

# Queensland Family and Child Commission Submission

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

Date: 6 September 2017

Topic: Child Protection Reform Amendment Bill 2017

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## Submission summary:

The Queensland Family and Child Commission (QFCC) is pleased to provide a submission to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee in relation to the Child Protection Reform Amendment Bill 2017 (the Bill).

The QFCC supports the Bill's objectives to clarify provisions in the *Child Protection Act 1999* (the Act), while adding new powers on delegations and information sharing.

The QFCC supports the introduction of permanency principles into the Act. The QFCC supports oversight of children as they enter Permanent Care Orders. It is vital the child protection system does not lose sight of any child living in out-of-home care. Consideration could be given to making sure there are clear pathways for children to raise concerns regarding their care.

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### Recommendation

The QFCC supports:

- new permanency principles in legislation
- clarifying assistance for transition to independence to young people between the ages of 15 and 25 years.

The QFCC notes the Bill proposing new Permanent Care Orders (PCOs), and recommends:

- oversight as children enter PCOs
- strengthening pathways for children to raise concerns about their care
- strengthening assessments for carers with PCOs
- establishing a simpler complaint and review mechanism for children under PCOs
- consideration of implications in notifying a permanent guardian if a child's request to review a case plan is denied.

The QFCC also recommends:

- removing the words 'trusting and nurturing' from the proposed s.5BA(2)(a) to strengthen objective and consistent interpretation
- strengthening resources to support transition to independence for young people between the ages of 15 and 25 years.

## Permanency and Stability

### Permanent care orders

The QFCC supports the Queensland Government's commitment to make sure as many children and young people as possible experience a 'forever family'.

Permanent Care Orders (PCOs) proposed in the Bill could be strengthened by:

- oversight as children enter PCOs
- accessible options for children and young people to make complaints or seek reviews of decisions made about their care.

Oversight of proposed PCOs could be strengthened so it is not an expectation children or young people on a PCO are required to advocate for themselves where an issue arises regarding their care.

Under s.51VA of the current Act, Child Safety Services must contact a child under a long-term guardianship order at least once every 12 months. These rights could be sustained for children and young people on a PCO.

The QFCC understands the intention behind the PCO is to minimise the intervention of others in a child's or young person's life. Some children and young people who have experienced trauma may have limited capacity to self-initiate advocacy, or to recognise their rights are being significantly infringed.

Therefore, it is recommended children under PCOs have some contact with child safety officers, community visitors, or other professionals, to build relationships with those who can help when making a complaint or seeking a review.

Data from the Department of Communities, Child Safety and Disability Services show, in 2015-16, 460 standards of care reviews relating to 432 children in out-of-home care were recorded.<sup>1</sup> This represents a 40.7 per cent increase since 2013-14. These reviews are conducted to determine if the standards of care are being met and, where not met, what actions are required. This data indicates even well-established care systems can result in environments which may pose concerns for vulnerable children.

The Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) has reported national data on child sexual abuse of children living in out-of-home care. Between 2012-13 and 2013-14, 39 per cent of child sexual abuse reports related to children living in foster care placements.<sup>2</sup>

The Royal Commission has also released a report into risk factors for institutional sexual abuse.<sup>3</sup> This report identifies risk factors broadly aligning with those also identified in the QFCC's *Recommendation 28: Supplementary Review* report.<sup>4</sup>

Research regarding risks of harm to children more broadly identifies areas which can be addressed to enhance the safety of children in home-based services. This includes understanding:

- the elements of home-based services which may increase opportunities for harm to children, such as the private nature of these environments and reduced levels of external observation
- factors which may increase the vulnerability of children accessing home-based services, such as being very young, having a disability or having previously suffered harm, and
- the importance of screening and ongoing monitoring of individuals working in child-related employment, including home-based services.<sup>5</sup>

Overall, data and research suggests regular oversight is necessary for child protection orders, to make sure children continue to have their care and protection needs met.

In addition, the Bill proposes PCOs could only be varied or revoked by the court if the chief executive makes a referral to the litigation director. Therefore, if a child or the child's family wishes to raise a concern, they are required to make a complaint to Child Safety Services. Child Safety Services can then decide how to work to resolve the complaint, or can refer the complaint to the litigation director.

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<sup>1</sup> Department of Communities, Child Safety and Disability Services, *Standards of care reviews and harm reports*, <https://www.communities.qld.gov.au/childsafety/about-us/our-performance/improved-safety/standard-care-reviews-harm-reports>, accessed 6 September 2017.

<sup>2</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home care*, <http://www.childabuseroyalcommission.gov.au/getattachment/0ffa1ec1-db19-4c3e-b3b8-d7a8f32d4f55/Out-of-home-care-consultation-paper>, 2016, accessed 31 August 2017, p. 28.

<sup>3</sup> Royal Commission into Institutional Child Sexual Abuse, *Risk profiles for institutional child sexual abuse: A literature review*, Commonwealth of Australia, Sydney, <https://www.childabuseroyalcommission.gov.au/getattachment/399a6b99-aa14-449e-bf6d-2d5d5beb773f/Risk-profiles-for-institutional-child-sexual-abuse>, 2016, accessed 4 September 2017.

<sup>4</sup> Queensland Family and Child Commission, *Recommendation 28: Supplementary Review*, <http://www.qfcc.qld.gov.au/sites/default/files/For%20professionals/recommendation-28-supplementary-review.pdf>, 2016, accessed 4 September 2017, p. 14.

<sup>5</sup> Queensland Family and Child Commission, *Recommendation 28: Supplementary Review*, <http://www.qfcc.qld.gov.au/sites/default/files/For%20professionals/recommendation-28-supplementary-review.pdf>, 2016, accessed 4 September 2017, p. 14.

Simpler complaint and review options would help children under PCOs to raise concerns about their care where required. A single pathway may not offer children adequate opportunities to make complaints. For example, if Child Safety Services were to refuse to refer an issue to the litigation director, a child's only option would be to seek a review of the chief executive's decision on the complaint by the Queensland Civil and Administrative Tribunal.

A child may seek to request a review independently of their permanent guardian, due to concerns they have with their permanent guardian. The Bill provides an obligation to notify the permanent guardian where such a request is denied. This could create risks for the child and the child's placement.

The QFCC also recommends the approval process for carers in relation to PCOs could be strengthened, to take into account the long-term risks associated with permanent care arrangements.

### **Permanency principles and chief executive's obligations**

The QFCC supports inserting new permanency principles into the Act to help promote early permanency planning and long-term placement stability for children in out-of-home care. The definition of permanency, included in the proposed s.5BA(3), could be strengthened by reference to maintenance of relationships with family of origin, reunification, or shared care.

Care should be taken to make sure the Bill's principles provide clear guidance for carers. The words 'trusting and nurturing', proposed for s.5BA(2)(a), are subjective and may not be interpreted the same way by different people. The QFCC recommends these words be removed.

The QFCC notes proposed principles that children be supported 'with connections to the child's community', and that consideration be given to 'the long-term effect of a decision on the child's identity and connection with the child's family and community'. The QFCC recommends these new principles be reflected in case planning.

The Bill also proposes a new s.74A outlining the chief executive's obligations to children under orders. Consideration could be given to instead expressing these as children's rights. This could clearly link to the charter of rights for children in care, to align with the rights-based framework already established in the Act.

### **Permanency planning**

The QFCC broadly supports the provision to require a permanency goal to be in place from the time a case plan is developed. This is similar to current provisions in Victoria, where a separate 'stability plan' is required along with a case plan 'for stable long-term out of home care for the child'.<sup>6</sup>

Consideration could be given to whether alternative permanency goals may be perceived as a threat and impact on a child's wellbeing and feeling of stability with their family of origin.

### **Consecutive short-term orders**

The QFCC supports the provision to limit consecutive short-term orders to a maximum of two years from the time the first order is made, unless it is in the best interests of the child.

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<sup>6</sup> *Children, Youth and Families Act 2005* (VIC), s.169(2).

The examples given in the proposed s.62(2), guiding the length of a short-term order, could be confusing to some readers. These examples could be shortened and made clearer. Further consultation across the sector, along with policy and practice guidance, could help make sure the provisions are widely understood and applied. Practice guidelines would assist practitioners to make applications and assessments based on clear and robust evidence.

### **Transition to independence**

The QFCC supports measures in the Bill to assist a child's transition from care to independence. These include a new s.51B(1B), which states a case plan must include actions for helping the child transition to independence if the child is 15 years or older and does not have a long-term guardian, and changes to s.75 to clarify assistance is available until a young person turns 25.

These changes could increase demand for services supporting a young person's transition to independence.

## Safe care and connection of Aboriginal and Torres Strait Islander children

### Recommendation

The QFCC supports:

- new principles applying the five elements of the Child Placement Principle
- the establishment of independent Aboriginal and Torres Strait Islander entities
- powers to delegate functions of the Act to Aboriginal or Torres Strait Islander organisations.

The QFCC recommends:

- guidance on how to decide whether an independent Aboriginal or Torres Strait Islander entity is appropriate to provide cultural advice in relation to a family
- guidance on timeframes for consultation, and consideration of the capacity of independent Aboriginal and Torres Strait Islander entities to provide cultural advice
- programs to build the capacity of Aboriginal or Torres Strait Islander community controlled organisations to take on delegated functions
- trialling delegation of functions to Aboriginal and Torres Strait Islander organisations, using as an example a trial undertaken in Victoria between 2013 and 2015.

### Expanding the child placement principle

The QFCC supports measures in the Bill to add new principles recognising the right of Aboriginal and Torres Strait Islander people to self-determination, and apply the five elements of the Child Placement Principle – prevention, partnership, placement, participation and connection – to the administration of the Act.

### Independent Aboriginal and Torres Strait Islander entities

The QFCC also broadly supports the establishment of independent Aboriginal and Torres Strait Islander entities. This provision may help support participation by the child and family in decision-making, and help to make sure processes and outcomes are culturally appropriate.

It is noted the Bill contains safeguards proposed for s.6(1) and s.6(2) of the Act. These new sections require the independent entity to be a representative of the child's community or language group, and to be an appropriate authority to speak about Aboriginal or Torres Strait Islander culture in relation to the child or the child's family.

Consideration could be given to providing guidance on whether and how departmental officers will be authorised to decide whether an independent entity is appropriate to provide cultural advice in relation to a family. A process may also need to be established if a parent or child does not agree with the independent entity's advice.

The proposed s.6AA suggests Child Safety Services is unable to arrange participation of an independent Aboriginal or Torres Strait Islander entity unless the child and family has been consulted. This would limit the ability to gain cultural advice at the early stages of an investigation. The section also suggests there would be no cultural advice available if the child or the child's family does not consent to the ongoing involvement of the independent Aboriginal or Torres Strait Islander entity, which could make it difficult to get the right advice to make culturally-appropriate decisions.

Guidance as to what constitutes a 'significant decision' about an Aboriginal or Torres Strait Islander child could help maintain consistency in practice. This provision could also benefit from a clear link to the charter of rights for a child in care.

Consideration could be given to the timeframes required to identify and speak to an independent entity, and whether organisations need support to build the required capacity to take on this new role. The potential for tensions between organisations and community members may also need to be considered, to make sure there is a safe cultural space for informed decisions to be made.

### **Delegating functions or powers to a suitable Aboriginal or Torres Strait Islander entity**

The QFCC supports provisions in the Bill to enable functions and powers to be delegated to a suitable Aboriginal or Torres Strait Islander entity with certain safeguards. This will allow Aboriginal or Torres Strait Islander organisations to provide services directly to children in their communities, which goes some way to putting in place the principles in *Our way: a generational strategy for Aboriginal and Torres Strait Islander children and families*.<sup>7</sup>

The Bill holds that if a delegated Aboriginal or Torres Strait Islander authority acts in a way inconsistent with the chief executive's actions for the child, the chief executive's actions will prevail. As such, decisions and actions would not be delegated nor meet the definition of self-determination.

The requirement for the proposed delegate to 'hold a current positive prescribed notice' should be considered in line with the QFCC Blue Card and Foster Care System Review reports. The reports will be provided to the Committee to inform deliberations once published.

Importantly, Aboriginal and Torres Strait Islander community controlled organisations need support to build and maintain the capability and capacity to take on these delegated functions. In Victoria, a similar provision was established in legislation through the *Children, Youth and Families Act 2005*.<sup>8</sup> In 2013, the Victorian Government then worked with the Victorian Aboriginal Child Care Agency to establish a time-limited trial of delegated responsibilities, which was independently evaluated in October 2015.<sup>9</sup> Similar trials may be useful when implementing these new powers in Queensland.

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<sup>7</sup> Queensland Government, *Our way: a generational strategy for Aboriginal and Torres Strait Islander children and families*, <https://www.communities.qld.gov.au/resources/campaign/supporting-families/our-way.pdf>, accessed 21 August 2017.

<sup>8</sup> *Children, Youth and Families Act 2005* (VIC), s.18.

<sup>9</sup> Naughton & Co., *S.18 'As If' Project Evaluation Report*, <https://www.vacca.org/wp-content/uploads/2016/03/Final-s18-Evaluation-Report-27-Oct-2015-1.pdf>, accessed 21 August 2017.

## Information sharing

### Recommendation

The QFCC supports:

- the establishment of specialist service providers to share information without consent when it is in a child's best interests.

The QFCC recommends:

- including the words 'to assess or' at the beginning of the amended s.159MB(1)(a).

### Information sharing without consent

The QFCC supports provisions in the Bill to clarify who can share information and the purposes for which they can share it. This includes the principle that information should be shared with consent where it is safe, possible and practical to obtain it, but that information can be shared without consent to protect a child's safety, wellbeing and best interests.

The QFCC also supports provisions to enable specialist service providers to share information with each other without consent for particular purposes, and provisions to clarify information sharing about unborn children who may be in need of protection after their birth.

To clarify whether specialist service providers are able to share information with the chief executive or an authorised officer at the point of intake, it is recommended the words 'to assess or' are included at the beginning of s.159MB(1)(a).

### Other amendments

The QFCC supports provisions to enable the chief executive to provide information to another state or to New Zealand if there is a reasonable belief the information will be required for a function under a child welfare law. If this provision is reciprocated, information received by Child Safety Services from another state or New Zealand may be legally accessible for specific purposes, such as blue card assessments. Consideration could be given as to how this information received from other jurisdictions would be collected, stored and shared between Queensland Government departments.