

Child Safe Organisations Bill 2024

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Queensland Foster and Kinship Care Submissions – Child Safety Organisations Bill 2024

Opening

The following submissions are made on behalf of Queensland Foster and Kinship Care (QFKC), the Peak body for foster and kinship carers in Queensland.

QFKC supports the establishment of child safe standards and a reportable conduct scheme to promote and protect the rights, interests and wellbeing of children in Queensland. QFKC does not have any submissions to provide in relation to the Child Safe Standards, we believe the introduction of child safe standards into legislation in Queensland will work towards creating a culture that genuinely places children's safety and wellbeing in the center of everything we do.

QFKC's submissions will focus on the Reportable conduct scheme. QFKC submits that there is opportunity in this space to provide an independent oversight that both protects the safety and wellbeing of children and young people with the right to natural justice for foster and kinship carers. There are sections within the Child Safe Organisation bill that speaks to both and QFKC will provide submissions in respect to these.

Meaning of reportable conduct Section 26

The Department of Child Safety, Seniors and Disability Services has a highly regulated system that responds to alleged harm, the definition of which is contained in the Child Protection Act 1999. QFKC is of the firm view the definition contained in the Child Safe Organisations bill aligns with the definition of Harm under the Child Protection Act 1999 and that carers should not experience different layers of investigation and assessment from different government bodies.

Responses to Sections of the Child Safe Organisation Bill 2024

QFKC recognizes potential unintended consequences when considering Reportable conduct in the context of Family based care where volunteer foster and kinship carers are providing care to children and young people in their home

The section which raises most concern for QFKC in the context of family based placements is section 35 and in particular the following

35 (g) if the worker currently performs work for the reporting entity- any action, including risk management action taken in response to the reportable allegation or reportable conviction, including for example

(i) Immediate steps taken to prevent the worker from having contact with children

Child Safety currently have clear regulation, policy and procedures that drive the reporting of harm for children in alternate care and how harm is responded to in family based care. Some of these measures include:



- Requirement to make a decision as to how to respond to the information received within 48 hours of receiving the information
- If the decision is to record a Harm report (meeting definition of Harm as outlined in Section 9 of the Child Protection Act), the child or young person must be sighted within 24 hours and their immediate safety and wellbeing assessed.
- Child Safety will only remove children from family based placements where they have assessed that the child or young person continues to be at immediate risk of harm and there is no steps that can be taken to mitigate this risk of harm
- Decisions to remove children from family based care will need to consider factors such as the harm that would be caused to the children in removing them from their carer.
- Child Safety have a 6 week period to investigate the alleged harm and complete an assessment.
- Procedures then outline possible actions that can be taken when harm has been substantiated, this could include an Action plan where the child remains in the home with the carer and the care team come together to develop a plan that mitigates future risk and ensures the ongoing safety and wellbeing of the child or young person
- Child Safety will not enter into an action plan where the assessment indicates that harm cannot be mitigated through an Action plan. In these instances Child Safety would have already or will take steps to remove children in the placement and either engage a suitability assessor to determine ongoing suitability of carer to hold a carer certificate of approval, or propose to cancel the certificate of approval

The processes currently in place in Child Safety's highly regulated system around reporting harm, places the child at the centre of decision making and ensures that decisions to remove children from family based care (including kin family placements) are balanced in considering potential of systems harm and the need to assess whether harm can be mitigated.

The section above does not properly consider the context of foster and kinship care and children living in homes. QFKC is concerned that such sections of the act will be taken out of context by Child Protection workers and potentially Queensland Child and Family Commission workers, with a very real risk that children and young people will experience more removals from family based care due to this section and implied actions that must be taken under the act to protect children.

Whilst it is hoped and acknowledged that section 25 (e) (f) and (i) will ensure proper education and collaboration between the Commission and Child Safety in the space of reportable conduct and interface with the recording and responding of Harm reports, there is a real risk that if this does not occur there will be more removals of children from family based care. If this occurs, the sector risks a reduction in the amount of foster and kinship care placements and an increase in the amount of children and young people in residential care which goes against all current priorities in this space.



Section 35 (2) (c) speaks to what must be included in an interim report by the head of the reporting entity to the Commission and is an example of the act balancing the rights of those being investigated as follows:

If the worker has made written submissions to the head of the reporting entity in relation to the reportable allegations or reportable conviction, a copy of the workers written submissions

QFKC welcomes this section as it supports natural justice and the right for carers to be heard. Carers are not workers and will not have access to bodies such as Unions or Workplace lawyers to provide them with advice and support in such submissions. Consideration will need to be provided to ensure that carers have access to appropriate support and assistance to complete such submissions.

QFKC currently has a legal program that supports carers in QCAT and Children's court matters, this is only one lawyer however and the position is not full time. QFKC would submit that this program could be further extended to provide support to carers to write submissions in the event reportable conduct is recorded or alternatively QFKC is funded additional hours for QFKC casework staff to support carers in this role. In any event, QFKC is of the firm view that carers should be provided with professional support and assistance to respond to reportable conduct matters.

Section 37 Report by head of reporting entity

Section 37 (2) (i) repeats an earlier section of the act, however this now relates to the outcome rather than the investigation

37 (f) if the worker currently performs work for the reporting entity- any action, including risk management action taken in response to the reportable allegation or reportable conviction, including for example

(i) Immediate steps taken to prevent the worker from having contact with children

QFKC maintains position outlined above as it relates to Section 35 (g) (ii) in the investigation stage as posing the same risk and concern for the outcome stage. It is critical that both the investigation and outcome, and actions taken in both phases, considers the context of the child in a family based placement. It is not a worker being investigated in their work place, it is a carer being investigated in their home and the already regulated system currently in place through delegated decision makers within the Department of Child Safety, Seniors and Disability Services should be relied upon to determine whether the carer is safe to be around the child or not.

Enforcement Measures

41 Commission may monitor reporting entity's investigation



This section references the ability for the Commission to monitor the progress of an investigation conducted by the head of a reporting entity. QFKC welcomes this section and submits that this section balances safety and wellbeing of children with the need for a fair and just process for foster and kinship carers.

Continuous reviews of Harm report processes that QFKC have been involved with over the years have identified systemic issues in the timeframes and completion of Harm reports and carers also not being satisfied that the outcome is reflective of a fair and just process. QFKC is unclear when reading legislation whether the request to monitor an investigation can be made by the person being investigated. It is unclear how the Commission would reach a view that determines it is in the public interest to monitor the progress – QFKC are interested in the guidelines relating to how this would be determined and whether a carer or child or young person could request it. QFKC submits that a carer should be able to request their matter be monitored by the Commission to support a fair and just process.

Disclosure of information to persons affected by investigation

Section 50 speaks to when the Commission makes a finding or becomes aware of a finding that an individual has engaged in reportable conduct, that the Commission must notify the chief executive of the finding, reasons for the finding action and any other relevant information.

The Department of Child Safety, Seniors and Disability services currently have reporting requirements to Working with Children's to advise of any disciplinary action taken in respect to a foster or kinship carer. This does not include the outcome of a harm report, even if substantiated, only if the outcome then results in Child Safety cancelling or not renewing a carer certificate of approval. It is reasonable and a necessary action for Working with Children's to know when Child Safety have made a decision that a carer is no longer deemed suitable to be approved as a foster or kinship carer and this usually results in Bluecards issuing a please explain to the previous carer and in most circumstances, their Bluecard will be cancelled.

Child Safety did, during a period of time, provide Working with Children's with all outcomes of harm reports, even when this did not result in disciplinary action towards carers. This led to carers Bluecards being cancelled and children being removed from kin placements and long term foster care placements where Child safety had deemed them safe. This practice led to Child Safety only providing to Working with Children's the required information from them, which was specifically to do with carer status.

The system therefore already knows what the unintended consequences of this particular section of the Child Safe organization bill will have on carer families and the children they care for. The Bluecard system and their assessment of someone's ability to hold a blue card sits very separately to Child safety's assessments. Child Safety's assessments should be the one relied on to determine whether a child or young person is considered to be safe in the home of an approved carer family.



Whilst it is acknowledged that there is currently a bill before parliament that will hopefully see the removal of Bluecards for kinship carers, therefore removing this unintended consequence for kin families, the risk will still be there for foster carer families, who the children or young people themselves often view as their significant family.

QFKC advises caution in this section and worries about the impact on children and young people in carer families and the decision around their placement effectively being removed from Child Safety due to a carers Bluecard being cancelled despite Child Safety assessing them as safe to care for children and young people

Review of Decisions

QFKC is interested in understanding review rights as they relate to section 98 (c)

Each of the following is reviewable decision ; a finding by the commission that a worker has engaged in reportable conduct on an investigation conducted on the commissions own initiative under section 43

Currently carers across Queensland do not have any external avenue of review available to them outside of Child Safety in respect to outcomes of harm reports. This can be extremely frustrating for carers where they do not feel there has been a fair and just process. Whilst there are internal avenues of complaints/reviews available to carers these often cannot go past a regional level when an internal Regional practice review has been completed. The issue QFKC has raised with Child Safety's Complaint's Unit is that internal reviews rely on the information in Child Safety's own system to determine the outcome of the review which will of course support the original finding. Most Harm report reviews QFKC have been involved in are limited to desktop reviews despite carers raising concern that the outcome is not reflective of all the information that should have been gathered to inform a fair and just outcome.

For the above reasons, QFKC would support the ability for carers to bring a finding of reportable conduct (substantiated harm) to QCAT for independent consideration. This would ensure rights to natural justice when findings are being recorded and reported to multiple independent entities (the Commission and Working with Children's) and consequences can result in outcomes such a carer losing their Bluecard. This outcome may not just have ramifications in respect to their role as a carer, if the carer holds a position outside of their carer role that requires a Bluecard, this could result in loss of employment also. The consequences of substantiated harm reports are serious for carers so there should be proper processes in place that ensure independent examination of findings. It is important to note that when Bluecards are told of a substantiated harm finding, their role is not to reinvestigate findings, they will rely on the findings made by Child Safety to determine



their outcomes. The issue with this is that if a carer loses their Bluecard due to the findings, when they go to QCAT to appeal a decision around the loss of their Bluecard, they are unable to request the original findings be reinvestigated, nor can Bluecards undertake a reinvestigation so there will of course be reliance on Child Safety's finding.

Summary

QFKC submits that a Reportable conduct scheme that is transparent, open and accountable will have a dual role of keeping children and young people safe, whilst balancing the rights for those accused of reportable conduct to have access to a process that ensures natural justice through sound investigations.

When reading through this act, it is critical that we understand the context of family based care is very different to that of an environment where a worker is reported to have engaged in reportable conduct. We must ensure that an appropriate lens is applied for children and young people in homes being cared for by volunteers where there is already a highly regulated system in place to protect children and young people from harm and risk of harm. This Bill has the ability to build on this by ensuring those tasked with investigating harm for children and young people in care, undertake a process that is child centered, transparent and in line with a Child Safety system that is highly regulated. It is important however that this Bill does not cause unintended consequences that result in the adaption of risk adverse assessments leading to removal of children from family based care that previously would not have been removed.

The need for education in the Child Protection sector is critical and will require an ongoing commitment with recognition of staff turnover. Education and understanding will reduce the likelihood of unintended consequences occurring which will result in adverse outcomes for children and young people and the system as a whole.

The need for appropriate messaging to carers in Queensland is also essential so that they do not see this as yet another government organization watching over them. Rather an independent body that is watching over the system as a whole to ensure the safety and wellbeing of children and young people and that the systems in place surrounding reportable conduct are fair, just, transparent and accountable.

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