Child Safe Organisations Bill 2024

Submission No: 12

Submitted by: Queensland Indigenous Family Violence Legal Service

Publication:

Attachments:

Submitter Comments:

QIFVLS

Queensland Indigenous
Family Violence Legal Service

Submission regarding the *Child Safe Organisations* Bill 2024

5 July 2024

The Queensland Indigenous Family Violence Legal Service (QIFVLS) Submission to the 57th Queensland Parliament Community Support and Services Committee regarding the Child Safe Organisations Bill 2024 (the Bill)

Executive Summary

Queensland Indigenous Family Violence Legal Service (QIFVLS) Aboriginal Corporation ('QIFVLS') welcomes the opportunity to provide a submission regarding the *Child Safe Organisations Bill* 2024 (the Bill).

As a Family Violence Prevention Legal Service provider, a member of the National Family Violence Prevention Legal Service Forum and member of the Coalition of Peak Aboriginal and Torres Strait Islander peak organisations (Coalition of Peaks), QIFVLS is dedicated to achieving the priority reforms and socio-economic targets outlined in the National Agreement on Closing The Gap (the National Agreement). In this context, QIFVLS is particularly dedicated to achieving Target 13 (reducing family violence against women and children by at least 50%, towards zero by 2031), in conjunction with the remaining targets (especially targets 10,11 and 12) and priority reforms.

We understand that the Bill adopts nationally consistent child safe standards (CSS) and establishes a reportable conduct scheme (RCS) in response to the recommendations of the Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission).

QIFVLS supports the establishment of the Bill and the overall intent of the Queensland Government in adopting an integrated child safe organisations system that requires and supports organisations to implement the CSS while also providing oversight of reportable conduct through an RCS. We welcome the decision to install the Queensland Family and Child Commission (QFCC) as the independent body charged with oversight of the CSS and RCS.

We are mindful that the CSS are intended to apply to a broad range of sectors working with children in institutional settings. We welcome the inclusion of justice and detention services, as provided for in Schedule 1 of the Bill, noting that this acknowledges our long-held concerns around conditions in youth detention and out-of-home care for young people. Given the crossover between children on orders and who are in youth detention and the child protection system, and their experiences as victim-survivors of domestic and family violence (DFV), our perspective is important for the government to consider.

Recommendations

In supporting the passage of the Bill, QIFVLS makes the following recommendations:

1. Passage of the Bill must provide an opportunity for government agencies, sector regulators, child safe entities, reporting entities and Aboriginal and Torres Strait Islander community-controlled organisations to work together to ensure cultural safety for Aboriginal and Torres Strait Islander children and young people.
2. The guidelines outlined under clause 108 of the Bill are critical in terms of the guidance for all organisations operating under the Bill.
3. While the Bill establishes a universal principle in addition to the 10 child safe standards, our preference is to include the universal principle as Child Safe Standard 1 of 11 child safe standards.

4. In addition to reviewing the Act, we call for a periodic review of the CSS and RCS.
5. Smaller entities, particularly Aboriginal and Torres Strait Islander entities need comprehensive assistance and guidance in complying with their obligations under the CSS and RCS.
6. Consideration should be given to including a provision in the Bill allowing smaller reporting entities to refer an investigation to the Commission or to an independent investigator.
7. We are concerned that exemptions for certain organisations/reporting entities under the RCS creates a system where certain organisations operate without external accountability.

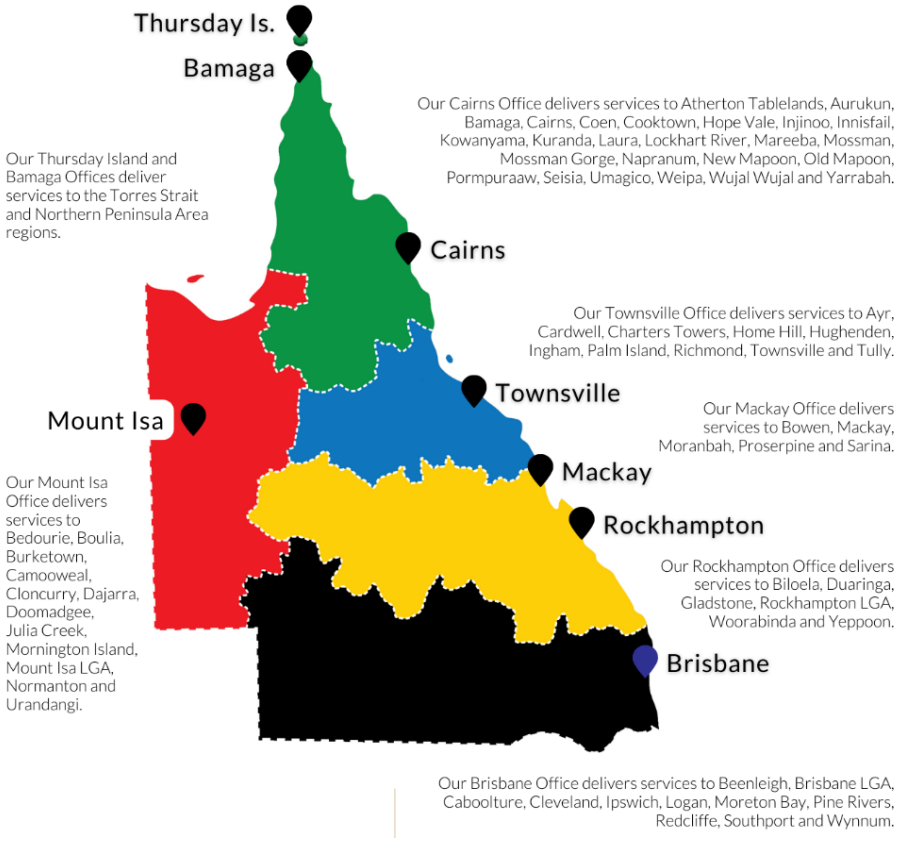
About QIFVLS

QIFVLS is a not-for-profit legal and non-legal service provider formed under the Family Violence Prevention Legal Services Program ('FVPLSP') through the Department of Prime Minster and Cabinet's Indigenous Advancement Strategy ('IAS'). FVPLSP fills a recognised gap in access to culturally appropriate legal services for Aboriginal and Torres Strait Islander victims of family and domestic violence and sexual assault.

QIFVLS is one of fourteen (14) Family Violence Prevention Legal Services ('FVPLSs') across Australia and one of the thirteen (13) FVPLSs that are part of the National Family Violence Prevention Legal Service ('NFVPLS') Forum. We are one of two Aboriginal and Torres Strait Islander community-controlled family violence prevention legal service providers in Queensland.

QIFVLS is exclusively dedicated to providing legal and non-legal support services to assist Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault with a breadth and scope of services which stretch to the Torres Strait. Together with its legal services, QIFVLS can be distinguished from other legal assistance providers through its advantage in providing unique, specialised, culturally safe and holistic assistance from the front-end via a wrap-around case management model that embraces early intervention and prevention. We advocate this model in supporting access to justice and keeping victim-survivors of family violence safe.

QIFVLS services 91+ communities across Queensland including the Outer Islands of the Torres Strait, neighbouring Papua New Guinea and provides services in the areas of domestic and family violence; family law; child protection; sexual assault and Victims Assist Queensland (VAQ) applications. QIFVLS supports its clients through all stages of the legal process: from legal advice to representation throughout court proceedings. In addition, QIFVLS responds and addresses our clients' non-legal needs through our integrated non-therapeutic case management process, which is addressed through the identified role of the Case Management Officer. QIFVLS as a practice, provides a holistic service response to our clients' needs: addressing legal need and addressing non-legal needs, which have in most cases, brought our clients into contact with the justice system in the first place.



As demonstrated by the above map QIFVLS is mainly an outreach service where our teams go into rural and remote communities to meet with clients. QIFVLS services over 90+ Aboriginal and Torres Strait Islander communities throughout Queensland. Recognising that Queensland is nearly five (5) times the size of Japan; seven (7) times the size of Great Britain and two and a half (2.5) times the size of Texas[1], QIFVLS has eight (8) offices in Queensland –

(1) a service delivery office in addition to its Head Office located in Cairns, responsible for servicing Cape York communities, Cooktown; Atherton Tablelands, Innisfail, and Yarrabah (and communities in between).
(2) a service delivery office in Bamaga responsible for servicing Cape York communities as far north as Bamaga and Umagico.
(3) a service delivery office on Thursday Island responsible for servicing communities stretching to the Outer Islands of the Torres Strait, neighbouring Papua New Guinea.
(4) a service delivery office in Townsville responsible for servicing Townsville, Palm Island, Charters Towers, Richmond and Hughenden (and communities in between).
(5) a service delivery office in Mackay responsible for servicing Mackay and Sarina (and communities in between).
(6) a service delivery office in Rockhampton responsible for servicing Rockhampton, Woorabinda, Mt Morgan, Biloela (and communities in between).
(7) a service delivery office in Mount Isa responsible for servicing Mount Isa, the Gulf of Carpentaria communities, as far south as Bedourie and across to Julia Creek (and communities in between).
(8) a service delivery office in Brisbane responsible for servicing the Brisbane local government area.

[1] https://www.qld.gov.au/about/about-queensland/statistics-facts/facts

Family violence as the cornerstone

It may be startling for some to learn that 3 in 5 First Nations women have experienced physical or sexual violence[2]. This speaks to the crisis we witness as a family violence prevention legal service daily across our offices in Queensland.

The Australian Institute of Health and Welfare (AIHW) has found that First Nations women are 34 times more likely to be hospitalised due to family violence than non-Indigenous women and 11 times more likely to die due to assault[3].

The scale of this problem, however, is far greater because it is known that First Nations women are less likely than other women to report family violence or seek support because of a range of factors including judgment, discrimination, shame or fear. This depressing backdrop informs QIFVLS' experience that family violence is the cornerstone or intersection, that links an Aboriginal and Torres Strait Islander person's connection to the child protection system, the youth justice system, adult criminal justice system, housing and/or homelessness, health and the family law system.

We find that these 'connectors' are further compounded or exacerbated for those living in regional, rural, and remote parts of Australia, where there are restrictions on the availability of actual on the ground services to assist a victim-survivor escaping a violent relationship[4] (i.e., domestic violence support services and shelters; actual police presence within a community).

Through our staff's observations in these diverse communities, the unique difficulties regional, rural and remote communities face in service delivery emphasise the necessity of governments working together in a coordinated approach that empowers the many diverse local communities to develop solutions and systems to combat family and domestic violence. Thus, QIFVLS is a strong advocate for uniform, holistic and consistent strategies that will improve responses in family violence, sexual violence, policing and criminal justice, child protection systems, housing and corrective services. This approach aligns with the priority reforms under the National Agreement on Closing the Gap.

Family violence and child safe organisations

For the purposes of our feedback, we believe it is pertinent to mention our daily observations of the links between family violence and the experiences of child victim-survivors of DFV.

The AIHW has previously found that family violence is the primary driver of children being placed into the child protection system with 88% of First Nations children in care having experienced family violence[5].

We are also aware of government data revealing that at least 60% of all Aboriginal and Torres Strait Islander children in youth detention have experienced or been impacted by domestic and family violence[6].

In that regard, we see opportunities for Queensland's CSS and RCS to account for the experiences of Aboriginal and Torres Strait Islander children. Our core concern is to ensure that Queensland's CSS and

[2] Australian Human Rights Commission (2020), *Wiyi Yani U Thangani Report*, https://humanrights.gov.au/sites/default/files/document/publication/ahrc_wiyi_yani_u_thangani_report_2020.pdf, page 44
[3] Australian Institute of Health and Welfare (2019), *Family, domestic and sexual violence in Australia: continuing the national story,* https://www.aihw.gov.au/getmedia/b0037b2d-a651-4abf-9f7b-00a85e3de528/aihw-fdv3-FDSV-in-Australia-2019.pdf.aspx?inline=true, page 113
[4] Australian Institute of Health and Welfare (2016-17), *Alcohol and other drug use in regional; and remote Australia: consumption, harms, and access to treatment* 2016-17. Cat.no. HSE 212. Canberra.
[5] Australian Institute of Health and Welfare (2019), *Family, domestic and sexual violence in Australia: continuing the national story,* https://www.aihw.gov.au/getmedia/b0037b2d-a651-4abf-9f7b-00a85e3de528/aihw-fdv3-FDSV-in-Australia-2019.pdf.aspx?inline=true
[6] https://www.cyjma.qld.gov.au/resources/dcsyw/youth-justice/reform/youth-justice-report.pdf

RCS directly address human rights obligations and cultural safety for Aboriginal and Torres Strait Islander children. We feel this has greater significance given the Queensland Parliament's actions last year in twice overriding the *Human Rights Act 2019* in the course of youth justice amendments.

Cultural safety in child safe entities and reporting entities

A key consideration for QIFVLS in reviewing this Bill lies in ensuring cultural safety from organisations towards Aboriginal and Torres Strait Islander children. The Bill's inclusion of a universal principle that promotes and protects the rights of Aboriginal and Torres Strait Islander children is welcomed. Nevertheless, it is significant to emphasise that we cannot rely on legislation alone to ensure that our children are safe.

From our vantage point, the legislation needs to be supported by action and a coordinated effort across government agencies and organisations who deliver services to children, or which directly affect children. As a member of the Coalition of Peaks, we strongly believe that there is room for government agencies to work in partnership with ACCOs by leaning into the priority reforms under the National Agreement. This sentiment has been supported by the Productivity Commission in its groundbreaking review in 2024 into government implementation of the priority reforms under the National Agreement.

Partnership with community-controlled organisations could take the form of:

- ACCOs and / or Aboriginal and Torres Strait Islander -run organisations being engaged to provide training to mainstream organisations and sector regulators regarding cultural competence and capability. Ongoing training would be a start in ensuring that organisations and sector regulators are adequately and appropriately catering to the interests of Aboriginal and Torres Strait Islander children and young people.
- Guidelines that signal the need to respect and promote the role of ACCOs and Aboriginal and Torres Strait Islander service providers/child safe entities' unique role in supporting Aboriginal and Torres Strait Islander families and communities to protect, care for and nurture our children and young people.

Clause 108 Guidelines

We note that Clause 108 will empower the Commission to make guidelines, consistent with the Act to provide guidance to entities about matters relating to the operation of the Act or the Commission's functions.

This may accordingly be the most important provision in the Bill given the scope of support, guidance and education for all who are required to interpret and refer to the Bill. As a starting point, we believe that the inclusion of the universal principle reflects the necessity for the guidelines to prioritise cultural safety. It would also be in the best interest of Aboriginal and Torres Strait Islander children and young people for the guidelines to mandate that the Commission, sector regulators, government agencies and non-government agencies work closely with relevant ACCOs and peak bodies.

Insofar as the investigation of reportable allegations, we support the Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) in calling for principles that:

- Aboriginal and Torres Strait Islander people should be leading investigations conducted in relation to Aboriginal and Torres Strait Islander children. This is in line with Queensland's CTG commitments, as well as research and evidence about effectively ensuring cultural safety for Aboriginal and Torres Strait Islander children.
- Investigations should be carried out in an independent manner to ensue natural justice. This should include an enabling provision which allows the investigation to be referred to a relevant Aboriginal and Torres Strait Islander organisation with appropriate experience to undertake such work.

- The final report on a reportable allegation is provided in a timely manner so as to ensure individuals and communities ae able to move forward without spending indefinite periods with incomplete matters/investigations.

We anticipate that the Guidelines will need to include a standard for investigations. Separate to the Guidelines, is the question of the level of investigative training given to the relevant Investigating Officer within the entity who is tasked with conducting an investigation.

The universal principle

We strongly support the addition of a child safe standard requiring child safe entities to provide an environment that promotes and protects the right to cultural safety of children who identify as Aboriginal or Torres Strait Islander persons.

We acknowledge the significance of the universal principle in the proposed s10(2) of the initial exposure draft and welcome its inclusion. Our preference however would have been to follow the example in Victoria's *Child Wellbeing and Safety Act 2005* (Vic), noting that Victoria have incorporated the universal principle relating to Aboriginal and Torres Strait Islander children as an eleventh standalone standard within the CSS. Specifically, the Victorian CSS includes the universal principle as Child Safe Standard 1.

While the universal principle is a much-needed development, we fear that the universal principle has the potential to be easily overlooked and sidelined by organisations and child safe entities across the board in terms of compliance. This is especially so with references to *the child safe standards and the universal principle*. Inclusion as one of the eleven standards on the other hand requires that all standards are considered without hesitation.

Repeating our support for a dedicated Aboriginal and Torres Strait Islander Child Commissioner

We welcome the commitment of the government to appoint an Aboriginal and Torres Strait Islander Children's Commissioner, in their announcement of the *Community Safety Plan for Queensland*. Aside from being an action committed to by all state and territory governments, the Commission's key oversight role alongside the introduction of a universal principle highlight the necessity for a dedicated Aboriginal and Torres Strait Islander Child Commissioner. The Commissioner will also be relied upon for external accountability alongside being a key advocate in promoting and protecting the rights of Aboriginal and Torres Strait Islander children in Queensland.

Review of the legislation, RCS and CSS

While Clause 109 of the Bill provides for a review of the Act, we also advocate for a periodic review of the Reportable Conduct Scheme (as called for in Recommendation 7.11 of the Royal Commission), alongside a periodic review of the operation of the Child Safe Standards.

Guidance for smaller organisations regarding the RCS

We are concerned about how the RCS will operate once in effect, from the standpoint of smaller organisations. Our focus in this regard is smaller Aboriginal and Torres Strait Islander organisations in regional, rural and remote areas. Without seeing the Guidelines, we have no information on the level of guidance to be provided to smaller reporting entities.

Our observation is that there are a raft of organisations operating in a landscape beset by funding and resourcing shortfalls. The importance of ensuring adequate and competent investigations of reportable allegations necessitates time and resourcing. This underlines our concerns about the ability of smaller organisations to conduct their own investigations.

Capacity and resourcing of smaller entities to conduct their own investigations

Our view is that requiring entities to conduct investigations may be quite onerous, particularly where there are shortfalls in funding, resourcing and capacity to carry out investigations.

We propose that the Bill could be enhanced by adopting provisions contained within Victoria's *Child Wellbeing and Safety Act 2005*. We understand that clause 43 provides that the Commission can investigate a reportable allegation it believes the reporting entity has failed to investigate or is reasonably unable to investigate under section 36.

> **43 Commission may investigate reportable allegation or reportable conviction**
> (1) The commission may, on the commission's own initiative, investigate a reportable allegation or reportable conviction if
> any of the following apply—
> (a) the commission—
> (i) believes the allegation or conviction relates to a worker of a reporting entity; and
> (ii) considers it is in the public interest that the commission investigate the allegation or conviction;
> (b) the commission believes the head of the reporting entity required to investigate the allegation or conviction has failed to investigate, or is reasonably unable to investigate, under section 36;

Despite the presence of s43(1)(b), we feel there is still a gap in relation to determining that a reporting entity is reasonably unable to investigate. Perhaps this will be outlined under the proposed guidelines under Clause 108?

In the absence of further guidance, we suggest that the Bill adopt the section 16N in Victoria's *Child Wellbeing and Safety Act 2005* (Vic). Section 16N provides that:

> **16N Head of entity to respond to reportable allegation**
> (1) As soon as practicable after the head of an entity becomes aware of a reportable allegation against an employee of the entity, the head must—
> (a) investigate the reportable allegation ***or permit a regulator, or an independent investigator engaged by the entity or regulator, to investigate the reportable allegation;*** and
> (b) inform the Commission of the identity of the body or person who will conduct the investigation.
> (2) If the Commission requests in writing that the head of the entity provide to the Commission information or documents relating to a reportable allegation or an investigation, the head of the entity must comply with the request.
> (3) As soon as practicable after an investigation has concluded, the head of the entity must give the Commission—
> (a) a copy of the findings of the investigation and the reasons for those findings; and
> (b) details of any disciplinary or other action that the entity proposes to take in relation to the employee and the reasons for that action; and
> (c) if the entity does not propose to take any disciplinary or other action in relation to the employee, the reasons why no action is to be taken.

For completeness and context, section 16O is also included below:

> **16O Commission may investigate reportable allegation**
> (1) The Commission, of its own motion, may conduct an investigation concerning a reportable allegation against an employee of an entity if the Commission—
> (a) receives information about the reportable allegation from any person; and
> (b) believes on reasonable grounds that reportable conduct may have been committed by an employee of the entity; and
> (c) considers that it is in the public interest that the Commission investigate the reportable allegation.
> (2) The Commission, of its own motion, may conduct an investigation concerning a reportable allegation against an employee of an entity if the Commission is advised by the entity or a regulator of the employee that the entity or regulator will not or is unable to—
> (a) investigate the reportable allegation; or
> (b) engage an independent investigator to investigate the reportable allegation.
> (3) The Commission, of its own motion or in response to a complaint, may conduct an investigation concerning any inappropriate handling of, or response to, a reportable allegation by an entity or a regulator if the Commission considers that it is in the public interest to do so.
> (4) At the conclusion of an investigation by the Commission and after consultation with the relevant regulator, the Commission—
> (a) must make findings, give reasons for the findings and make recommendations, if any, for action to be taken with respect to the matter investigated; and
> (b) must provide to the entity the findings, reasons and recommendations, if any, of the Commission, together with any necessary information relating to the recommendations; and
> (c) may provide to the regulator the recommendations of the Commission for action to be taken by the regulator.

On the basis of the above from the Victorian legislation, we would support clear provisions in the Queensland Act that enable a smaller reporting entity with the option to refer an investigation to a regulator or independent investigator.

Exemptions for certain organisations

We note that clause 39 of the Bill allows the Commission to exempt a reporting entity from complying with obligations to make reports under the RCS. We understand the rationale for this provision, noting that the Royal Commission recommended that the RCS should provide for the power to exempt any class or kind of conduct from being reportable conduct. We also understand that these larger reporting entities will still be required to investigate reportable conduct. The only distinction being that they do so without the oversight of the Commission.

Despite the underlying reasoning, we wish to highlight that it creates in QIFVLS some unease given that the RCS will potentially have a raft of smaller organisations who will require a great deal of assistance to be able to comply with their obligations. In this regard, we call for greater assistance and oversight for smaller reporting entities. On the other hand, exempting larger organisations/reporting entities from complying with their obligations creates the perception that certain reporting entities will escape external or independent accountability.

In the context of a lager, well-resourced reporting entity being exempt from Commission oversight, we raise the example of Queensland being yet to fully implement its requirements under the Optional Protocol for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). In this

regard, we are aware that the QFCC has specifically commented that implementing our requirements under OPCAT would significantly improve independent oversight of youth detention facilities[7].

In our current climate with youth justice being a prescient issue, we believe that clarity regarding oversight of conditions for children in detention and out-of-home care is vital, especially given the proposal for the operation of an independent oversight body with responsibility for Queensland's proposed RCS. We are optimistic in the knowledge that QFCC has independent oversight.

Conclusion

We take this opportunity to thank the Committee for considering our feedback. We trust that the Committee appreciates our viewpoint as both an Aboriginal and Torres Strait Islander Community Controlled Organisation and Family Violence Prevention Legal Service.

[7] Queensland Family and Child Commission, *Child Rights Report 2023*, https://www.qfcc.qld.gov.au/sites/default/files/2023-08/QFCC%20Child%20Rights%20Report%202023%20%281%29.pdf page 32