

Queensland Family and Child Commission Submission

To: Department of Communities, Child Safety and Disability Services Date: 13 January 2017

Topic: The next chapter in child protection for Queensland: options paper

Submission summary:

The Queensland Family and Child Commission (QFCC) is pleased to provide a submission to the Department of Communities, Child Safety and Disability Services (DCCSDS) in response to the options paper, *The next chapter in child protection legislation in Queensland*.

The QFCC supports development of contemporary child protection legislation that reflects the best practice and the lived experiences of children and families. We appreciate the significant work and extensive consultation DCCSDS has undertaken to develop this options paper.

The paper offers a range of possibilities to modernise, clarify and extend Queensland's child protection legislation. The QFCC is pleased to see a large number of suggestions that aim to make a significant difference in the lives of children and families.

The QFCC supports many of these options, while looking for additional consideration or clarification on others. DCCSDS should ensure that there are resources and practice guidelines in place to successfully implement any new measures.

Overall, the QFCC believes the new *Child Protection Act* (the Act) should be clearer and simpler, offering a broad framework while allowing detail to be determined in regulations and practice guidelines. The Act could serve as an overarching set of rights and requirements, easily understood by practitioners in the child protection sector. Outside the Act, detailed regulation would allow government to respond quickly to emerging needs without requiring further legislative change.

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These reforms will shape the future of Queensland's child and family support system. We look forward to seeing the outcomes in legislation and practice.

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1. A broader purpose and strengthened principles

Recommendation

The QFCC supports:

- developing a broader purpose than the ‘protection of children’
- the intent of expanding the paramount principle to include the words ‘throughout their lives’
- including a clearer definition of ‘best interests’ in the Act, along the lines of the *Family Law Act 1975* (Cth)
- aligning some of the language in s. 5C of the Act to match the *Strengthening Families Protecting Children Framework for Practice*.

Option 1A – Developing a broader purpose than the ‘protection of children’

The *Child Protection Act 1999* (the Act) currently expresses a number of principles, values and requirements beyond the stated purpose of the ‘protection of children’. The paramount principle ‘is that the safety, wellbeing and best interests of a child are paramount’.¹

The QFCC supports developing a broader purpose to the Act, which takes into consideration the wider scope of the Chief Executive’s functions as detailed in s. 7(1).

Option 1B – Introducing an expanded paramount principle of ‘the safety, wellbeing and best interests of a child now and throughout their lives’

The QFCC supports in principle the option of expanding the paramount principle in s. 5A to include the words ‘and throughout their lives’, similar to s. 5(a) of the *Adoption Act 2009* (Qld). Careful consideration should be given to ensuring this principle continues to encourage a focus on planning and meeting immediate safety needs, while also allowing for a holistic approach to providing long-term support to children and families.

Option 1C – Introducing specific matters to be considered in determining what is in a child’s best interests now and throughout their lives, including matters for consideration in determining best interests for an Aboriginal and Torres Strait Islander child

The QFCC supports including a clearer definition of ‘best interests’ in the Act. This should be modelled on the provisions in s. 60CC of the *Family Law Act 1975* (Cth). Since matters in the Queensland child protection system may intersect with matters in Commonwealth family law, such as parenting orders, the process of determining a child’s best interests should be harmonised between the two Acts as much as is practicable. This will help people dealing with complex issues to understand some key principles shared across the pieces of legislation that affect them.

¹ *Child Protection Act 1999*, s. 5A.

Option 1D – Strengthening the principles in legislation

Section 5B of the Act contains other ‘general principles’ that are secondary to the paramount principle. While a strengthened set of principles in s. 5B could align to the language of and concepts behind the *Strengthening Families Protecting Children Framework for Practice*,² it is important this section does not lose its more specific guiding principles. Implementation of this option could be informed by evaluation of the framework for practice to ensure it meets current needs.

² Department of Communities, Child Safety and Disability Services, *Strengthening families protecting children: framework for practice*, <https://www.communities.qld.gov.au/resources/gateway/campaigns/supporting-families/framework-for-practice-overview.pdf>, accessed 29 November 2016.

2. Addressing the disproportionate representation of Aboriginal and Torres Strait Islander children

Recommendation

The QFCC recommends:

- care is taken to ensure that any strengthened principles relating to Aboriginal and Torres Strait Islander children are clear, considering the responsibilities of recognised entities and the complexity of kinship systems
- extensive consultation with Aboriginal and Torres Strait Islander communities is undertaken to determine how family and kinship is recognised in legislation
- a broader section is included in the *Child Protection Act 1999* to recognise the full intent and meaning of the Aboriginal and Torres Strait Islander Child Placement Principle
- DCCSDS further examine policy and funding in relation to ‘self-determination’
- DCCSDS looks at evidence from Victoria to develop a position on delegating functions and powers to the chief executive of an Aboriginal or Torres Strait Islander agency.

Option 2A – Strengthening the specific principles in relation to Aboriginal and Torres Strait Islander children

The QFCC supports strengthening the specific principles in the Act in relation to Aboriginal and Torres Strait Islander children. These principles, contained in s. 5C, should take into consideration the responsibilities of recognised entities and the complexity of kinship systems. At present they only require DCCSDS to consider allowing the child to develop and maintain a connection to culture, family, traditions, language and community, and the long-term effect of a decision on a child’s identity.³

The principles in s. 5C are not the only provisions which guide decision-making with regard to Aboriginal and Torres Strait Islander children. The Aboriginal and Torres Strait Islander Placement Principle, codified in s. 83(4), provides a more specific set of obligations on government in relation to Aboriginal and Torres Strait Islander children. It requires proper consideration to placing the child, in order of priority, with:

- a member of the child’s family
- a member of the child’s community or language group
- another Aboriginal person or Torres Strait Islander who is compatible with the child’s community or language group, or
- another Aboriginal person or Torres Strait Islander.⁴

The Aboriginal and Torres Strait Islander Placement Principle operates in all Australian jurisdictions. It attempts to preserve connection to family and sense of identity and culture.⁵ There is scope for the Act to more fully reflect the wider meaning of the Aboriginal and Torres Strait Islander Placement Principle, as discussed further in our response to Option 2C below.

³ *Child Protection Act 1999* (Qld), s. 5C.

⁴ *Ibid.*, s. 83(4).

⁵ Arney, F., Iannos, M., Chong, A., McDougall, S., and Parkinson, S. (2015) *Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle: Policy and practice considerations* (CFCA Paper No. 34), <https://aifs.gov.au/cfca/publications/enhancing-implementation-aboriginal-and-torres-strait-islander-child/aboriginal-and>, accessed 21 November 2016.

Section 83(5) requires DCCSDS give proper consideration to the views of a recognised entity for the child, and ensure that the decision provides for the optimal retention of the child's relationships with family and other people of significance under Aboriginal tradition or Island custom.⁶

Section 5E of the *Child Protection Act 1999* requires DCCSDS provide children with the opportunity to express their views.⁷ Section 6(1) requires a recognised entity for an Aboriginal or Torres Strait Islander child be given the opportunity to participate in the decision-making process.⁸

When deciding on strengthened specific principles, DCCSDS could consider how these may impact on recognised entities and Aboriginal and Torres Strait Islander communities. Recognised entities work in a highly sensitive space between government and community, relying on the trust of communities and the perception of independence from government to achieve positive outcomes for Aboriginal and Torres Strait Islander children.⁹ Any decision to include their role within a general principle in legislation should be carefully considered, after consultation with recognised entities, as any new responsibilities arising from a revised legislative principle might unintentionally impact on their ability to support families.

Aboriginal and Torres Strait Islander kinship systems can be fluid and complex, incorporating large and varied family groups and varying sources of authority.¹⁰ While it is important to consider these networks every time a child protection decision is made, further consideration could be given to how appropriate individuals within these communities would be identified.

Care should be taken to ensure that any revised principles for Aboriginal and Torres Strait Islander children does not deviate from the paramount principle, 'the safety, wellbeing and best interests of a child are paramount'.

Option 2B – Incorporating a new principle that recognises that Aboriginal and Torres Strait Islander parents, family and kin should participate in a child's care and protection, as far as possible, and places a responsibility on the department to facilitate this occurring

As mentioned above, kinship systems can be fluid and complex, and recognised entities can occupy a contested space between communities and government. To include kinship systems as part of decision-making could ensure greater cultural responsiveness, accountability and broader ownership of child protection issues throughout the community. Development of a new principle to recognise these important aspects of care should be guided by extensive consultation with communities and recognised entities, to avoid unintended consequences.

⁶ *Child Protection Act 1999* (Qld), s.83(5).

⁷ *Child Protection Act 1999* (Qld), s. 5E.

⁸ *Ibid.*, s. 6(1).

⁹ Douglas, H. and Walsh, T., 'Continuing the Stolen Generations: Child Protection Interventions and Indigenous People', *The International Journal of Children's Rights*, vol. 21, iss. 1, 2013, pp. 59-87; Austin-Broos, D., 'Places, Practices, and Things: The Articulation of Arrernte Kinship with Welfare and Work', *American Ethnologist*, Vol. 30, 2003, No. 1, pp. 118-135.

¹⁰ Lohar, S., Butera, N. and Kennedy, E., *Strengths of Australian Aboriginal cultural practices in family life and child rearing*, 2014, <https://aifs.gov.au/cfca/sites/default/files/publication-documents/cfca25.pdf>, accessed 21 November 2016.

Unintended consequences might include:

- resource implications, due to the need to facilitate family-led decision-making processes, possibly including kinship systems of multiple people in regional and remote communities
- legal obligations on government to provide material support to a wider range of people, to allow wider meaningful participation
- the impact of complex community politics on decision-making.

While kin and community are an important source of care, it may be useful to take steps within and outside legislation to ensure these complex networks do not overwhelm the system's capacity to secure positive outcomes for children.

The QFCC supports the Review of the Recognised Entity Program.¹¹ It is important that conflict of interest is avoided as much as possible, in circumstances when recognised entities are viewed as preparing work for DCCSDS as its client.

Option 2C – Introducing additional principles relating to Aboriginal and Torres Strait Islander children to explicitly recognise the full intent and meaning of the Aboriginal and Torres Strait Islander Child Placement Principle

The QFCC supports including in the Act a broader section explicitly recognising the full intent and meaning of the Aboriginal and Torres Strait Islander Child Placement Principle. Further explanation of the five domains of this principle – prevention, partnership, placement, participation and connection¹² – would help professionals in the child protection sector to deliver culturally connected and sensitive services to families and communities in need.

Currently, the Act only explicitly refers to one of these domains, placement, by codifying the placement hierarchy in s. 83(5). It does not refer explicitly to the other four domains, although elements of that framework appear elsewhere in the Act, for example in s. 6 (partnership), s. 51D (participation) and s. 5C (connection).

The first core element of the Aboriginal and Torres Strait Islander Child Placement Principle, prevention – 'each Aboriginal and Torres Strait Islander child has the right to be brought up within their own family and community' – is not addressed explicitly in the Act. Section 6(4)(b) refers to 'the general principle that an Aboriginal or Torres Strait Islander child should be cared for within an Aboriginal or Torres Strait Islander community', however this does not account for the differences in culture, language and identity between communities. Sections of the Act which contain the placement hierarchy do state the preference to place the child, where possible, with a member of the child's family, community or language group – however, this is not elevated to a general principle within the Act.

Threading the intent of the Aboriginal and Torres Strait Islander Child Placement Principle throughout the Act will strengthen decision-making by helping practitioners to focus through a cultural lens at all times. Adding the additional domains as principles in the Act will help guide decisions more broadly, rather than a prescriptive placement hierarchy. However, all decision-

¹¹ Department of Communities, Child Safety and Disability Services, *Review of the Recognised Entity program*, <https://www.communities.qld.gov.au/gateway/reform-renewal/child-family/meeting-needs-requirements-aboriginal-torres-strait-islander-children-families-communities/review-recognised-entity-program>, accessed 15 December 2016.

¹² Australian Institute of Family Studies, *Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle*, <https://aifs.gov.au/cfca/publications/enhancing-implementation-aboriginal-and-torres-strait-islander-child/aboriginal-and>, accessed 22 November 2016.

making in child protection is complex. It should therefore be clear that these principles are there to guide decisions but the paramount principle to act in the child's 'best interests' must still be the key principle in legislation.

Option 2D – Introducing explicit recognition of Aboriginal and Torres Strait Islander children's and families' right to self-determination and cultural authority to the fullest extent possible

The *Children and Young Persons (Care and Protection) Act 1998* (NSW) establishes a principle that Aboriginal and Torres Strait Islander people are 'to participate in the care and protection of their children and young persons with as much self-determination as is possible', and allows the Minister to negotiate 'programs and strategies that promote self-determination'.¹³

In New South Wales, several programs have been implemented that seek to give effect to this principle of self-determination. For example, the Protecting Aboriginal Children Together program seeks to 'actively encourage consultation between relevant non-Aboriginal and Aboriginal non-government organisations', and 'develop locally driven service models which empower and actively engage with the unique needs of Aboriginal families and their communities'.¹⁴

At present, there is no such principle in Queensland legislation. If DCCSDS is considering including such a principle, some consideration should go to whether similar programs might be pursued in Queensland, and whether there is capacity to fund, regulate and support non-government organisations in the sector to provide services to Aboriginal and Torres Strait Islander communities under the principle of self-determination. There are some existing funded non-government services in Queensland, such as recognised entities, Family Support Services, Foster and Kinship Care Services and Family Intervention Services,¹⁵ which offer targeted support to Aboriginal and Torres Strait Islander families. However, these are not based on a legislative principle of self-determination, which would naturally require the Queensland Government to reduce its operational involvement with programs while funding them to provide a wider service.

The Queensland Child Protection Commission of Inquiry (QCPCI) raised concern about the fragmentation of Aboriginal and Torres Strait Islander services, and called for Aboriginal and Torres Strait Islander Child and Family Services to be established across Queensland, affiliated with Aboriginal Community Controlled Health Services.¹⁶ The QCPCI also recommended assisting individual communities to develop appropriate community-based referral processes and supporting differential responses in discrete communities.¹⁷ These measures would enhance communities' capacity to respond to need, but do not equate to self-determination, and the QCPCI report does not recommend a self-determination principle.

There would be considerable resource implications to government in adopting a self-determination approach. The capacity of non-government organisations would need to be built to effectively provide child protection programs and strategies, and find ways to evaluate those programs to ensure positive outcomes for children.

¹³ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s. 11.

¹⁴ Government of New South Wales, *Protecting Aboriginal Children Together*, http://www.keepthemsafe.nsw.gov.au/initiatives/supporting_aboriginal_children_and_families/protecting_aboriginal_children_together, accessed 22 November 2016.

¹⁵ Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, Brisbane: State of Queensland, p.371

¹⁶ *Ibid*, p. 372.

¹⁷ *Ibid*, p. 384

Option 2E – Including a new power enabling the chief executive to delegate functions and powers in relation to a child that is the subject of a child protection order to the chief executive of an Aboriginal and Torres Strait Islander agency

The option to delegate the functions and powers in relation to a child to the chief executive of an Aboriginal and Torres Strait Islander agency goes beyond the recommendations made by the QCPCI.

Similar provisions have been available in various jurisdictions throughout Canada and the United States.¹⁸ Victoria's *Children, Youth and Families Act 2005* features the following passage in s. 18:

The Secretary may in writing authorise the principal officer of an Aboriginal agency to perform specified functions and exercise specified powers conferred on the Secretary by or under this Act in relation to a protection order in respect of an Aboriginal child.¹⁹

This section has been seen as a form of 'Aboriginal guardianship'.²⁰

At the time of passage, the Victorian Government identified practical and legal provisions that made s. 18 difficult to put into effect. In 2013, the Victorian Government established a pilot program, which placed 13 children into the care of the non-government Victorian Aboriginal Child Care Agency (VACCA). An evaluation report by Naughton&Co recommended the full implementation of s. 18.²¹ In June 2016, the Victorian Government announced a \$2.82 million investment in partnering with Aboriginal community controlled organisations, including funds to VACCA to continue to deliver 'section 18 services', and funds for a transition team to develop a strategy to further implement section 18 provisions.²² In July 2016, the Bendigo and District Aboriginal Co-operative began operating a Section 18 Rural Pilot Program.²³

The VACCA trial provided section 18 services to small sample of children in care. The Naughton&Co report found the results 'cautiously encouraging' and recommended further testing of the approach.²⁴

Issues with community politics should be explored further in relation to an Aboriginal and Torres Strait Islander agency being delegated functions and powers. It may be useful to separate

¹⁸ Brennan, B. 'The extra mile: why Aboriginal leaders want Victoria's child protection system reformed', *ABC Background Briefing*, <http://www.abc.net.au/radionational/programs/backgroundbriefing/why-aboriginal-leaders-want-vic-child-protection-system-reformed/7577068>, accessed 22 November 2016.

¹⁹ *Children, Youth and Families Act 2005* (Vic), s18(1).

²⁰ Victorian Aboriginal Child Care Agency, *What is 'Aboriginal guardianship' or 'Section 18'?* <https://www.vacca.org/what-is-aboriginal-guardianship-or-section-18/>, accessed 29 November 2016.

²¹ Naughton&Co (2015), *S.18 'As If' Project Evaluation Report*, <http://www.vacca.org/wp-content/uploads/2016/03/Final-s18-Evaluation-Report-27-Oct-2015-1.pdf>, accessed 22 November 2016.

²² Victorian Government (2016), *Building strong futures for Aboriginal children in care*, <http://www.premier.vic.gov.au/building-strong-futures-for-aboriginal-children-in-care/>, accessed 22 November 2016.

²³ Bendigo & District Aboriginal Co-operative (2016), <http://www.bdac.com.au/news-publications/news/98-pilot-program-benefits-vulnerable-children>, accessed 22 November 2016.

²⁴ Naughton&Co (2015), *S.18 'As If' Project Evaluation Report*, <http://www.vacca.org/wp-content/uploads/2016/03/Final-s18-Evaluation-Report-27-Oct-2015-1.pdf>, accessed 22 November 2016, p. 42.

Recognised Entity responsibilities from care functions granted to external agencies, given the already complex position of Recognised Entities between communities and service providers.

Eight years passed between the passage of the Victorian legislation and the start of a practical trial. Even now, the Victorian Government is still in the developmental phase, with strategies and further trials before full effect is given to s. 18 of the *Children, Youth and Families Act 2005*. If Queensland were to adopt a similar provision, it may require a similarly long timeframe, including extensive resourcing and careful trials.

3. A shared responsibility across government for child protection and wellbeing

Recommendation

The QFCC recommends:

- clarifying whether provisions relating to the coordination of services extend to meeting children’s wellbeing needs and supporting vulnerable families
- incorporating the concept of shared responsibility in the purpose of the legislation
- incorporating new principles for the administration of legislation to reflect shared responsibility
- including a requirement for relevant government agencies to regularly contribute to the development and implementation of a whole-of-government strategy or action plan.

Option 3A – Make it clear that the provisions in the Act relating to the coordination of services extend to meeting children’s wellbeing needs and supporting vulnerable families

The QFCC supports clarifying that provisions relating to the coordination of services extend to meeting children’s wellbeing needs and supporting vulnerable families. Currently there are a number of principles and provisions in the Act that promote meeting the safety, wellbeing and best interests of the child.²⁵ Section 5A contains the main principle for the administration of the Act that the safety, wellbeing and best interests of a child are paramount. Section 159B of the Act contains principles for coordinating service delivery and exchanging information that require the state to be responsible for ensuring that children receive the support they need to promote their wellbeing and families receive the support they need to decrease the likelihood of children becoming in need of protection.²⁶ It would be beneficial to extend these provisions to include the coordination of service delivery by the secondary sector for consistency.

Option 3B – Incorporate the concept of shared responsibility in the purpose of legislation

The QFCC supports incorporating the concept of shared responsibility in the purpose of the legislation to encourage government agencies with responsibility for providing services to children and families to work together. Legislation should also be clear to emphasise legal responsibility and accountability with the State of Queensland, with the Chief Executive of DCCSDS as the delegate.

This reflects the finding of the QCPCI report that keeping Queensland children safe is a responsibility shared by government agencies such as the state, teachers, doctors, police as well as families themselves.²⁷

It is also in keeping with legislation in New Zealand, Victoria and the United Kingdom.²⁸ The United Kingdom legislation places a duty on local government agencies and their partners to co-operate in promoting the wellbeing of children and young people and to make arrangements to safeguard and promote the welfare of children.

²⁵ *Child Protection Act 1999*, ss. 5A, 5B, 51B(2)(c), 159B(a)

²⁶ *Ibid.*, ss.159B(a) and 159B(b)

²⁷ *Taking Responsibility: A Roadmap for Queensland Child Protection*, p. xiii

²⁸ *Children Act 2004 (UK)*, s10(1)

Option 3C – Incorporate new principles for the administration of legislation that reflect shared responsibility

The QFCC supports incorporating new principles in the Act that reflect shared responsibility across government and non-government agencies. This will acknowledge that government and non-government agencies share responsibility for meeting the wellbeing, protection and care needs for children who are likely to become or who are in need of protection, and to also support their families.

British legislation reflects shared responsibility by promoting cooperation between the child protection authority, relevant partners and other people or bodies that the authority considers appropriate to engage in activities in relation to children.²⁹

Option 3D – Include a requirement for relevant government agencies to regularly contribute to the development and implementation of a whole-of-government strategy or action plan

The QFCC supports including a requirement for relevant government agencies to regularly contribute to the development and implementation of a whole-of-government strategy or action plan, such as New Zealand's approach with the *Vulnerable Children Act 2014* (NZ). A whole-of-government approach could contribute to more positive systemic outcomes for children and vulnerable families and further embed principles of shared responsibility.

²⁹ *Children Act 2004 (UK)*, s10(1)

4. A contemporary quality and safeguards framework

Recommendation

The QFCC supports:

- development and application of a quality and safeguards framework within legislation, consistent with the NDIS National Quality and Safeguards Framework when released
- consistent application of out-of-home care regulation, perhaps through a simpler, clearer framework in legislation
- a broader framework to support flexible responses to emerging needs, which could be detailed outside legislation
- care when determining any minimum qualifications requirements, taking into consideration impact on workforce, labour mobility, organisational resources and the existing qualifications and experience of workers in the sector.

Option 4A – Develop and apply a quality and safeguards framework within the legislation

The QFCC supports the move to develop and apply a quality and safeguards framework for the child protection sector. When the NDIS National Quality and Safeguards Framework is released, this could be considered as a model for a similar framework in child protection.

The Royal Commission into Institutional Responses to Child Sexual Abuse has also recommended quality and safeguards frameworks, arguing that child safety should be ‘embedded in institutional leadership, governance and culture’.³⁰ The Royal Commission’s final report will include recommendations for a framework to build institutional safeguards in child protection. DCCSDS should consider the Royal Commission’s final recommendations when investigating a quality and safeguards framework in Queensland.

The QFCC is currently preparing reviews of the blue card and foster care systems. Discussion papers were released in November 2016 and the QFCC is accepting submissions from stakeholders on the reviews. Under the terms of reference the QFCC will audit and review carer approval and monitoring processes, to assess their effectiveness as safeguards for vulnerable children.³¹ The QFCC will deliver findings and recommendations to the Premier in 2017.

It may not be necessary to include the entire quality and safeguards framework in legislation. The Act may establish a framework and provide key principles, while the detail of the framework can be expanded in a separate practice document. This would help to simplify the Act, allowing DCCSDS the flexibility to update the framework in response to future events without further legislative change.

³⁰ Royal Commission into Institutional Responses to Child Sexual Abuse (2016), *Creating Child Safe Institutions*, <http://www.childabuseroyalcommission.gov.au/getattachment/5d0dc659-68c2-46f9-847b-fafd52f58673/Creating-child-safe-institutions>, accessed 23 November 2016.

³¹ Queensland Family & Child Commission, *Review of the foster care system: discussion paper*, <https://www.qfcc.qld.gov.au/sites/default/files/Review-of-the-foster-care-system-Discussion-Paper.pdf>, accessed 5 December 2016.

Option 4B – Clarify the regulation of out-of-home care requirements to ensure there is a robust, transparent framework for how decisions are made

The present regulatory system around out-of-home care requirements appears robust, but the QFCC has heard it is not always applied consistently in practice. The current system consists of a legislative framework for licensure of care services and provisional approval of foster and kinship carers,³² along with regulation and practice frameworks to guide decision-making.

The QFCC does not object to a clearer framework in legislation, particularly if that framework were also made simpler. The specific information and sources considered as part of the decision-making process could be contained in regulation or practice guides, to add detail to the simpler legislative framework.

Placing a clearer onus on service providers and carers to demonstrate how they are meeting the criteria may increase their regulatory burden. Organisations in the sector may need to increase their workforce capacity in response.

If licensing requirements are to be amended to complement the Human Services Quality Framework (HSQF), it should be noted that services supporting the NDIS will also need to comply with the HSQF.³³ It may help providers if licensing requirements for out-of-home care, as well as a quality and safeguards framework, match the NDIS and HSQF requirements as closely as practicable, to ensure consistency across the board.

The QFCC supports clear separation of funding, licensing and monitoring functions. This would ensure transparency and accountability throughout the system.

Option 4C – Broaden the types of services that are regulated to enable flexible responses to emerging and developing service needs, in addition to the current mix of out-of-home care service models, in the future

The QFCC supports the proposal to broaden the types of services regulated to enable flexible responses to need. This could be done through a broad statement in legislation allowing differentiated requirements for services, followed by more detailed regulation and practice frameworks outlining what the different requirements for each service will be.

The requirements then could apply to any services, including non-government organisations, government and carers. The detail of these requirements could be handled outside legislation to allow quick responses to changing needs.

Option 4D – Specify minimum qualifications for people working in residential care

There may be unintended consequences in specifying minimum qualifications for people working in residential care. Such a move may impact on labour mobility around the sector, for example for people who seek to move from out-of-school-hours care to residential care. People currently working outside the residential care sector may be discouraged from applying if first required to pay for a tertiary qualification.

³² *Child Protection Act 1999*, ss.124-136.

³³ Department of Communities, Child Safety and Disability Services, *National Disability Insurance Scheme (NDIS) quality assurance requirements for Queensland*, <https://www.communities.qld.gov.au/gateway/funding-grants/human-services-quality-framework/national-disability-insurance-scheme-ndis-quality-assurance-requirements-queensland>, accessed 5 December 2016.

There are already minimum qualifications for family day care and early childhood education work under the Education and Care Services National Regulations.³⁴ If DCCSDS implements new minimum qualifications for residential care workers, consideration should be given to aligning these to the existing regulations to ensure consistency while allowing labour mobility where appropriate. It may be beneficial to consider whether qualifications for one area of the care workforce could be considered appropriate for other areas. For example, a qualification in child care or early childhood education might also be appropriate for a position in residential care.

There may be resource implications for residential care organisations needing to upskill their current workforce. Any minimum qualification should take into consideration the need to attract staff, retain experienced staff, and allow staff to move around the sector where appropriate.

The QFCC has produced a report, *Your Workforce, Your Future*, which details current levels of qualifications in the Queensland child protection sector. It shows 68 per cent of organisations have indicated they have minimum employment qualifications. Of these, 40 per cent indicated a minimum Bachelor level qualification, 35 per cent required a Certificate IV, 27 per cent required a Certificate III and 25 per cent indicated preference for a Diploma level qualification. These numbers reflect the sector broadly, not only in residential care. The report also notes the preference organisations have for experienced staff, outside their qualifications.³⁵ These numbers suggest there are a large number of highly qualified staff in the sector, and any move to require minimum qualification requirements should consider the needs of the existing workforce.

It may also be worth considering whether the specific detail of minimum requirements needs to be in legislation, or whether this detail could be contained in regulations to allow quick responses to changing needs.

³⁴ Department of Education and Training, *Qualifications for family day care services*, <http://www.deta.qld.gov.au/earlychildhood/workforce/family-day-care-services.html>, accessed 30 November 2016; Department of Education and Training, *Staffing requirements in Queensland*, March 2015, <http://deta.qld.gov.au/earlychildhood/pdfs/key-changes-qld.pdf>, accessed 30 November 2016.

³⁵ Queensland Family and Child Commission, *Your Workforce, Your Future: 2016 Survey Report*, 2016, <https://www.qfcc.qld.gov.au/sites/default/files/For%20professionals/your%20workforce%20your%20future%20report%20final.pdf>, accessed 30 November 2016.

5. Meaningful participation by children in decision making

Recommendation

The QFCC supports:

- the option to require the Government to give a child an opportunity to express their views, but not to require the child to express a view if they are unwilling.
- continuing to provide for separate and direct representation in legislation, ensuring any clarification of this provision does not create more stress or obligation on children and young people
- care when considering a broader rights focus, that any new stated rights are specific, and matched to funding and action
- consideration of expanding the Charter of Rights to all children involved in child protection concerns, ensuring this does not oblige Government to provide resources to children who do not need it
- inclusion of a preamble to recognise the relevant international human rights context

Option 5A – Include provisions that make it clear that children have the right to express and have their views heard before a decision that affects them is made, and outline how children and young people can express their views

Section 5E of the Act requires the Queensland Government to give ‘a child an opportunity to express their views’ and stipulates that children should be given communication, support and explanations in appropriate language to help them do so. However, the QCPCI report argued that children’s ‘views are not consistently being heard’.³⁶ Recommendation 13.13 from the QCPCI report calls for the Minister for Communities, Child Safety and Disability Services to ‘propose amendments to the Act to require the views of children and young people to be provided to the court either directly... or through a separate legal representative’.³⁷

Section 5D of the current Act requires the Queensland Government to seek the views of ‘relevant persons’ before making decisions ‘to the extent that it is appropriate’. However, the Act does not require the Government to specifically seek the views of the child who is subject to proceedings.

In response to recommendation 13.13, DCCSDS could consider adding a subsection to s. 5D to require the Government to seek the views of a child before making decisions. As with the current s. 5E(2), this subsection could also contain a provision to not require a child to express a view when they would prefer not to do so. The subsection could require, if a child does not express a view, a separate representative act in a child’s best interests before a decision is made.

Option 5B – Include clearer provisions that enable children and young people to be given access to independent legal advice and representation to vary or revoke their child protection order

The QFCC supports clarifying provisions within legislation to make clear children and young people are to be given access to independent legal advice and representation to vary or revoke their child

³⁶ Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, Brisbane: State of Queensland, p.xxv.

³⁷ *Ibid.*, p.xlii

protection order. Some consideration could be given to make sure children are not required to seek representation, as this could create stress for vulnerable young people.

Option 5C – Introduce a broad rights focus throughout the legislation and ensure reciprocal responsibilities are provided to ensure children and young people are aware of their rights and supported to exercise them

and

Option 5D – Revise and expand the Charter of Rights to apply to all children involved in the system

The QFCC supports revising the Charter of Rights to apply to all children subject to ongoing intervention under the legislation. A carefully-worded, expanded charter of rights would help empower more children to express their views and understand the child protection system. This would extend beyond Charters of Rights currently in place here in Queensland, and also in New South Wales, Western Australia and South Australia, which apply only to children in care.

The existing paramount and general principles provide a strong rights-based context for child protection legislation. If the Act were to contain a broader rights focus, DCCSDS could consider how those rights can be supported through policy and resourcing.

Consideration could also be given to adopting some of the principles behind the *United Nations Declaration on the Rights of Indigenous Peoples* in expanding the Charter of Rights in the Act.³⁸

Option 5E – Include a preamble in legislation that recognises the relevant human rights context within which it operates

The QFCC supports including a preamble in legislation recognising the relevant human rights context, which would make the Act consistent with the *Domestic and Family Violence Act 2012*. This could include the *United Nations Convention on the Rights of the Child* and the *United Nations Declaration on the Rights of Indigenous Peoples*. If implemented, Queensland would be the first jurisdiction to write this into child protection legislation.

³⁸ Australian Human Rights Commission, *Indigenous International Rights*, <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/indigenous-international-rights>, accessed 13 December 2016.

6. Child wellbeing

Recommendation

The QFCC supports:

- introducing a definition of the concept of child wellbeing into legislation
- ensuring principles encourage working with families at each point of their involvement in the system, in a clear and simple statement
- developing an alternative to child safety investigations to respond to concerns currently categorised as notifications
- if a requirement is included that the Childrens Court must be satisfied the Government has taken all reasonable efforts to provide support, the term ‘reasonable’ should be strictly defined with examples.

Option 6A – Define the concept of child wellbeing

The QFCC supports clearly defining the concept of child wellbeing for the purposes of the Act. The paramount principle in the *Child Protection Act 1999* is the ‘safety, wellbeing and best interests of a child are paramount’.³⁹ The concept of ‘wellbeing’ has the potential to be interpreted broadly unless it is clearly defined.

This is common in states and territories across Australia, which mention ‘wellbeing’ without clearly defining the term.⁴⁰ Some states, such as Tasmania and South Australia, do not refer to ‘wellbeing’ as an object of the Act, and instead refer to allowing children to reach their full potential.⁴¹ This could also be broadly interpreted.

Option 6B – Ensure relevant principles and provisions encourage working with families at each point of their involvement in the system

The QFCC supports ensuring principles encourage working with families at each point of their involvement in the system. This could be straightforward, as in the case of s.8(1)(b) of the *Children, Young Persons and their Families Act 1997* (Tas), which states ‘a high priority is to be given to supporting and assisting the family to carry out that primary responsibility in preference to commencing proceedings’.⁴² The *Children, Youth and Families Act 2005* (Vic) has a similar statement in s.11(a), being ‘the child’s parent should be assisted and supported in reaching decisions and taking actions to promote the child’s safety and wellbeing’.⁴³

Option 6C – Clarify the existing provisions that enable the department to take the necessary action to meet the needs of a child reasonably believed to be in need of protection

The QFCC also supports moves to develop an alternative to child safety investigations to respond to concerns currently categorised as notifications. This is covered by recommendation 4.7 of the QCPCI report, which calls for DCCSDS to establish a ‘family services assessment response by a non-

³⁹ *Child Protection Act 1999*, s.5A.

⁴⁰ For example, *Children, Youth and Families Act 2005* (Vic), s.10; *Children and Young Persons (Care and Protection) Act 1998* (NSW), s.9; *Children and Young People Act 2008* (ACT), s.7;

⁴¹ *Children’s Protection Act 1993* (SA), s.3; *Children, Young Persons and their Families Act 1997* (TAS), s.7.

⁴² the *Children, Young Persons and their Families Act 1997* (TAS), s.8(1)(b)

⁴³ *Children, Youth and Families Act 2005* (Vic), s.11(a)

government organisation where there is a low to moderate risk' of harm.⁴⁴ The QCPCI report refers to successful adoption of these 'differential responses' in jurisdictions across the United States. Such a model may help DCCSDS work with families before requiring investigation and intervention. However, any development of a differential response model should consider contemporary research on outcomes for children in the absence of safety and risk assessments undertaken by statutory services.⁴⁵

Option 6D – Include a requirement that before granting a child protection order, the Childrens Court must be satisfied that the department has taken all reasonable efforts to provide support to the child and their family

Recommendation 13.20 of the QCPCI report calls for amendments to the Act to require the Childrens Court to be satisfied the department has taken all reasonable efforts to provide support services to the child and family before granting a child protection order.⁴⁶ The QFCC supports the intent of the option, recognising the principle that support should be provided to children and families. However, consideration needs to be given to allow circumstances where a child protection order is the most protective response.

Before enshrining these provisions in legislation, the QFCC would encourage DCCSDS to consider evaluations of the services funded by government to provide support to families.

Accessibility to services for families in remote communities, such as the outer islands of the Torres Strait, needs to be considered. This option should link with policy and practice to ensure Aboriginal and Torres Strait Islander families can access culturally specific services and other traditional forms of support. Recognised entity staff should also be supported to engage with all outer islands in the Torres Strait and be resourced appropriately to ensure they are skilled in communicating with different Torres Strait Islander groups and individuals regarding child protection court processes.

⁴⁴ Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, Brisbane: State of Queensland, p.101.

⁴⁵ For example, Hughes, R., J. Rycus, S. Saunders-Adams, L. Hughes, K. Hughes, 'Issues in Differential Response', *Research on Social Work Practice*, vol. 123, iss. 5, pp. 493-520, 2013.

⁴⁶ *Ibid.*, p. 487.

7. Working with families with parental agreement

Recommendation

The QFCC recommends:

- defining the role and responsibilities of ‘relevant’ non-government services
- clarifying the rights and responsibilities of a child’s parents during the process of developing and agreeing to a care agreement
- recognising Aboriginal tradition and Island custom during the development of a care agreement
- enabling family care agreements to support a sibling group
- increasing the maximum duration of a child protection care agreement
- enabling the department to direct a parent to do or refrain from doing something directly related to a child’s protection during a care agreement

Option 7A – Better outline the role and responsibilities of non-government services engaged by the department to support a child and their family during the development, agreement and duration of a care agreement

The QFCC supports outlining the role and responsibilities of non-government services engaged by the department to support a child and their family during the development, agreement and duration of a care agreement. There are a number of service providers in the community that play an important supportive role for families. Recognising their role may help strengthen the commitment and relationships between all parties to an agreement.

Option 7B – Clarify the rights and responsibilities of a child’s parents during the process of developing and agreeing to a care agreement

The QFCC supports clarifying the rights and responsibilities of a child’s parents during the process of developing and agreeing to a care agreement. In addition to supporting natural justice principles, this may also help strengthen the family’s understanding that they retain responsibility for safely caring for and protecting their child and for meeting their wellbeing needs.

The QFCC supports provisions to allow parents to be supported by another person during the development of a case plan, provided with relevant information and offered a reasonable opportunity to seek independent legal advice. However, these provisions should not hinder timely decisions that are in a child’s best interests.

Option 7C – Clearly recognise Aboriginal tradition and Island custom during the development and agreement of a care agreement

The QFCC supports recognising Aboriginal tradition and Torres Strait Islander custom during the development of care agreements and acknowledges the practice of traditional adoption and permanent child rearing practices. The QFCC supports legislative amendments to recognise traditional adoptions.

Option 7D – Enable a family care agreement to be made that supports a family to safely care and protect more than one child

The QFCC supports enabling a family care agreement to support a family to safely care for and protect more than one child, rather than requiring a separate agreement for each child. This shift would allow for a holistic approach to offer a consistent program of support for each child in a family.

Option 7E – Increase the maximum duration of a child protection care agreement

The QFCC supports increasing the maximum duration of a child protection care agreement. This may provide a more realistic timeframe for behaviour change, allowing parents to demonstrate capacity to safely care for their child and meet their wellbeing needs. It is important, however, that these provisions take into consideration children's need for stability and permanency.

Option 7F – Enable the department to direct a parent to do or refrain from doing something directly related to a child's protection during a care agreement, such as undertake testing, treatments or programs, or to refrain from living at a particular address

The QFCC supports, in principle, enabling the department to reasonably direct a parent to do or refrain from doing something directly related to a child's protection, while providing support to a family with their agreement. The QFCC welcomes further exploration regarding the benefits and challenges of legislative directions to parents working in a voluntary capacity, as well as further clarification regarding the implications of non-compliance. An evaluation of the use and outcomes of Directive and Supervision Orders is a necessary step prior to considering broadening this approach.

8. Parental responsibility

Recommendation

The QFCC supports:

- Maintaining a broad definition of ‘parent’ in the legislation, with sensitivity to Aboriginal and Torres Strait Islander kinship systems and traditional adoption practices
- Introducing a new key concept of ‘parental responsibility’ along the lines of the *Family Law Act 1975* (Cth)
- Further consideration as to how shared parenting orders, if introduced, would be used in practice in Queensland, and how these could contribute to the wellbeing and best interests of children.

Option 8A – Maintain the broad definition of parent to apply throughout the legislation. The narrow definition of parent could be removed, and the definition of who has party status in court proceedings could be revised to include those persons with a legal interest in the proceedings.

Section 11 of the *Child Protection Act 1999* sets out a broad definition of a parent. It includes mothers and fathers, someone else having or exercising parental responsibility for a child, and parents under Aboriginal tradition or Island custom. However, the definition of parent changes in s.51AA to a narrower definition, for the purpose of court processes within part 4AA of the Act.

The term ‘party to a proceeding’ could enable greater acknowledgement of Aboriginal and Torres Strait Islander kinship systems and traditional adoption practices. These practices could also be acknowledged in the broad definition of ‘parent’, if the term is used consistently and sensitively throughout the Act.

The QFCC supports the option to maintain the broad definition of parent throughout the Act, to ensure all persons with a legal interest, including people who are considered parents under the narrow definition, have the right to participate in court proceedings regarding their children.

Option 8B – Introduce and define a new key concept of ‘parental responsibility’ using a similar definition to the *Family Law Act 1975* (Cth) and remove references to ‘custody’ and ‘guardianship’ of a child

and

Option 8D – Define concept of ‘parental responsibility’ more broadly

The QFCC supports the option to introduce a new key concept of ‘parental responsibility’ along the lines of the *Family Law Act 1975* (Cth).⁴⁷ This could simplify provisions in the current Act and reduce confusion between parenting, custody and guardianship. Parental responsibility could be defined more broadly than at present, but this definition should still be clear. The broader concept of ‘parental responsibility’ should not impact the principle that children should only be subject to child protection orders if they have experienced, or are at risk of, significant harm.

⁴⁷ *Family Law Act 1975* (Cth), s. 61B.

Option 8C – Introduce new ‘shared parenting orders’ that enable parental responsibility for a child to be jointly shared between the chief executive or another suitable person and a child’s parents

The *Children and Young Persons (Care and Protection) Act 1998* (NSW) allows for parental responsibility to be allocated to multiple people, including one or both parents, the Minister, or another suitable person or persons. Specific aspects of parental responsibility can be shared between these people. As outlined in s.79(2), these aspects are:

- a) the residence of the child or young person
- b) contact
- c) the education and training of the child or young person
- d) the religious upbringing of the child or young person
- e) the medical treatment of the child or young person.⁴⁸

A provision such as this could be introduced in Queensland to provide clarity about the decisions made about children. A new key concept of parental responsibility, as in option 8B, may help to clarify the extent and operation of shared parenting orders if introduced.

⁴⁸ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s.79(2).

9. Collaborative case planning

Recommendation

The QFCC supports:

- inclusion of enabling, flexible case planning provisions to simplify this section of the Act and make case planning requirements less prescriptive
- enabling the delegation of case planning responsibilities to particular non-government entities or individuals, with the inclusion of appropriate quality and safeguard measures to ensure the safety and wellbeing of a child.

Option 9A – Include enabling, flexible case planning provisions

The QFCC supports the inclusion of enabling, flexible case planning provisions to simplify the case planning section of the Act and make requirements less prescriptive. High-level principles will enable case planning procedures to be responsive to changes in best practice while supporting the collaborative family decision-making reforms currently taking place. Flexibility in the way case planning is delivered will allow for processes to be adapted to be more culturally appropriate.

The QFCC also supports the significance of culturally appropriate and culturally relevant case plans. These should be developed to accommodate particular stages in the child's life and development. For example, in Aboriginal custom or Torres Strait Islander tradition, young boys are initiated to a first shave or hunting practices at a particular stage in their lives. Young girls also require initiation to certain practices during different stages in their lives.

Option 9B – Provide greater flexibility to enable the delegation of case planning responsibilities to particular non-government entities or individuals in the future

The QFCC supports the provision of greater flexibility to enable the delegation of case planning responsibilities to particular non-government entities or individuals in the future, with the inclusion of appropriate quality and safeguard measures to ensure the safety and wellbeing of a child when case planning is delegated.

Many community agencies currently provide extensive case work support in child protection matters which could effectively undertake case planning too, particularly with families where reunification is a strong likelihood. This would provide consistent support to families and possibly reduce pressure on current child protection resources.

Delegation of child protection functions to Indigenous communities, where appropriate, would support culturally appropriate case planning practices. Where case planning responsibilities are delegated to and led by a culturally appropriate agency such as an Aboriginal Community Controlled Organisation, there may be less resistance from Aboriginal and Torres Strait Islander families to participate in case planning.

It would be important for DCCSDS to provide training to contracted services in Structured Decision Making tools, the Strengthening Families Protecting Children Framework for Practice and other documents such as case plans and reviews. Accordingly, services would need to be appropriately funded to undertake these roles and responsibilities.

10. Meaningful participation by families in decision making

Recommendation

The QFCC supports:

- including strengthened principles that recognise a family's right to meaningfully participate in planning and decision-making
- embedding natural justice and procedural fairness requirements into relevant decision making points in the legislation.
- providing for collaborative family decision making and Aboriginal and Torres Strait Islander family-led decision making in the legislation.

Option 10A – Include strengthened principles that recognise a family's right to meaningfully participate in planning and decision making as far as possible

The QFCC supports including in the Act strengthened principles that recognise a family's right to meaningfully participate in planning and decision-making as far as possible. There are currently a number of key decision making points where parents and families are provided with information and appeal rights to support natural justice and procedural fairness, such as advice about the outcome of an investigation, changes to family contact visit arrangements and court proceedings.

The *Childrens Court Rules 2016* and the *Director of Child Protection Litigation Act 2016* introduced a duty of disclosure in child protection proceedings in Queensland. This duty is applicable to DCCSDS staff and the Director of Child Protection Litigation (DCPL). Rule 13 promotes the active disclosure of information to families when an application for a child protection order is being made.⁴⁹ The *Childrens Court Rules 2016* say that when the DCPL files a child protection application, it must also at the same time file an affidavit exhibiting a number of relevant documents that contain personal information about the family.

Information disclosure to families in general though could be strengthened by including principles in the Act that promote a requirement for families to be treated fairly and with respect, and recognise the importance of a child's enduring relationship with family, community and kin.

While every effort must be made to treat families fairly and with respect, child protection work must remain child-focussed. Any changes to this section should be consistent with the paramount and other general principles of the Act, to continue to ensure timely decisions are made in a child's best interests.

⁴⁹ *Childrens Court Rules 2016* (QLD), s.13.

Option 10B – Embed natural justice and procedural fairness requirements into all relevant decision making points in the legislation

The QFCC supports embedding natural justice and procedural fairness requirements into relevant decision making points in the legislation.

There are no examples of natural justice and procedural fairness being explicitly stated in child protection legislation in other jurisdictions. The Legal Services Commission of South Australia states that unless an act expressly or by implication forbids the rules of natural justice, the courts will infer that parliament intended those rules to be observed.⁵⁰ However, the Australian Law Reform Commission highlights there are significant power differentials in child protection interventions and there is concern about how natural justice, procedural fairness and legal rights are upheld in out-of-court meetings and conferences where parties are not legally represented.⁵¹

Therefore, it is important that parents and families are provided with the information they need to meaningfully participate, are given a reasonable opportunity to do so, and have access to appropriate recourse if decisions are made that affect them. This could be supported by developing resources, which child protection workers could give to parents and families at key case planning points. This means there may be resource implications associated with adopting this option.

Option 10C – Provide for collaborative family decision making and Aboriginal and Torres Strait Islander family-led decision making in the legislation

The QFCC supports enabling collaborative family decision making and Aboriginal and Torres Strait Islander family-led decision making in the legislation. Provisions could allow for changes to service models and practice including collaborative responses in earlier phases of all children and families' contact with the child protection system. Consideration should be given to avoid prescriptive provisions in the Act, to allow detail to be outlined in practice and policy frameworks.

⁵⁰ Legal Services Commission of South Australia, *Natural Justice*, <http://www.lawhandbook.sa.gov.au/ch18s09s01.php>, Accessed 25 November 2016.

⁵¹ Australian Law Reform Commission, *Family Violence – A National Legal Response (ALRC Report 114)*, s.23.75, <https://www.alrc.gov.au/publications/23.%20Intersections%20and%20Inconsistencies/dispute-resolution-child-protection%E2%80%94law-and-pract>, accessed 25 November 2016.

11. Information sharing

Recommendation

The QFCC supports:

- simplifying and clarifying the current information sharing provisions contained within the Act
- broadening information sharing provisions
- flexible information provisions that enable the delegation of case management responsibilities to non-government organisations
- allowing broad sharing of personal information without consent
- sharing information with adults who were children in out-of-home care.

Option 11A – Simplify and clarify the current information sharing provisions

The QFCC supports simplifying and clarifying the current information sharing provisions contained within the Act. Currently, the Act allows for the sharing of relevant information between government agencies and non-government service providers that support children and families. The Act also prescribes a list of the types of information that may be shared,⁵² and the types of information that must remain confidential.⁵³

However, research suggests many practitioners are reluctant to share information despite having the legal authority to do so.⁵⁴ This stems from the complexity of the legislative and regulatory frameworks and the fear of being wrong, disciplined, or criminally sanctioned. This has the potential to create a risk-averse culture around information sharing, where practitioners focus on the protection of the agency rather than the interests of children and their families.

The Royal Commission into Institutional Responses to Child Sexual Abuse has identified it is often the interpretation of legal and policy frameworks which create significant barriers to information sharing, more than legislation and policy.⁵⁵

Furthermore, the QFCC's *When a child is missing* report has identified key government agencies do not routinely share information where there is no clear legislated ability or policy mandate to do so.⁵⁶ These difficulties were partly due to inconsistent definitions and guidelines.⁵⁷ A clearer legislative and policy framework may therefore help agencies to better share information to guide efforts to protect and care for children.

⁵² *Child Protection Act 1999* (Qld), s.159C

⁵³ *Ibid.*, ss.186-188

⁵⁴ Royal Commission into Institutional Responses to Child Sexual Abuse, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, 2016, p.62

⁵⁵ *Ibid.*, p.9.

⁵⁶ Queensland Family and Child Commission, *When a child is missing*, <https://www.qfcc.qld.gov.au/when-a-child-is-missing>, accessed 9 December 2016, p. 27.

⁵⁷ *Ibid.*, p.33.

Option 11B – Broaden information sharing provisions to enable personal information about a child and their family to be shared between ‘service providers’ when a child is at risk of becoming a child in need of protection and for specific purposes.

The QFCC supports broadening information sharing provisions to enable personal information about a child and their family to be shared between ‘service providers’ when a child is at risk of becoming a child in need of protection and for specific purposes. The Act currently does not enable information sharing between non-government service providers without consent or unless they are participating in case planning.

The QCPCI raised concerns about the way information is shared between DCCSDS and other government and non-government organisations. It also identified a need for better information-exchange processes between non-government organisations.⁵⁸

Ideally, any provisions which outline information sharing principles should not overcomplicate the Act. These measures should be straightforward and clear to encourage information sharing to meet the protection and wellbeing needs of children.

Action 4.3 of the QFCC’s *Strengthening our sector: first action plan 2016-17* requires the QFCC to ‘facilitate joint training initiatives and access to resources to support professional behaviour change relating to information sharing’.⁵⁹ This work will help staff in the child protection sector to better understand when and how they can share information to promote the safety and wellbeing of a child.

Option 11C – Ensure information sharing provisions are flexible to enable the delegation of case management responsibilities to non-government organisations in the future

The QFCC supports ensuring information provisions are flexible to enable the delegation of case management responsibilities to non-government organisations in the future. The QFCC agrees that this would support the delegations of any powers and functions to other agencies and enable non-government agencies to take on greater responsibilities for case management in the future.

Option 11D – Allow broad sharing of personal information without consent in a similar way to Chapter 16A in the New South Wales legislation

The QFCC supports allowing broad sharing of personal information without consent in a similar way to *Children and Young Persons (Care and Protection) Act 1998* (NSW).⁶⁰ The QFCC sees benefits in relevant agencies being able to share personal information about a child or family with other agencies, to enable better responses to the needs of children throughout the child protection sector.

Currently, there are various provisions in child protection legislation across Australian jurisdictions which provide for specific information sharing arrangements between particular agencies and organisations. The Royal Commission into Institutional Responses to Child Sexual Abuse has suggested that all Australian jurisdictions adopt nationally consistent information sharing

⁵⁸ Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, Brisbane: State of Queensland, 2013, pp.509-510

⁵⁹ Queensland Family and Child Commission, *Strengthening our sector: first action plan 2016-17*, https://www.qfcc.qld.gov.au/sites/default/files/For%20professionals/strengthening%20our%20sector/qfcc_strengthening_oursector_actionplan_201_17_printversion.pdf, accessed 9 December 2016.

⁶⁰ *Children and Young Persons (Care and Protection) Act 1998* (NSW), Chapter 16A.

arrangements based on New South Wales legislation.⁶¹ Uniting these provisions, as has been done in Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW), may help clarify and increase confidence in, information sharing arrangements. It may also highlight agencies and organisations that lie outside the information sharing arrangements that should be included in any amendments.⁶²

If the options to emphasise shared responsibility for child protection and collaborative case planning are implemented,⁶³ it is particularly important that appropriate non-government organisations are included in expanded information sharing arrangements.

If Queensland were to adopt option 2E, which would allow delegation of functions and powers to the chief executive of an Aboriginal or Torres Strait Islander agency, the inclusion of clear provisions would help that agency share information with other defined entities to support a child in its care.

Adopting provisions similar to NSW legislation would allow the sharing of personal information where public sector agencies and private sector organisations reasonably believe it is necessary to lessen or prevent a serious threat to a child's life, health or safety, rather than being limited to situations where the threat of significant harm is imminent.

The provisions in the NSW legislation help to make information sharing clear. A provision such as this in Queensland would go some way to responding to the concerns voiced by the Royal Commission and the QFCC's *When a child is missing* report, that organisations are not sharing as much information as they could be, due to difficulties interpreting legislation and policy.

Option 11E – Enable the sharing of information with adults who were children in out-of-home care

The QFCC supports enabling the sharing of information with adults who were children in out-of-home care. Former children in care are currently able to access their personal information through administrative access processes however creating provision within the Act would improve care leavers' ability to access information about their personal and family history.

Strengthened provisions would be consistent with improved information sharing provisions in the *Adoption Act 2009*, as amended in 2016, to support the broad principle that information should not be withheld from people who have experienced trauma.

Thought should be given to whether counselling should be offered to people receiving information, although this should be addressed in practice rather than legislation.

⁶¹ Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Institutional Responses to Child Sexual Abuse in Out-of-Home Care*, p.8, <http://www.childabuseroyalcommission.gov.au/getattachment/Offa1ec1-db19-4c3e-b3b8-d7a8f32d4f55/Out-of-home-care-consultation-paper>, accessed 25 November 2016.

⁶² Royal Commission into Institutional Responses to Child Sexual Abuse, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, p.3, <http://childabuseroyalcommission.gov.au/getattachment/09cc75d1-30aa-46b4-a922-fdeb5fc58e67/A-study-into-the-legislative-and-related-key-frame>, accessed 14 December 2016.

⁶³ Department of Communities, Child Safety and Disability Services, *The next chapter in child protection legislation for Queensland – Options paper*, 2016, pp. 12-13 and 32-33.

12. Permanency outcomes for children

Recommendation

The QFCC supports:

- introducing overarching permanency principles in the legislation
- specifically prohibiting the making of one or more short-term orders that extend in total beyond the two-year period from the time the order is made, unless the court is reasonably satisfied that it is in the best interests of the child to do so
- introducing provisions that require a case plan for a child to include permanency goals and plans for the child
- introducing a new type of enduring permanent care order
- allowing a child to be an applicant for the permanent care order, with appropriate safeguards.

Option 12A – Introducing overarching permanency principles in the legislation

The QFCC supports introducing overarching permanency principles in the legislation. Although DCCSDS policies and resources provide guidance around permanency planning, the Act itself does not explicitly prioritise or support permanency outcomes for children in the child protection system. Overarching principles may help promote early permanency planning and long-term placement stability for children in out-of-home care.

New South Wales and Victorian legislation have specific timeframes for child protection departments and courts to assess the possibility of a child being returned to their parents. The *Children and Young Persons (Care and Protection) Act 1998* (NSW) states that a permanency plan does not provide details of the exact long-term placement but must provide a reasonably clear picture as to the way in which the child's needs, welfare and wellbeing will be met in the foreseeable future.⁶⁴

Option 12B – Introduce provisions which specifically prohibit the making of one or more short-term orders that extend in total beyond the two-year period from the time the order is made, unless the court is reasonably satisfied that it is in the best interests of the child to do so

The QFCC supports introducing provisions which specifically prohibit the making of one or more short-term orders that extend in total beyond the two-year period from the time the order is made, unless the court is reasonably satisfied that it is in the best interests of the child to do so.

The Queensland Child Protection Commission of Inquiry found issues with the length of time between application and outcome for court matters, which in some cases was up to two years.⁶⁵ Limiting the length of time a child can be on any form of short-term order, including interim orders, could support the prioritisation of reunification activities, or expedite permanency.

⁶⁴ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s.78A(2A)

⁶⁵ Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, Brisbane: State of Queensland, 2013, p.490

Option 12C – Introduce provisions that require a case plan for a child to include permanency goals and plans for the child, including contingency plans if a child is unable to be reunified with their family in the foreseeable future

The QFCC supports introducing provisions that require a case plan for a child to include permanency goals and plans for the child, including contingency plans if a child is unable to be reunified with their family in the foreseeable future. Setting out these requirements in the early part of intervention may result in better planned long-term placements, more thorough exploration of possible placements with extended family, improve cultural identity and connectedness and will also provide transparency to families about what will happen if reunification is not successful.

Option 12D – Introduce a new type of enduring permanent care order that provides a child in out-of-home care with a secure family while maintaining their identity

The QFCC supports introducing a new type of enduring permanent care order that provides a child in out-of-home care with a secure family while maintaining their identity. This will enable a child to exit from the child protection system while enabling the department to provide financial support to the carer. The QFCC agrees that this could potentially broaden the supply of carers.

This type of order is available in Victoria.⁶⁶ It could provide long term security and certainty about the future care for children who have entered the child protection system and for whom a decision has been made that they are unable to live safely with their birth parents on a long term basis.⁶⁷

Impacts of the *Succession Act 1981* should be considered when drafting enduring permanent care provisions, to ensure children are supported after the death of a permanent carer.

Option 12E – Introduce provisions to allow a child to be an applicant for the permanent care order (as proposed in 12D)

The QFCC supports introducing provisions to allow a child to be an applicant for the permanent care order and recommends including safeguards to ensure this power is exercised in appropriate circumstances. It may be beneficial for the Office of the Public Guardian's Child Advocates and a direct legal representative for the child to support the child in these circumstances.

⁶⁶ *Children, Youth and Families Act 20015 Act No. 96/2005*, (VIC), Part 4.10.

⁶⁷ Victoria State Government Department of Health and Human Services, *Child Protection Manual, Permanent care*, <http://www.cpmanual.vic.gov.au/advice-and-protocols/service-descriptions/out-home-care/permanent-care>, accessed 24 November 2016.

13. Young people transitioning to independence

Recommendation

The QFCC supports:

- Requiring a transition to independence plan from the time a young person reaches the age of 15 years
- Making clear the Queensland Government must ensure the young person can access assistance to transition up to 21 years of age, with discretion to provide assistance if requested until the age of 25 years.

Option 13A – Require a case plan for a child to include a transition to independence plan from the time the young person reaches the age of 15 years.

The QFCC supports the option to require a transition to independence plan from the time the young person reaches the age of 15 years. At present, transition to independence plans are not included in the *Child Protection Act 1999*, and are not a legislative requirement. Transition to Independence planning is recorded within a case plan document. As at 30 June 2016, 66.4 per cent of eligible young people had a transition to independence plan.⁶⁸

Enshrining this requirement in legislation would make sure Transition to Independence plans are made sooner, to allow the young person time to prepare for independent living.

The QFCC supports amending the Act to require a transition to independence plan that meets a young person's housing and accommodation, education and employment, health, disability, and other long term care and wellbeing needs.

Option 13B – Make it clear that the department must ensure the young person can access assistance to transition from being a child in care to independence, up until they reach 21 years of age.

The QFCC also supports the option to make clear that DCCSDS must ensure a young person can access assistance to transition until they reach 21 years of age, along with discretion to provide assistance if requested until the age of 25. This would make Queensland consistent with a number of other jurisdictions in Australia,⁶⁹ which allow for young people who develop at different rates and face a range of difficulties through their young adulthood. According to the Australian Institute of Family Studies, best-practice independence planning should be 'based on the young person's needs, flexible post-care options and ongoing support until young people reach 25 years of age'.⁷⁰

⁶⁸ <https://www.communities.qld.gov.au/childsafety/about-us/our-performance/high-quality-services-improved-wellbeing/transition-independence>, accessed 25 November 2016.

⁶⁹ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s. 161; *Children and Community Services Act 2004* (WA), s. 96; *Children and Young People Act 2008* (ACT), s. 529B; *Care and Protection of Children Act 2007* (NT), s. 68.

⁷⁰ Australian Institute of Family Studies, *Supporting young people leaving out-of-home care*, CFCA Paper No. 41, 2016, <https://aifs.gov.au/cfca/publications/supporting-young-people-leaving-out-home-care/supporting-young-people-leaving-care>, accessed 25 November 2016.

Other Queensland Child Protection Commission of Inquiry recommendations being considered

Recommendation 4.11: the department to review its data-recording methods so that the categories of harm and the categories of abuse or neglect accord with the legislative provisions of the *Child Protection Act 1999*.

The QFCC supports the QCPCI recommendation that DCCSDS review its data-recording methods so that the categories of harm and the categories of abuse or neglect accord with the legislative framework of the *Child Protection Act 1999*. DCCSDS should align data-collecting systems with the new categories or practices, in order to ensure targeted interventions can be actioned, tracked and evaluated.

Recommendation 13.15 (1): support parents through child protection proceedings by providing them with information about how to access and apply for legal advice or representation, and ensure parents are provided with reasonable time to seek advice. The government recognises that providing timely information about how to access and apply for legal advice or representation, and enabling access to appropriate legal representation is critical to ensuring that the child protection system produces good and just outcomes for children and their families.

In 2016, the South West Brisbane Community Legal Centre, in partnership with the QFCC, released the *Information kit on child protection for parents*. This is available from the QFCC website and has been distributed in print to a number of Child Safety Service Centres and non-government organisations in the child protection sector. The kit, which responds to recommendation 13.26 of the QCPCI report, provides information to parents on all aspects of the child protection system, including how to access legal advice and representation.

The QFCC supports the recommendation that information like this should be provided to parents as a matter of course. The information kit could form part of the response to this recommendation.

The QFCC also supports giving parents reasonable time to seek advice. Care should be taken to define the concept of 'reasonable', keeping in mind that Aboriginal and Torres Strait Islander families, and family located in remote communities, may need long timeframes to be able to travel to access legal advice.

Recommendation 8.9: the department to develop a model for providing a therapeutic secure care as a last resort for children who present a significant risk of serious harm to themselves or others (recommendation accepted in principle; if and when Queensland government finances permit). The model should include, as a minimum, the requirement that the department apply for an order from the Supreme Court to compel a child to be admitted to the service.

The QFCC supports the development of a model for providing therapeutic secure care as a last resort intervention type for children who present a significant risk of serious harm to themselves or others.

The QFCC does not support secure care as a primary placement option.

The QFCC also supports the requirement that the department apply for a court order as a safeguard measure.

Matters DCCSDS may consider in the development of this model include:

- the potential for the model to draw more children into the child protection system as a result of parents relinquishing children where they do not have access to appropriate services such as mental health and drug rehabilitation, especially for 10 to 16 year olds
- the types of therapeutic interventions that will be available such as mental health, drug and alcohol rehabilitation
- the protection of children's rights and how their views and participation are considered during the intervention
- the need to provide protection for the child and members of the public
- the period for which a young person could be detained in secure-care
- which interventions are needed to support the reunification of the child to the family after leaving secure care.

Recommendation 13.23: allow the Childrens Court discretion to make an order for costs in exceptional circumstances.

The QFCC supports amending the *Child Protection Act 1999* to allow the Childrens Court discretion to make an order for costs in exceptional circumstances. Section 116 currently states that the parties to a proceeding in the Childrens Court for an order must pay their own costs of the proceeding. An award of an adverse costs order may be seen as a deterrent to those parties who do not comply with orders and other obligations and as a means of encouraging parties to use an alternative dispute-resolution procedure where appropriate, similarly to Family Court matters.⁷¹

The QFCC would support legislation similar to New South Wales where there may be exceptional circumstances where the Childrens Court may make an order for costs against any party to the proceedings,⁷² rather than South Australian or Tasmanian legislation that only make provision for an order against the state child protection agency.

Recommendation 14.3: the chief executive administering the Act and the Director of Child Protection Litigation have limited legal authority to make public or disclose information that would otherwise be confidential (including, in rare cases, identifying particulars) to correct misinformation, protect legitimate reputational interests or for any other public interest purpose. In particular, it will be considered whether some of the confidentiality obligations should not apply when the child in question is deceased.

The QFCC supports the recommendation that the chief executive administering the Act and the Director of Child Protection Litigation have limited legal authority to make public or disclose information that would otherwise be confidential (including, in rare cases, identifying particulars) to correct misinformation, protect legitimate reputational interests or for any other public interest purpose.

Currently the Act preserves the confidentiality rights of children and families where privacy is in the best interests of the child. Section 189 prohibits publication of information that identifies that a child is, or has been, in the child protection system, other than the information sharing provisions with other agencies.⁷³

⁷¹ Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, Brisbane: State of Queensland, 2013, p.490

⁷² *Children and Young Persons (Care and Protection) Act 1999* (NSW), s.88.

⁷³ *Child Protection Act 1999* (QLD), s. 189.

The QFCC's view is that it is important to balance an individual's right to privacy with the public's ability to check and challenge departmental decisions as well as retain confidence in the child protection system through the department being able to explain legitimate actions.⁷⁴

⁷⁴ Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, Brisbane: State of Queensland, 2013, pp 510-11.