

Child Safe Organisations Bill 2024

Submission No:	15
Submitted by:	Queensland Aboriginal and Torres Strait Islander Child Protection Peak Limited
Publication:	
Attachments:	
Submitter Comments:	



ChildProtectionPeak

Queensland Aboriginal and Torres Strait Islander
Child Protection Peak Limited
Submission on Child Safe Organisations Bill 2024

qatsicpp.com.au

Acknowledgement of Country

QATSICPP would like to acknowledge the traditional custodians across all the lands that make up the state of Queensland. We would like to acknowledge the oldest living culture of Aboriginal and Torres Strait Islander peoples and the continued connections to Country, language, and tradition. We would like to acknowledge Elders past and present and acknowledge future generations of Aboriginal and Torres Strait Islander children and young people and the bright future they will have.

Contents

Acknowledgement of Country	2
Introduction	3
Related Reforms/Impact of reform	4
First Nations Led Decision Making.....	4
QATSICPP Feedback on specific aspects of the Bill.....	7
Child Safe Standards Scheme.....	7
Universal standard of cultural safety.....	7
Reportable Conduct Scheme	7
Definition of ‘Reporting Entity’	7
Timeframes for reporting to QFCC.....	8
RCS Investigations – Vicarious allegations.....	9
RCS Investigations – Principles.....	9
RCS Investigations – Process.....	9
Implementation considerations.....	10
CSS.....	10
RCS	11
Conclusion.....	11
End Notes.....	11

Introduction

The Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) is the peak body representing thirty-eight (38) Aboriginal and Torres Strait Islander community-controlled child and family organisations working in child, youth and family support across Queensland. From practical resources to policy advice, our team pursue outcomes that are in the interest of our children, families, and communities.

QATSICPP welcomes the opportunity to provide input on the *Child Safe Organisations Bill* (the Bill). QATSICPP and our members are committed to our overarching purpose and vision that all Aboriginal and Torres Strait Islander children and young people are physically, emotionally, culturally and spiritually strong; live in safe, caring and nurturing environments within their own families and communities; and are afforded the same life opportunities available to other children and young people to achieve their full potential. This includes access to safe and secure organisations and institutions.

However, as outlined in the Royal Commission into Institutional Responses to Child Sexual Abuse (the ‘Royal Commission’), many children have experienced harm and neglect in the institutions where they have played, learnt and lived. This is unacceptable.

Although QATSICPP agrees with a consistent and clear approach to addressing children’s safety in institutions, we have some concerns about potential negative impacts of the CSS and RCS on

our members that risk creating additional regulatory burdens as opposed to culturally safe and responsive organisations.

Our submission outlines a range of proposed amendments to the Bill to ensure that any new regulatory system is culturally safe and features Aboriginal and Torres Strait Islander people overseeing systems that provide services and care for our children and young people.

Related Reforms/Impact of reform

In Queensland, as is the case across the nation, Aboriginal and Torres Strait Islander children and young people are drastically overrepresented in out-of-home care.ⁱ Currently less than 50 percent of First Nations children in out-of-home care live with their kin, meaning that most live with foster carers or are in residential care – with strangers.ⁱⁱ

In 2017, the Queensland Government released the *Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and families 2017-2037*, offering a generational approach to supporting Aboriginal and Torres Strait Islander children and families. The strategy represents a shared commitment to eliminating the disproportionate representation of Aboriginal and Torres Strait Islander children in statutory out-of-home care, by 2037.

Recent commitments by the Queensland Government have answered calls in the *Our Way* strategy and *Closing the Gap* agreement. These include a commitment to transfer out-of-home care services for Aboriginal and Torres Strait Islander children to Aboriginal and Torres Strait Islander Community Controlled Organisations (the ‘Strategic Reform’). This is in line with the Queensland Government’s commitment to work closely with Aboriginal and Torres Strait Islander Community Controlled Organisations (ATSICCO) sector to design and implement programs and service models that respond to the needs of Aboriginal and Torres Strait Islander families, particularly within a child protection context.

This ambitious Strategic Reform process is underway and will require a comprehensive, considered and collaborative approach to ensure success. As the peak body representing and supporting the Aboriginal and Torres Strait Islander child and family support services in Queensland, QATSICPP will play a pivotal role in supporting ATSICCOs to ensure better outcomes for Aboriginal and Torres Strait Islander children and families. For some of our members, they will be moving into providing out-of-home care for children and young people for the first time. It is imperative that all new regulations and subsequent support systems ensure that they are culturally safe and practical for this new and emerging sector.

First Nations Led Decision Making

Any new regulatory systems must work with Aboriginal and Torres Strait Islander leadership to prevent the continued implementation of ineffective and harmful systems that disempower Aboriginal and Torres Strait Islander people. The Bill will create a scheme with long reaching impacts on the lives of the individuals involved. It is critical the Bill considers the question of who makes individual and systemic decisions about Aboriginal and Torres Strait Islander children under the CSS and RCS.

As outlined in the Consultation Regulatory Impact Statement (CRIS) and by the Royal Commission, connection to culture is a protective factor for Aboriginal and Torres Strait Islander children, and the absence of cultural safety can compound the risk of abuse for Aboriginal and Torres Strait Islander children in institutions by creating barriers to disclose and inhibiting their access to appropriate support.ⁱⁱⁱ To this end QATSICPP supports the introduction of a universal principle of cultural safety in the proposed Child Safe Standards (CSS) scheme

and as a guiding principle in the administration of the proposed Reportable Conduct Scheme (RCS) .

However, for these commitments to effectively improve cultural safety for Aboriginal and Torres Strait Islander children further amendments to the Bill are required which ensure that Aboriginal and Torres Strait Islander communities will be leading how the CSS and RSS is applied for First Nations children.

It is critical to understand that the process of creating and maintaining cultural safety for Aboriginal and Torres Strait Islander children is an inherently cultural process that must be carried out by First Nations people themselves. The SNAICC resource *Keeping Our Children Safe: Cultural Safety and the National Principles for Child Safe Organisations* supports this, stating:

“In a culturally safe environment, Aboriginal and Torres Strait Islander children and families define what is comfortable and safe...Everyone, regardless of cultural background, makes decisions through a cultural lens which shapes a person’s view of what is ‘normal’. As all decisions – no matter how simple or complex – are made through this lens, everyone needs to recognise and remember that if you are not an Aboriginal and/or Torres Strait Islander person, your cultural lens is different.”

QATSICPP member organisations have shared experiences of being audited through current sector regulatory mechanisms where non-Indigenous accreditors were assessing the cultural safety of Aboriginal and Torres Strait Islander Community Controlled Organisations (ATSICCOs), a process which they felt itself was culturally unsafe.

QATSICPP does not believe that it is appropriate for non-Indigenous people to be making decisions about the cultural safety of Aboriginal and Torres Strait Islander people and leading regulation in the areas outlined in the new bill.

QATSICPP acknowledges the intention outlined in the explanatory note for the Bill that guidance for cultural safety will be led by Aboriginal and Torres Strait Islander peoples within and external to the proposed oversight body, the Queensland Family and Child Commission (QFCC), however this commitment lacks detail and strength (it is not included in the Bill itself). To address this, QATSICPP proposes the Bill be amended to enshrine a lead role for Aboriginal and Torres Strait Islander people in the implementation and operation of the RCS and CSS at both an individual and systemic level.

Enshrining a role for Aboriginal and Torres Strait Islander led decision making in the operation of the CSS and RCS would enable a range of positive implementation measures including:

- The establishment of an independent Aboriginal and Torres Strait Islander Commissioner, which the Queensland Government has committed to through *Safe and Supported: Framework for protecting Australia’s children* and the *Community Safety Plan*.^{iv} This Commission should lead the implementation of the RCS and CSS schemes for First Nations children and relevant organisations.

- Department of Child Safety, Seniors and Disability Services (DCSSDS) and Department of Justice and Attorney General (DJAG) establishing an Aboriginal and Torres Strait Islander Governance Committee comprised of leaders from Aboriginal and Torres Strait Islander Community Controlled Sector and QATSICPP to:
 - Ensure that the needs and considerations of community-controlled organisations are considered in the design, implementation and monitoring of the CSS and RCS.
 - Oversight of all learning, development, and capacity building training for Aboriginal and Torres Strait Islander organisations that is proposed under the implementation processes for the scheme.^v
 - Oversight activities related to cultural safety in both the CSS and RCS
- Supporting improved cultural capability for non-Indigenous service providers working with First Nations children.
- Provision of advice about the means to ensure a culturally safe process is embedded in the oversight of the CSS and RCS.

This approach is supported by research and the Queensland Government's own commitments. Butler (2021) in examining Indigenous child and family system in Australia and North America, identified that:

" the need for accountability mechanisms is critical to embed self-determining systems in Australia. The establishment of a National Aboriginal and Torres Strait Islander Children Commissioner as well as in State and Territories who can hold governments accountable and track the progress of key child protection reforms will be paramount to ensure this is enabled."^{vi}

QATSICPP's proposals are grounded in the voices of over 900 Aboriginal and Torres Strait Islander community members consulted as part of the development of the *Breaking Cycles Action Plan* under the *Our Way* strategy, who called for more culturally safe complaints and accountability mechanisms across a range of sectors.

In response to this the 2023-2026 Breaking Cycles Action Plan includes an action to

Action 1.7 Develop and implement culturally safe and responsive complaints management policy, processes and practice to improve Aboriginal and Torres Strait Islander peoples and organisations experience with government agencies that play a role in the lives of their children and families.

QATSICPP's proposed amendments to the Bill are also in line with the Queensland Government's commitments to the National *Close the Gap* agreement, which commits governments to priority reforms through which Aboriginal and Torres Strait Islander people are empowered to share decision-making authority with governments.^{vii}

QATSICPP acknowledges the intent of the current Bill to create culturally safe process for First Nations children. However, to better enable well-resourced and more meaningful implementation, the Bill needs to provide a more explicit direction that for Aboriginal and Torres Strait Islander children, the RCS and CSS implementation needs to be led by Aboriginal and Torres Strait Islander people.

QATSICPP Feedback on specific aspects of the Bill

Child Safe Standards Scheme

Universal standard of cultural safety

Whilst QATSICPP supports the inclusion of a universal principle of cultural safety in the CSS, the Bill would benefit from the addition of explicit provisions to support Aboriginal and Torres Strait Islander decision making in the application and monitoring of the CSS. As outlined earlier in this submission, existing sector regulatory processes are already creating culturally unsafe situations through the use of non-Indigenous accreditors to conduct cultural safety assessments on ATSICCOs. To ensure its meaningful application, adherence to the universal principle needs to be monitored by Aboriginal and Torres Strait Islander people, who are uniquely placed to make decisions on cultural safety.

To this end, QATSICPP calls for amendments to the Bill which:

- Enshrine an Aboriginal and Torres Strait Islander led process for the development and ongoing monitoring of mechanisms to ensure compliance with the universal principle of cultural safety by organisations in scope for the CSS. This mechanism could then be embedded into the accreditation and compliance processes of the Human Standards Quality Framework (HSQF), which QATSICPP understands will be the sector regulatory mechanism for the CSS for organisations working in child, youth and family support sector. The HSQF system needs further refinement and workforce development to be a fit for purpose regulatory regime for implementing the CSS with Aboriginal and Torres Strait Islander children as it is not currently appropriate for assessing questions of cultural safety. This work should be led by the Aboriginal and Torres Strait Islander Children's Commissioner.
- It is important to note that ATSICCO's by their definition and operational structures are culturally driven organisations that have cultural safety embedded in their design, operations and delivery of services. This is what makes them successful in engaging and supporting Aboriginal and Torres Strait Islander children and families. This must be acknowledged and incorporated into any regulatory frameworks that are developed to assess these standards within ATSICCO's or the regulatory burden could be unnecessarily increased.

Reportable Conduct Scheme

Definition of 'Reporting Entity'.

Clause 29 of the Bill defines organisations that will be required to participate in the Reportable Conduct Scheme as those that care for, supervises or exercises authority over Children and would fit within the list outlined in Schedule 2 of the Bill which refer to a wide range of services such as education services, early childhood education and care services, disability services, supported accommodation or residential services, religious bodies, health services, child protection services, justice and detention services and government entities.

Despite this broad guidance there is currently not a definitive list of which services will be required to participate in the scheme. QATSICPP is concerned that drawing in secondary support services that provide child related but not services directly to children (e.g. Family

Wellbeing Services), the Queensland government may be increasing the regulatory burden on such services unnecessarily, impacting on their capacity to provide the level of support needed by families in distress.

The Royal Commission noted the need to consider the regulatory burden of the RCS on institutions in terms of implementation and ensuring compliance and outlined its intention for the RCS to apply to a narrower set of organisations than those for the CSS with a focus on organisations with the most high-risk contact with children.

The experience of other Australian states who have implemented legislative CSS and RCS schemes also suggests that the RCS scheme in particular requires intensive resourcing. In its submission to a review of CSS and RCS implementation, the Victorian peak body for child and youth services, the Centre of Excellence for Child and Family Welfare observed that the oversight body for the schemes, the Commission for Children and Young People is “now swamped with Reportable Conduct allegations and has no time for CSS. Their role has changed, and the scope has changed. It is not clear how they support compliance or implementation of the CSS.”^{viii} This suggests that defining the scope of RCS scheme too broadly creates significant implementation and resourcing challenges.

QATSICPP proposes the Bill be amended to make clear the distinction between services which care for or exercise authority over children and those which provide family support and primarily work with parents. QATSICPP is concerned that service networks such as the Family Wellbeing Services and Family Participation Program will be drawn into the RCS unnecessarily when they do not fit the scope intended by the Royal Commission. This extra and unnecessary regulatory burden would be a barrier to effective service provision and effective oversight of the RCS and CSS; an amendment in the Bill clarifying intent would address this.

Timeframes for reporting to QFCC

Given the sensitive nature of reporting allegations of misconduct relating to children there needs to be consideration given to the reporting time frames and the type of information required to be provided to the Commission under the RCS. The Bill defines a reportable allegation to mean “an allegation or other information that leads a person to form a reasonable belief that a worker of a reporting entity has committed reportable conduct.”^{ix} Three days is not enough time for small to medium size community organisations without dedicated human resources teams to provide an initial report to the Commission in which they can claim to have a “reasonable belief” that a serious allegation such as reportable conduct is true.

For smaller community organisations who may only have the CEO to provide the report, the time frame would pose a significant challenge given the limited resources available to them. If a worker refuses to be interviewed and there is not an HR officer at the organisation, this could lead to the CEO being reprimanded for failing to report within time frame.

In its current form the Bill does not seem to outline what would classify as a “reasonable excuse” to not meet the three-day deadline. QATSICPP proposes this part of the Bill be amended to give further clarity by giving examples of what a reasonable excuse could be, including cultural practices such as Sorry Business and practical limitations such as remote travel and the need for translation services.

To mitigate the risk of organisations missing reporting time frames and being penalised, QATSICPP proposes a streamlined process whereby an organisation can make an initial phone or email report to the QFCC to provide the information and follow up within seven business days with the initial report. This will take into consideration any delays posed by other parties who need to be interviewed.

RCS Investigations – Vicarious allegations

As outlined earlier in this submission, there a number of large reforms currently underway in the child, youth and family support sector which require considerable growth in the size of Aboriginal and Torres Strait Islander community controlled workforce. ^x

To ensure a sustainable workforce organisations need to be able to offer employees from protection against unfair treatment in the workplace. There is potential that if not implemented well, the RCS could have unintended negative impacts on worker recruitment and retention. To mitigate against such impacts the Bill should be amended to include a Clause which exempts a reporting entity from starting or continuing an investigation if the allegation can be considered, beyond reasonable doubt, to be frivolous, vexatious or not made in good faith. Similar provisions have been included in legislation passed in 2022 to introduce a similar RCS scheme in Western Australia. ^{xi}

RCS Investigations – Principles

Whilst Clause 41(c) in the Bill empowers the QFCC to provide guidance and advice to the head of the reporting entity about investigations required to occur as part of the RCS, it provides limited information on how such investigations should occur.

This is concerning, because such investigations and their outcomes have the potential for long reaching impacts on the lives of individuals involved and the broader community. To further strengthen the principles for the administration of the RCS outlined in Clause 25, QATSICPP proposes the following additional principles:

- Aboriginal and Torres Strait Islander people should be leading investigations conducted in relation to Aboriginal and Torres Strait Islander children. This is line with Queensland’s *Close the Gap* agreement commitments, as well as research and evidence about effectively ensuring cultural safety for First Nations children.
- Investigations should be carried out in an independent manner to ensure 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.
- That the final report on the reportable allegation is provided in a timely way to ensure individuals and communities are able to move forward without spending indefinite periods without matters being finalised.

RCS Investigations – Process

QATSICPP have concerns relating to the lack of information in the Bill about the standard of the investigation to be conducted by the reporting entity. This is of particular concern considering the Bill provides for investigation findings to be referred to Blue Card Services for their ongoing assessment of a person’s suitability to hold a Blue Card.

As a result of the sensitive nature of investigation into reportable conduct, there needs to be considerations given to the type of questions asked and how the information on the incident is obtained, especially in smaller, more close-knit communities.

It is worth noting that when DCSSDS conduct interviews with carers or guardians these occur often under the guidance of police who may lead the interview or at the minimum a senior Child Safety officer is engaged who is trained in the special type of 93a interview technique that is used for in gathering evidence for criminal proceedings. In light of this concern, we propose a co-design process with Aboriginal and Torres Strait Islander organisations (with a particular focus on the voices of remote communities) to develop a model that supports organisations and CEO's with required investigations so that the process will preserve the confidentiality and harmony in small communities.

As highlighted earlier in this submission, the ATSICCO child, youth and family support sector is in a rapid growth stage and many organisations are still in the process of securing resources required to develop the substantial human resources capacity required to deliver in the RCS in a way that adheres with the requirements outlined in the Bill.

To ensure consistent and rigorous investigate processes under the RCS, QATSI CPP suggests further amendments to Clause 43 of the Bill which provide clarity on which circumstances a reporting entity may be unable to conduct an investigation. These should include when a reporting entity is not able to adhere to the principles outlined for the administration of the RCS, due to circumstance or resource capacity. In this instance the organisation would be able to make a referral to QFCC to arrange for an independent, First Nations led investigation into the matter.

Implementation considerations

Both the CSS and RCS will significantly increase the regulatory burden on organisations which needs to be met by increased investment by government to enable organisations to meet the costs of compliance and where possible what is being proposed needs to be streamlined with what already exists.

It will be particularly critical for the implementation of the CSS and RCS to align with and support Queensland's Delegated Authority reforms, which involve the Chief Executive of Child Safety delegating certain responsibilities under the Child Protection Act to the heads of relevant ATSICCOs. Where authority for children and carers is transition to ATSICCOs, the QFCC and other sector regulators must provide intensive, targeted support to help organisations meet their responsibilities under the CSS and RCS.

CSS

Although many of the larger ATSICCOs have already implemented the CSS within their organisation, the smaller community-controlled organisations are likely to find the set up and implementation costly and burdensome. The associated costings for organisations to set up the CSS and RCS previously published in the Queensland Government's in the CRIS for the CSS and RCS, are not appropriate for many of these diverse community organisations. Costs for the smaller organisations are underestimated when taking into consideration the time and expertise required to implement these changes – particularly if the organisation is based in a rural and remote location.^{xii}

RCS

The proposed RCS has a wide range of serious implications for QATSICPP member organisations and the communities they work in. Without effective implementation the RCS poses a risk to the future viability of many small to medium sized ATSCCOs and the child and youth sector workforce more broadly.

There is also a risk that the RCS becomes a culturally unsafe compliance mechanism which has little meaning for Aboriginal and Torres Strait Islander children and their communities. To address this, it will be crucial for the Queensland government to invest significantly in the creation of independent RCS mechanisms for Aboriginal and Torres Strait Islander children and targeted support for participating ATSCCOs. This investment should be guided by Aboriginal and Torres Strait Islander leadership in the design, implementation and maintenance of all implementation resources.

Conclusion

QATSICPP looks forward to working with the Queensland government on the continuing development and implementation of an effective regulatory model is developed that ensure our children and families can be assured of having their voices heard and their cultural safety upheld.

In this submission QATSICPP has highlighted a range of ways the Bill can be amended to create the best legislative environment for Aboriginal and Torres Strait Islander people to be leading the design and implementation of the CSS and RCS reforms for their organisations and children. Our approach is grounded in the our commitment to leading change for Aboriginal and Torres Strait Islander children in Queensland, ensuring they have positive futures where they live in safe environments growing up strong in their culture, with their families and communities.

End Notes

ⁱ <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2021-22/contents/about>

ⁱⁱ <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2021-22/contents/about>

ⁱⁱⁱ <https://www.childabuseroyalcommission.gov.au/final-report>;
https://www.qld.gov.au/_data/assets/word_doc/0011/410132/overview-of-rs.docx

^{iv} <https://www.qld.gov.au/about/community-safety>

^v <https://www.dss.gov.au/families-and-children-programs-services-children-protecting-australias-children-safe-and-supported-the-national-framework-for-protecting-australias-children-2021-2031/safe-and-supported-aboriginal-and-torres-strait-islander-first-action-plan-2023-2026>; <https://www.qld.gov.au/about/community-safety>

^{vi} <https://www.churchilltrust.com.au/fellow/candice-butler-ql-2022/>

^{vii} <https://www.closingthegap.gov.au/national-agreement/priority-reforms>

^{viii} <https://www.cfecfw.asn.au/wp-content/uploads/2020/09/The-Centre-Submission-Review-of-the-Child-Safe-Standards-2019.pdf>

^{ix} <https://www.legislation.qld.gov.au/view/html/bill.first/bill-2023-079>

^x E.g. <https://www.dcssds.qld.gov.au/resources/dcsyw/aboriginal-torres-strait-islander-families/supporting-families/our-way.pdf>

^{xi} [https://www.parliament.wa.gov.au/parliament/bills.nsf/D135C68719D3ECDB48258862001E3385/\\$File/Bill%2B61-1%2B%282021%29.002.002.pdf](https://www.parliament.wa.gov.au/parliament/bills.nsf/D135C68719D3ECDB48258862001E3385/$File/Bill%2B61-1%2B%282021%29.002.002.pdf)

^{xii} https://www.qld.gov.au/_data/assets/word_doc/0015/410136/overview-guide-to-the-CRIS.docx