment to require active efforts to apply the child placement principle. We note that the active efforts actually are in the Child Practice Safety Manual, in the 'Safe care and connection' section. It provides an interpretation of how the department and their authorised officers should respond to the child placement principle to evidence the active efforts they have made. We have concerns that it has not gone far enough. If you refer to the active efforts in the Child Safety Practice Manual, they are just three points and they are extremely broad. They are designed to be broad so that it takes into account the differences in each of the matters coming through. However, we think it needs to go further than that.

I draw the committee's attention to the Indian Child Welfare Act 1978, which the department referred to in their response about bringing that across to the legislation here in Queensland. It provides a definition for 'active efforts' which this bill is proposing to adopt. However, what is also noted in some research of this application of the definition is that the appellate courts in the United States have found it very difficult to actually interpret what that means.

I note that in QATSICPP's submission they have actually taken the 11 steps that have been alluded to in the United States as being the 10 or 11 steps that should be used as a benchmark for implementing active efforts through the department. We would like to say that is a starting point. We note the department are saying that they are going to consult further with stakeholders to actually work out what that might look like. We would encourage that, but we also submit that they need to work with Aboriginal and Torres Strait Islander peoples in doing that—given that our children are over-represented in the system—and they need to engage with the advocates through the key stakeholder agencies such as QATSICPP and the QFCC through the commissioner as well.

We would like to endorse the 11 steps in QATSICPP's submission as being almost identical to the US appellate courts' 11 steps that are recommended. They have just been tailored to Aboriginal and Torres Strait Islander children here, which we think is a starting point for defining what active efforts might be.

Ms LUI: You use the phrase 'active efforts'. We heard from an earlier speaker around involving more young people in the decision-making process. I was wondering if you think there is a difference between young people fitting in that process and being part of the active effort and strengthening the decision-making process for certain plans that affect young children. How do those two fit together?

Ms Grant: In adopting an 11-step process as outlined in QATSICPP's submission, it would actually include the voice of the child and a younger view or perspective into that. The 11 steps are very detailed and very thorough. Not only do they say that the department has an obligation to refer or provide the opportunity for essentially voices to be heard; there is a clear definition that they have to take active steps to do it. That may include providing the funding to do it or allowing that to happen, so giving it time for that to happen. If enough thought is given to what the active efforts are and detailing them effectively, I think it will allow for that.

Ms LUI: In respect of the blue card, specifically in relation to regional and remote communities, I am keen to hear your thoughts around the blue card system, the child placement principle and how it is working now. Do you have any suggestions moving forward from here?

Ms Greenwood: One essential problem is that there is a one-size-fits-all blue card system. It is impacting kinship care quite significantly. The assumptions in the blue card system often do not take into account extended Aboriginal family structures. There are difficulties where someone in their early 20s is still living under the same roof and commits some level of crime. Suddenly that throws problems up in that if there is a child being cared for and the parent has a blue card then the presence of an adult, albeit it a very young adult, in the household who is waiting to have their matters dealt with creates all sorts of issues and all sorts of problems.

The blue card system is attempting, following the QFCC recommendation, to have a specialist unit to look at that, and that is a very positive step forward, but it is also a very slow step. There are long delays for blue card applications to be considered, especially when there is any sort of complexity to them. Even once we get to the point that a blue card has been denied and then we have the review processes going on, they take a very long time. We have children being removed too fast from families and it is a bit of a perfect storm at the moment. It is capable of being fixed, but it is a really significant problem and contributing to the over-representation figures that we see.

There is also a second issue, which maybe the placement principles will improve, that children are often being removed from the wrong parents in terms of recognition of Aboriginal family structures in particular. A child may be raised not only by the biological mother but also by aunts who may have a more important role raising the child than the child's mother and they are called 'mother'. If the biological mother has been going off the rails and the child is not actually with the biological mum—the child is with what is in our terms a senior aunty—there are all sorts of issues that sit around proper recognition of family structures and who the child is with and who the child should be placed with.

I think it is also fair to say, because I travel around the whole state and I talk to communities about what the big legal issues are, that the blue card and removal of children are always big issues for them. There can often be quite large inconsistencies with how these rules are being applied and how children are being removed or not removed.

We have issues in terms of siblings not being kept together and issues with newborn babies being removed too fast when there are other family members who are ready, willing and able to take care of those children. It is the application of the law that is the real problem at the moment. Hopefully the strengthening of these principles will be the first really big step to improve how that is carried out.

Ms Grant: I have nothing to add to that, other than to say that we do support the Queensland Family and Child Commission's view of the updated kin in that it should include a separate subset of definitions around Aboriginal and Torres Strait Islander children and essentially their cultural kin and how that might apply.

Mr BENNETT: I did not want this whole session to be about the blue card, but I do note that both submissions were fairly in-depth—and I thank you for that, because it is a lot to consider. Would the Law Society like to talk to that issue around the problems identified potentially with the blue card proposals?

Ms Shearer: We think the blue card is not a sufficiently nuanced instrument to have the determinant power that it appears to have in this context. It relates to our point about the gathering of domestic violence information and the gathering of criminal history information. It has to be done in the context of what we know happens in domestic violence, for example, in that frequently Aboriginal and Torres Strait Islander women may be misidentified as perpetrators in domestic violence contexts or they may consent to mutual orders, so the fact that there is a domestic violence order does not mean necessarily that there is a domestic violence problem or issue. It is the same with criminal history. That has to be seen in context of the over-criminalisation of Indigenous people.

We share similar concerns that the issues are very difficult and the system needs a bit more nuance than has been there. There has been something akin to the placement principle in place for decades now, yet we still have the over-representation and removal of Aboriginal and Torres Strait Islander children from their kin and culture in much higher levels than we would like to see.

Mr BENNETT: We see so much in this committee the issues around the blue card in that it is sometimes weaponised and it is a barrier to a whole heap of things, even outside child safety. It could be employment, opportunity, dignity and all those things that come with it. I wanted to make sure we got it on record that there are some concerns out there being raised with the proposals, so thank you for that.

CHAIR: Ms Grant, you mentioned the 11 steps implemented in the US and some of the preliminary research that has followed. You talked about the challenges around implementation. Could you just speak to us a little bit about your understanding of that research and how that is progressing?

Ms Grant: My understanding is that after the legislation was put in place in 1978 it took two years before the department worked out that they had not actually defined 'active efforts' sufficiently to tick off what might be deemed as appropriate or inappropriate in the circumstances. Various matters have gone through the appellate courts over the last 20 years or so, and what they have found is that, although they do need some flexibility in deciding what those active efforts are per case, there needs to be some very strict guidance around what they need to look at as a bare minimum to ensure they are actually meeting that criteria. They have gone along the way of trying to define what that might look like, which has resulted in the 11 steps which are now in case law in the US. QATSICPP has pulled that out and amended that—it was for Indian culture in the US—and changed it to Aboriginal and Torres Strait Islander culture. They have taken that step already, which is fantastic.

If you review the 11 steps, it goes a long way to actually making a difference. If those steps are enacted and the department are required to tick those off—it includes things like a very detailed assessment of family and kin and keeping siblings together, which Ms Greenwood has spoken about—it will go a long way to saying that they clearly have taken active efforts to ensure that is done.

Under case law, it says that not only do they need to do it but also if they take the matter to court they must then provide that to the court for consideration. That allows advocates to challenge what they have done according to those steps and raise issues for the presiding magistrate at the time. So it goes a long way to do that and it would be remiss of the legislation not to acknowledge that that should be either a basis for implementation in moving forward or at least considered in some form.

Mr BENNETT: I was just looking at those 11 principles. It is something for us to look at for sure. With the issues around the bill, the focus has to be on the child. I did not take from you any real emphasis on further amendments. If there was one other takeaway that as a committee you would like us to consider, either from the Law Society or from the legal service, maybe you could emphasise that in the short time we have left.

Ms Grant: If I may, I will talk to clause 24, which I alluded to earlier, which amends section 51V of the Child Protection Act. I note the department's response that it allows a review of a decision not to review a case plan to be inserted. I just wanted to make the point—and I want to make it very clear because it is in our submissions—that we do support the inclusion of subsection (4A), which is essentially saying that a child may request that their case plan be reviewed. This is in keeping with the intent of the bill, which is to get the child's voice heard.

What we have concerns with and do not support is the addition of subsection (4B) and paragraphs (a) and (b), which essentially say that, even though they may request it, the department can say no to that. We understand that if (4B) is not included then it makes the insertion of (4C) and (4D) irrelevant because, if they cannot say no, they will not need to go to QCAT to get a review of the decision. It is essentially they request it and it is done. That is what we would like the legislation to allow—for the child to request it and, if they think it is important enough, which it will be because a case plan is a significant part of a child's care arrangements because it not only talks about contact with their family but also talks about where they live and placement and it gives them self-determination. It gives them a voice to have their say. If they think it important enough to have it reviewed, we submit that it should be reviewed in line with that. I just wanted to provide clarity around the submissions where we say we oppose clause 24. It is on that basis.

Ms Shearer: The only thing we would like to highlight is perhaps the point about appeals and these being heard without the respondent being notified. You will see in our submission just a concern—we acknowledge that in some rare cases it may be necessary for an appeal to proceed before it is served on the other party, but we make it clear that that is a very rare circumstance. We are concerned that the amendment as drafted may lead to it becoming a bit more routine than it should.

Ms Greenwood: From me, 'may' take into account, not 'must' in relation to the domestic violence issues. As I have just been thinking, I initially suggested the incorporation of those 11 steps from QATSICPP into a regulation, but it may also fit as a subparagraph within the legislation to explain 'this is what best efforts are'.

CHAIR: On behalf of the committee, I thank you immensely. We know that as legislators here in Queensland we certainly could not do the work we do without the input, the expertise and the guidance of the Queensland Law Society. Thank you, Ms Shearer and Ms De Campo, for your expertise and for your continued contribution to law in Queensland. Thank you to the Aboriginal and Torres Strait Islander Legal Service. We defer to you regularly, as you know. We greatly appreciate the support you provide as we draft legislation here in Queensland. Thank you sincerely. We know that you are incredibly busy people, so thanks again.

MacDERMOTT, Mr Patrick, Senior Policy Officer—Governance and Strategy, Queensland Catholic Education Commission

PERRY, Dr Lee-Anne AM, Executive Director, Queensland Catholic Education Commission

CHAIR: I now welcome my colleagues and friends from the Queensland Catholic Education Commission. It is wonderful to see you again, Dr Perry and Mr MacDermott. It is wonderful to have you here. Thank you sincerely for giving up your time this morning to contribute to this very important legislation in Queensland—something that is going to impact our children for many years to come. Dr Perry, knowing you well, I am sure you will have some opening remarks. Then our committee will follow up with some questions for you.

Dr Perry: Thank you very much, Chair, and thank you to all the committee members for the opportunity to speak to our submission on the Child Protection Reform and Other Legislation Amendment Bill 2021. I will make just a few opening remarks.

The Queensland Catholic Education Commission, otherwise known as QCEC, is the peak strategic body with statewide responsibilities for Catholic schooling in Queensland. Our submission is provided on behalf of the five diocesan Catholic school authorities and 17 religious institutes and other incorporated bodies which between them operate a total of 309 Catholic schools that educate more than 156,000 students in Queensland.

Queensland Catholic schools are committed to ensuring the safety of students as their highest priority. School staff undertake training in child protection matters on an annual basis and procedures are in place to ensure all mandatory reporting and other compliance requirements are met.

Our remarks are in the context of blue cards being a critical screening mechanism for schools. Schools, as I am sure the committee is aware, are special places. Blue cards give what I would term privileged access to young people. Blue cards play a critical role from the perspective of ensuring adults who are given that privileged access are screened as effectively as possible because it is a key part of the protection of the young people who are entrusted to schools.

The aspects of the bill dealing with blue cards are those that are most relevant to schools. QCEC supports these changes in principle, subject of course to any changes that may be made during the legislative process. My comments today will focus on those proposed changes to blue cards in the context of schools as people who give privileged access to particular adults.

Blue cards play a critical role in schools as they are used as a key part of the screening processes for all non-teaching staff, for volunteers, for contractors. They are also an essential requirement for members and directors of school governing bodies and a range of other people.

The blue card requirements under the Working with Children (Risk Management and Screening) Act 2000, as I have just emphasised, play an important role in assisting schools to manage the employment of relevant non-teaching staff and the engagement of other persons such as volunteers, contractors and board directors. QCEC believes the changes proposed in the bill will strengthen this role.

A particularly important improvement to the blue card arrangements will be the ability to take account of adverse information from other jurisdictions through Queensland participating in the Working with Children Check national reference system. This change has the potential to make children safer by ensuring that a non-teaching staff member or volunteer or board director cannot circumvent screening arrangements simply by relocating to or from another state or territory. There is considerable interstate movement into schools.

Another important change supported by QCEC is the ability of Blue Card Services to request from police domestic violence information as part of a blue card assessment, as highlighted in the explanatory notes and clearly by other people who have submitted to this process. We recognise that using such information does raise complexities which will have to be carefully considered. However, we are also of the view that it will strengthen current approaches by allowing for a holistic risk assessment and for erring on the side of caution in respect of children's safety. That is always the position we take—to err on the side of protecting the young people in our care. Thank you for the opportunity to comment on how the bill will impact upon and importantly support the role of schools in ensuring the safety of students in our care.

CHAIR: Thank you, Dr Perry. I cannot underestimate the support that the committee has for having your involvement and contribution to this very important aspect of the bill. We certainly appreciate your guidance and your recommendations.

Mr BENNETT: Your presentation has put a different spin on the whole debate that I have been pursuing on the changes to the blue card arrangements because you have put a positive spin on it. I think that is really helpful when we are trying to get our minds around what these potential amendments mean. I thank you for putting a positive spin on it. Making it about the child as well is a really important aspect. My questions have been about the potential problems that this may create. With recruitment and selection that is a core part of the role, could you give the committee some ideas around the potential delays in applications or are the teachers expected to have these things sorted out on their own resume and within their own professional lives before they apply to become teachers?

Dr Perry: If I can clarify, teachers are screened through their teacher registration process. They are not required to have blue cards. This is covering all of the other people who are employed in schools. I hate using the negative term 'non-teaching' but basically it is a group of people—and there are considerable number of them. We are talking about teacher aides, tuckshop workers, sports coaches, instrumental music teachers—people who have one-to-one access to young people in a whole variety of contexts. We are also talking about contractors who come into schools and are there on an ongoing basis—they might be there doing maintenance work or whatever it might be—and, as I said, members of governing bodies. We are talking about an extraordinary array of people.

Yes, if you want to work in a school, you have to have a blue card. That takes time. I heard the comments of the group before us that that can take some time, but we do have an expectation that someone who is seeking to work in a school will go through that process. Our experience has been that the various changes that have been made over time have considerably improved that. If I went back a few years, there were extraordinary delays. That has been greatly improved. I commend Blue Card Services for the improvements they have made there.

It would be our view that the delays are offset by the fact that it is important to have the screening done before they can start in a school. Again, I make the point that, once they are permitted to come into a school in particular roles, as I say, they are in a privileged position. They are working in a range of settings. Schools obviously manage those settings but, if you can imagine, they are out on a sporting field, they are in a gym, they are on an excursion or they are in an instrumental music room one on one with a student. It is important from our perspective that they are screened before they come and that anyone who wants to work in a school needs to take that into consideration. We think that is not an unreasonable demand.

Mr BENNETT: Is there any other specific screening that is done? I know I am off the subject a little bit, but I am curious about what other protections we have for young people within the Catholic education system.

Dr Perry: In Catholic education—and I am sure this would be the case across all schools—there would be the usual process used when you are employing someone in terms of referee checks. People have to apply. They have to show appropriate documentation and qualifications, depending on what the role is. Then there would be referee checks done. Depending on the role, if it is a high-level role such as the business manager in a school, you would have to have accounting qualifications and all of those sorts of things.

There are other roles. I will take the sports coach as an example. You are talking about people who are 18-plus. With someone who is an 18½-year-old, there is not necessarily a lot of background information, so the blue card becomes critical in that. While probably 99 per cent of people who apply to work in schools are people who are absolutely committed in a genuine way to working with young people, there is a very small minority of people who want to get access to young people for what I would call nefarious reasons. That is why it is critical to have every process we can to screen those people before they come in. There have been issues with teachers and non-teaching staff. We screen volunteers as well. Again, I keep putting it in the context that they have privileged access to young people.

Mr BENNETT: That is great way of putting it.

Dr Perry: Parents and carers rightly expect schools to do everything they can while knowing that no system is going to be perfect. That is the reality.

CHAIR: Thank you, Dr Perry, for highlighting that important aspect about schools. Dr Perry, you and I are both very aware that the blue card system is moving into some new ground in relation to domestic and family violence. Does the commission hold any concerns over the sharing of such information? Are there any risks that you can think through in relation to the sharing of that information within the Catholic education system?

Dr Perry: There are always risks—I think it goes without saying—and particularly in an area as complex as domestic and family violence. I think, rightly, it is an area that we in Catholic Education, the Queensland government and society in general recognise is a pervasive concern in our society and it needs to be taken into consideration. We recognise that there are sensitivities here.

The information would not be shared with Queensland Catholic Education. My understanding of the way the provisions have been written is that it would enable Blue Card Services to undertake particular screening. As with any highly sensitive information, we would expect that that is dealt with in terms of the appropriate privacy provisions around that. We would not be seeking to receive that information, but we would be relying on Blue Card Services to undertake the appropriate processes.

We recognise—and I heard the previous presenters talk to some of the particulars in some groups within our community—that there are complexities. However, we support in principle the idea that you provide information which goes to the safety of young people. On balance, we would always want to err on the side of the safety of the young person. When you balance risks—and that is what it always comes down to—we would want to err on the side of the safety of young people. We absolutely recognise the complexities that are there.

CHAIR: For the benefit of the committee, who have not had the experience that both you and I have had, in terms of the processes that you would follow in relation to young people at risk of domestic and family violence in a risky situation, they would remain the same when it comes to reporting the potential harm of children despite the changes in this legislation?

Dr Perry: Absolutely. As you certainly are aware and, I am sure, other members of the committee are aware, there are extensive reporting requirements for schools and they have increased over time, and we have been supportive of all of those. They would not be impacted here. The reporting requirements that schools have are that where they have reasonable grounds to suspect that a young person is at risk, that they either have experienced harm or are at risk of experiencing harm, that would be reported to the appropriate authorities. Obviously alongside that are all of the pastoral supports and wellbeing supports that schools clearly offer to young people.

Mr BENNETT: As I said earlier, you have really covered off on the issues around blue cards, and you mentioned teacher registration earlier. In order to get registration, do they have to have certain levels of screening?

Dr Perry: Correct, yes.

Mr BENNETT: That would include the blue card?

Dr Perry: It is a similar process. Mr MacDermott, are you able to speak more clearly to that?

Mr MacDermott: It covers the same checking for the teachers, but then it is even broader around suitability to teach. It is even more stringent than blue cards, like the Queensland College of Teachers would do.

Mr BENNETT: Is that police checks, federal taxation, types of fraud? I am fishing a little bit.

Dr Perry: Not taxation. I do not think they would get checked there. All teachers in Queensland are required to be registered and the registering body is the Queensland College of Teachers, and they undertake extensive checking as part of the registration process. As Mr MacDermott just said, it covers the same sorts of areas and it is a bit broader for teachers. There are processes in terms of the interstate checking, which again has been an improvement over time because there have been gaps in the past with people moving interstate. That has been improved in terms of the teacher registration as well.

Mr BENNETT: With the blue card changes we are proposing and your experience—and you made a positive point that it has gotten a lot better—are there specific things that Justice and the screening area might look at in terms of training in relation to those? We have heard that a lot of our submitters—even today—are a bit concerned about the level of training or expertise. They are their words, not mine. Is there something else that you would like to see the screening area looking at, or training for these people who are doing the screening assessments?

Dr Perry: Are we talking about training for people who work in Blue Card Services?

Mr BENNETT: Yes, that may assist your particular circumstance?

Dr Perry: You are probably not surprised that, as an educator, I would say that education is always a good thing, and ongoing education and training is really critical. It is a really important function that Blue Card Services is playing. We are very aware of the impact, because if you do not get a blue card you cannot work in a school or if you do not get teacher registration you cannot work. It does have major particularly employment considerations. Anything which is as high stakes as that

requires, in my view, appropriate training and ongoing training, particularly given the complexities—and this bill is proposing also to look at domestic violence, which adds another level of complexity. When you are dealing with people and people's behaviours and people's background, that is really complex.

I would always be endorsing really high levels of training and ongoing levels of training that go beyond understanding your legislative requirements, what is in the regulations, guidelines and so on but also having an understanding of the broader societal context and so forth. We have been of the view that there should just be one blue card, not a range of different blue cards, which has been suggested from time to time, although I know it is not being suggested now. We believe in having the one blue card, but understand that you have clear regulations and guidelines but that they have to be applied with sensitivity, nuance and so on and that there are appropriate appeal mechanisms and that there is appropriate resourcing such that that process can happen as quickly as possible, particularly where there is a rejection and the appeal mechanism can take place because of the cascading impacts.

Ms LUI: Thank you, Dr Perry and Mr MacDermott, for your time this morning. I concur with everyone else: there is a need for blue cards in our schooling system. It is vital that we have these mechanisms in place to keep our children safe. There is definitely a need for it. I do appreciate your time and feedback this morning.

CHAIR: Thank you sincerely. We know how busy you are. We take the opportunity to thank you both for giving us some of your valuable time. We always appreciate the contribution that the Queensland Catholic Education Commission makes to education policy particularly in Queensland as well as some of the peripheral policies that are important to our schools.

HANCOCK, Ms Nikki, Senior Lawyer, LawRight

MAROSKE, Mr Kurt, Project Officer, LawRight

SARKOZI, Ms Julie, Solicitor, Women's Legal Service

TUCKETT, Mr Ben, Managing Lawyer, LawRight

CHAIR: Good morning to you all and thank you sincerely for being with us. The committee appreciates your expertise and certainly appreciates the contribution you make to legislation here in Queensland. Julie, would you mind making the first opening statement? I will then move on to LawRight. Following that our committee, I am sure, will have some questions for you.

Ms Sarkozi: Thank you very much for the opportunity to address the committee. I represent the Women's Legal Service of Queensland and we are a specialist community legal centre established in 1984. We provide free legal and social work services and support to Queensland women. We assist women in the areas of family law, domestic violence, financial abuse, child protection and some aspects of sexual violence. We provide statewide assistance through our statewide domestic violence legal helpline and rural, regional and remote priority lines to increase women's access to our service, to lawyers who have expertise in family law and domestic violence.

We undertake outreach work at the Brisbane Women's Correctional Centre, the Gatton prison and family relationship centres in Brisbane. We conduct domestic violence duty lawyer services at three courts: the Holland Park court, the Ipswich court and the Caboolture court. Our specialist domestic violence units in Brisbane, the Gold Coast and Caboolture provide intensive casework and court representation for women who are experiencing domestic violence. We also have a self-funded respondent lawyer. That is where women are respondents to domestic violence orders.

Ms Hancock: Good afternoon, members of the committee. Thank you for the opportunity to speak today. I am a senior lawyer with LawRight's court and tribunal services and I am joined by two colleagues: my managing lawyer, Ben Tuckett, and Kurt Maroske, who is the project officer for our community and health justice partnerships. We appear on behalf of the organisation.

LawRight is a community legal centre and the primary facilitator of structured pro bono legal services in Queensland. Our court and tribunal service assists individuals with current or potential proceedings in the Magistrates, District and Supreme courts, QCAT and some courts of federal jurisdiction. Our QCAT service assists with numerous matters including, but not limited to, administrative reviews, guardianship and administration, and anti-discrimination. The legal problems we receive most requests for assistance with are blue card related.

In the 2019-20 financial year LawRight assisted 92 people in some form to review a decision of a negative notice blue card decision. This represents 40 per cent of our new files and 70 per cent of the legal services we provided in that year. We feel that this puts us in a unique position to comment on the practical effect of the blue card and child protection systems on vulnerable groups.

With regard to the proposed changes to the Child Protection Act, we are supportive of the bill's aim to strengthen the Aboriginal and Torres Strait Islander placement principle. However, the requirement to hold a blue card prevents many Aboriginal and Torres Strait Islander people from becoming foster or kinship carers, even to their own kin. For this reason we feel that the proposed changes will not have their desired effect unless the blue card system is also reformed. We understand that the Working with Children (Indigenous Communities) Amendment Bill seeks to address some of these issues, which is why in our submission we expressed our dissatisfaction with the disjointed consultation process for both bills.

In regard to the changes to the Working with Children (Risk Management and Screening) Act, we support the inclusion of domestic violence information as relevant information that must be considered when deciding whether to issue a negative notice but hold similar concerns to our colleagues at the Women's Legal Service, the Aboriginal and Torres Strait Islander Legal Service and the Queensland Law Society as to how that information will be considered in deciding an exceptional case.

In regard to interstate information sharing, we agree that adverse interstate information is relevant information in assessing whether a person is suitable to hold a blue card, but we do not support the proposed insertion of section 303A into the act which would result in the issuance of a negative notice to a person who has an adverse interstate decision with no right of review. As a matter

of procedural fairness, we believe that a right of review should be afforded to an applicant in this position unless a disqualifying offence is involved. We thank you again for the opportunity to engage with this vital area of law reform and welcome any questions from the committee.

Mr BENNETT: It is a privilege to see you. There are people in our communities who definitely rely on your services and we thank you for that. I will start with a couple of questions for LawRight. I thank you for your submission. I would like to talk more about your comments on the consultation period. You mentioned that you dealt with 92 cases on review. What is the percentage success rate for those 92? I am not trying to put you on the spot, but are you are happy with the number of positive results?

Ms Hancock: We recently conducted a survey of our client base and we had 83 responses. Two-thirds of those who reviewed the decision got a positive notice at the end of the review process.

Mr BENNETT: That leads me to my next question. Without talking about the Indigenous communities bill—the blue card bill issue—it would be helpful for the committee to hear some of the examples. We know that in those communities it is incredibly hard for people who have had experiences with the law or other issues to gain employment. Could you maybe flesh out the issues First Nations people experience with the blue card process?

Ms Hancock: It has been acknowledged by the department in a recent report they produced the barriers to accessing the blue card system for Aboriginal and Torres Strait Islander people. Most of the first application phase is done online and it is only in English. There is no way to have it translated into another language. That is the initial barrier. There is a requirement to have ID. We know it is sometimes a problem for Indigenous people to obtain identification documents.

Then when the department decides whether they are going to issue the negative or positive notice, they give the applicant an opportunity to provide submissions on that, either in writing or orally. Not everyone has the ability to put forward well-drafted submissions on that point. If the negative notice is issued and they want to come to QCAT to review that decision, similar problems exist with engaging with QCAT, particularly for people in remote communities and where English might not be their first language.

We have had clients who have been assessed as suitable kinship carers by the Department of Children, Youth Justice and Multicultural Affairs but, because of the requirement to hold a blue card, are being prevented from being kinship carers to their own grandchildren. Sometimes the negative notice they receive is based on really old criminal offences or it might be that they did not understand the process, did not put those submissions in and then have ended up with a negative notice.

Mr BENNETT: You mentioned in your opening statement that any proposals going forward should include further amendments to the process. Are you advocating that there should be different rules for First Nations communities to try to streamline the process for screening? That is what we hear a lot. It might not be about this issue, but it might be about things like access to employment. They might have had a very old conviction or something and moved on with their lives, but they are still held back from reaching any sort of potential because of this screening issue. Would that be an advocacy area that you would think should be discussed?

Ms Hancock: Potentially, but if the entire system was reformed to capture everybody then that would in turn improve outcomes for Aboriginal and Torres Strait Islander people. We have clients who are not Aboriginal and Torres Strait Islander people who struggle with the system as well and have the same problems with capacity and engaging.

Mr BENNETT: So that is numeracy and literacy issues but also access to technology, as you mentioned before?

Ms Hancock: Access to technology or people within disabilities and things as well.

Ms LUI: Someone mentioned in their opening statement the barriers around a negative notice. I am speaking specifically about remote communities and, if there is a negative notice, acknowledging all the gaps that exist with people wanting to work through that negative notice. I am wondering whether you know of any programs or services that work with those communities to address some of the issues around language barriers and so forth and work with QCAT to work through the challenges of getting a blue card.

Ms Hancock: We do not know of any others except for the Aboriginal and Torres Strait Islander Legal Service and our service that are providing advice and assistance in this area. Legal Aid do not do this area of law. Some other community legal centres do it as well, such as the one in Townsville. The department is trying to put in place some programs to assist Aboriginal and Torres Strait Islander people with engaging in the system. That was outlined in their report entitled *Safe children strong communities*. Unfortunately, I cannot answer the rest of that question because we do not know.

CHAIR: Julie, in relation to consenting without admission, particularly in the context of domestic violence orders, can you talk the committee through how the proposed amendments to the bill may affect this?

Ms Sarkozi: My understanding of the proposed amendments is to open the level of information that the chief executive of Blue Card Services takes into consideration. It is explicit in the proposed amendments that information about domestic violence is one of those new categories. It is important to note that that is a new category so it has not been in legislation before.

Whilst the Women's Legal Service, like a lot of others, supports that as being important information, we also have very good information and rigorous research that shows us that there is a high level of misidentification of the primary aggressor. What happens in practice is that the first responders turn up to an incident and they are under-resourced and they make a call. Often the narrative of that call has been set up by the perpetrator. A lot of our clients are the people who are in most need of protection. They have been misidentified and so there is a domestic violence order that has been put on them. It may be a police protection notice to begin with—and importantly this legislation covers those circumstances—and then later they are in court and all of those structural factors that apply to women experiencing domestic violence and First Nations women and women who do not speak English as a first language then come to bear upon what happens in court.

What happens in court, the research shows, is that women are more likely to consent without admissions. We have experience of the respondent—the aggressor—ringing up Blue Card Services to say, 'Do you realise that there is a domestic violence order in place against the mother?' et cetera. We already know that, practically, this affects women who have been misidentified, who have consented without admissions because of a lack of resources, lack of time, they are traumatised, they just want to get this over and done with and they have been assured that it will not affect their blue card status. That is the way it works now. This amendment is going to significantly change that.

The other side of that story is that it is one of the features that, when we are in that busy courtroom duty lawyer forum, we can say to a respondent, 'The advantage of you not defending this application is that if you consent without admissions it will not affect your blue card status.' The converse is also true. That actually does mean that women in need of protection and who need a domestic violence order can take advantage of the fact that he has consented without admissions: 'I have my protection order. I can now move on with my life knowing that it is safe for me and the children.'

Anything that reduces a survivor's time in court and the amount they are taken up with those kinds of systems is a really good thing. I know that I have answered your question in a very long way, but I did note, because I was sitting here before, that there was a previous question about training. The Women's Legal Service strongly supports that any decider of how the domestic violence information impacts the eligibility of a blue card needs to have specific and specialised domestic violence awareness training.

CHAIR: A growing concern in my community has been the retaliatory nature of an accusation of domestic violence from a perpetrator and the implications that has for women, particularly in environments where they become a single mum with young children. That is a huge concern for them and a risk for them. Do you feel that the legislation does enough to capture or prevent or protect that retaliatory nature that often does happen?

Ms Sarkozi: No, I do not. In that regard, I know that our domestic violence legislation at section 4 in its objects says that courts need to have regard for who is in most need of protection, because what happens is cross-orders. You are exactly right. Those are often made because, in the heat of the moment, people cannot work out who is most in need of protection and where the domestic violence order application is used as a form of systems abuse. If these amendments included at least some guidance where the domestic violence information is provided to Blue Card Services then regard must be had to the person most in need of protection. At least that would flag it to the decider of fact. In my view it needs training, training, training. It is a very complicated area, but at least that would be good.

Mr BENNETT: Recommendation 3 in your submission talks about the chief executive using professionals and experts in that determination. Would you like to talk a bit more about that?

Ms Sarkozi: We would say either there is a specialist domestic violence unit within the service that actually deals with blue card applications when there is information provided to the chief executive that there is domestic violence information, and so they are a specialised unit within Blue Card, and/or there is generalist training to all blue card deciders and that training that is provided to all of the staff specifically addresses issues like coercive control, cross-applications, the misuse and

systems abuse that occurs with domestic violence orders and that there is contextual information about who is in most need of protection before removing someone's blue card because there is information about domestic violence.

Mr BENNETT: With the higher representation of non-English-speaking and First Nations people in domestic violence, my real concern is that this will have the perverse outcome of preventing people getting this blue card which means so many things to so many people. We do have higher representations in those cohorts; is that fair?

Ms Sarkozi: Yes, there is research that shows that in relation to the contact of First Nations people with the police, it is so much higher than with the general population.

Mr BENNETT: What are you referencing there?

Ms Sarkozi: I am referencing research that Women's Legal Service has undertaken but in particular the Queensland Domestic and Family Violence Death Review and Advisory Board 2016-17. The board noted that in 44 per cent of all cases of female deaths, the woman had been a respondent to a protection order. There are very high levels of First Nations representation in the death review board data as well. It just shows you that if there is domestic violence information against someone it does not necessarily mean that they are the perpetrator or the primary aggressor or that they may not be suitable to have a blue card. Of course, that really affects our First Nations people and issues like kinship care.

CHAIR: Julie, I know we are getting off the topic a little bit, but it is an issue that I feel really passionate about and it is an issue that comes up day after day in my community where a woman will be successful in getting a domestic violence protection order and two days later they are served with one by their former partner. Do you have any suggestion around how we manage that as legislators?

Ms Sarkozi: I know that the Women's Safety and Justice Taskforce, led by—

CHAIR: Led by Justice McMurdo.

Ms Sarkozi: Yes. I know that they are actually reviewing this issue very closely in relation to whether or not there might be some more positive outcomes if there was criminalisation of coercive control because that is a high risk factor, the presence of coercive control in relationships. I guess the short answer is that I know that this is something we are all taking very seriously and we are trying to develop more effective ways of dealing with this.

I know that in other jurisdictions, for example Scotland and the UK, one of the really key factors that comes out of all of the research, putting aside whether or not we should criminalise coercive control, is police and first responder training so that when the first responder is provided with information from someone who is perhaps the primary aggressor they actually do have the training to ask the right questions to identify who is most in need of protection and whether it is actually an abuse of the system to take out even a temporary order against the primary victim. So it is about training, training, training—resources at that front end.

CHAIR: Thank you. I do apologise for being off task just slightly, but it is an issue that I am sure we are all dealing with in our communities.

Mr BENNETT: You mentioned the working with children legislation that has been brought into the House. LawRight has not done a submission to that, I note.

Ms Hancock: Not yet, but we intend to.

Mr BENNETT: Generally what are your thoughts about where that is going?

Ms Hancock: We are generally in favour of it, but we think some of the issues that have been identified as particularly affecting Aboriginal communities, particularly in the explanatory notes to that bill where it talks about there not being a mechanism to recognise rehabilitation of people—those issues are standard across our clients and not just for Aboriginal and Torres Strait Islander peoples. While we think this bill goes some of the way to addressing some of those issues for Aboriginal and Torres Strait Islander people, we think there are major issues with the system as a whole whereas if those issues were looked at then it would improve the outcomes for everybody.

Mr BENNETT: I am just looking online at some of the issues within that bill and I guess they are relevant and real issues that are confronting us. I look forward to seeing your submission when it comes out.

CHAIR: Is there anything more you would like to add in relation to the inclusion of domestic violence information as relevant information when obtaining a blue card and some of the grey associated with that, particularly for our remote communities?

Ms Hancock: I think we hold the same concerns as Women's about that: the decision-maker taking that information as fact essentially and deciding a negative notice just based on that information alone and not really considering the submissions that people are putting forward on that information when it applies to them.

Mr Tuckett: It is the next part of that process, too, after the actual order has been put in place. I do a lot of my work in the state courts and we get a lot of approaches from people trying to appeal those orders because they have consented in the first instance or they did not understand what was happening. Usually the situation is that they are happy just to be separate from the other person and they are not worried about how that plays out until they get this order that then says 'you are the aggressor' or involved in that process. Often because of the nature of it—it is kind of a quasi-criminal type decision—there are very few organisations that provide assistance to actually challenge those orders that are in place. It also requires heading off to a superior court to actually appear. It is a more complicated process. There are costs implications for that in filing, and if you are unsuccessful in appealing there can be cost orders made against you that might be significant.

We do not at LawRight give significant advice in that area, but we get a lot of people who come in and I usually just sit them down and say, 'Well, what impact is this having on your life? If you don't mind being named in that way—you're going to be separate from that person—you can move on. If your employer knows about it and you don't think it's going to have any impact, the best thing for you and the rest of your life might be to just accept it and continue on,' which I think echoes the advice given at the earlier stage. The inclusion of it as part of this blue card process then means that it may be that those people have to go through a more complicated appeal process to try to change that order, to then go back to Blue Card, which is supposed to be an easier system that they can access. I just thought that was interesting. The next part of that, setting it aside, is actually significantly more complicated than potentially the QCAT process or the blue card process.

CHAIR: Thank you. Surely we need to get it right at the other end, though. Surely for predominantly women who agree and then are labelled in that way and then find themselves in the context that you are describing—surely we need to make the modifications. I trust that the work that Justice McMurdo and her team will do will challenge some of these outcomes. To the majority of Queenslanders, certainly people in that position in my community, it seems an unfair label to accept going forward for the benefit of being separated from the perpetrator. Do you have a comment, Julie?

Ms Sarkozi: I agree. I agree that if we can get it right the first time then we will not have this cascade of really inadvertent consequences, and quite serious consequences. I know that getting it right the first time does require some really significant funding around resourcing, training, cultural attitudes and shifts, especially for first responders, and also resourcing of courts.

I note that earlier there was a question directed to me in relation to whether there is a way this legislation might articulate itself in a way that perhaps could assist in minimising the inadvertent—and I noted in some of the other submissions there were real concerns that the chief executive of Blue Card could take into consideration domestic violence information including police protection notices. Perhaps it is just because I am a lawyer that I say this. The fact is that if somebody admits to a domestic violence order—without admissions, none of the information that is contained in that application should be used against that person, because that is the whole point of what they have done in court. They have said, 'I am not agreeing to have done any of that, but for the sake of expedience, for the sake of just getting out of here to pick up my kids'—and that is what happens—'I am going to agree to this.'

It does concern me a little bit that it is so broad, that it says here in these amendments just 'domestic violence information', and that could include a police protection notice which is made often in the middle of the night when people are very upset. All of the research into trauma response says that people who are traumatised make really bad victims. They look bad. It is very likely that someone who is actually most in need of protection will have a police protection notice made against them. I think it is a little bit about what is the level of evidence that the chief executive should be provided with to be satisfied that they should act on that information.

CHAIR: Are you making that as a recommendation?

Ms Sarkozi: Yes, I am.

Mr BENNETT: In wrapping up, your geographical area of concern is in the three different jurisdictions you mentioned earlier. What about LawRight? Do you cover all of Queensland?

Ms Hancock: We are statewide.

Mr BENNETT: Based here?

Ms Hancock: We are based here and in Cairns.

Mr BENNETT: You have a branch up there, or an office?

Ms Hancock: We have a community health justice partnership up in Cairns, but the court and tribunal services are statewide. We do most of our advice by telephone.

Mr BENNETT: How many others do you call colleagues within LawRight? Are there a number of lawyers?

Mr Maroske: Across the organisation I would say we have 35 staff, maybe 15 to 20 of whom would be lawyers.

Mr BENNETT: All pro bono?

Mr Tuckett: LawRight partners with a lot of member firms. We have staff internally; we have the court and tribunal service team. We have two lawyers in each office in the Federal Court, state courts and also in QCAT. Then we have another arm of the organisation which is outreach clinics and health justice partnerships. All of that is partnered with pro bono. I think at last count we had something like 28 member firms. That might not be the exact number. Then there is the Bar Association as well. We manage a number of lists for those. For a lot of the work that we are doing, the staff lawyers, we are partnering with pro bono firms and barristers to deliver those legal services as well.

Mr BENNETT: I think the work you are doing is great because a lot of people in our society need you, so thank you for that.

CHAIR: Absolutely. I certainly concur with the member for Burnett and deputy chair of the committee. The work that you all do for our most vulnerable people in Queensland is much needed. We certainly appreciate and acknowledge the work that you do for those people. We thank you immensely. Thank you for your time today. We have come to the end of the hearing. Once again, thank you for the contribution you make to legislation here in Queensland. We know that the quality of the legislation would not be what it is without your expertise and input so thank you so much. I declare this public hearing closed.

The committee adjourned at 11.58 am.