



# Recommendation 28 Supplementary Review

A report on information sharing to enhance the safety  
of children in regulated home-based services

**When a child is missing**

Queensland  
Family & Child  
Commission



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The QFCC would also like to acknowledge the contribution of officers from across the organisation for their efforts in conducting and reporting on the activities required for this review.

# Executive Summary

In July 2016, the Queensland Family and Child Commission (QFCC) released its report *When a child is missing: Remembering Tiahleigh – A report into Queensland’s children missing from out-of-home care* (When a child is missing report). The report made 29 recommendations to achieve whole-of-government system improvements in responding to children missing from out-of-home care. Recommendation 28 of the report required the QFCC to review legislation, policies and practices relating to information sharing to protect all children in regulated service environments.

On 21 September 2016, the Premier requested the QFCC undertake a review of the blue card system, the approval and monitoring processes of foster carers and pressure points in child protection service delivery. The need for this review was identified following the investigation into the tragic death of Tiahleigh Palmer. The QFCC has commenced this review and is working with stakeholders and an Expert Panel to identify opportunities for improvements.

The QFCC’s review in response to Recommendation 28 focuses specifically on those regulated services provided from the home: foster and kinship care, family day care and stand-alone care services<sup>1</sup>. Agencies responsible for regulating and monitoring these environments include the Department of Communities, Child Safety and Disability Services (Child Safety Services), the Department of Education and Training (DET), the Queensland Police Service (QPS) and the Department of Justice and Attorney-General – Blue Card Services (Blue Card Services). Information sharing legislation, policies and procedures between these agencies were considered as part of this review.

<sup>1</sup> Stand-alone care services are similar to, but not connected with the national family day care system. They are mostly small-scale care services operating in regional and remote areas. These types of carers are not engaged by a family day care service or provider, but are usually provided in the home of the carer.

This report outlines the key findings identified as a result of the review and makes 17 recommendations. The recommendations are designed to improve information sharing and develop stronger safeguards for children in regulated home-based services. In implementing the recommendations, agencies will need to continue working together to identify the resources required to achieve the intended benefits.

Key findings of the review are classified into three broad themes.

## **Visibility of all home-based services**

There is a need for greater visibility of home-based services by regulatory bodies, particularly where households are providing more than one service to children. Creating a centralised system, such as a register, for recording and reporting on all home-based services – particularly co-located services – will facilitate more effective information sharing between the agencies responsible for the safety of children accessing these environments.

## **Assessing the suitability of individuals providing regulated home-based services to children**

While all foster and kinship carers, family day care educators and stand-alone carers are required to hold a blue card, there are currently variations in the types of information assessed by each system to determine their suitability. Aligning the assessment and approval processes across regulated home-based services is necessary to make sure children experience the safest possible environments when accessing these services. Suitability assessments should consider child protection history, as well as domestic violence and traffic history where relevant. This will require legislative and policy change.

## Sharing information to respond to potential risks in regulated home-based services

There are improvements which can be made to information sharing, where it relates to potential risks to children in regulated home-based services. In particular, the QPS could benefit from developing additional decision-making frameworks to guide information sharing to protect all children. The QPS has already begun working on this important initiative. There are also opportunities for legislative and policy change to allow for earlier notification to Blue Card Services and regulatory bodies when a person associated with a home-based service is a suspect in a disqualifying offence (e.g. child sexual offences, child homicide or possession of child exploitation material).

## Recommendations

The Queensland Family and Child Commission recommends:

### Visibility of all home-based services

**28.1** Blue Card Services immediately begins work to establish a centralised system (i.e. a register) for recording and reporting on all child-related employment or businesses conducted from the home. This may be achieved through modifying existing blue card information systems.

### Improvements to data systems

The system will be able to identify co-located services, including foster/kinship care, family day care and stand-alone care. In establishing the register, Blue Card Services should consider:

- developing better defined blue card categories to identify discrete employment and business types
- the QPS having line of sight to the register to access up-to-date information when police attend a residential address to identify potential risks to children
- Child Safety Services and the DET providing information to inform the register, and
- making information available to agencies, including the DET, Child Safety Services, the OPG, and relevant non-government agencies to assist with regulating and/or monitoring home-based services.

The *Blue Card and Foster Care Systems Review* is considering any legislative change required to support the release and sharing of this information.

**Reason:** *Developing a centralised system for recording all home-based services, including those that are co-located, will increase visibility of these services, inform decision-making and facilitate information sharing between agencies to promote the safety of all children. Blue Card Services currently holds information about all child-related employment or businesses conducted from the home. This information will form the basis of the register.*

## 28.2 Blue Card Services expands its legislative functions to include a responsibility to:

- classify blue card data according to relevant factors and analyse this data to identify trends or patterns relevant to risks to children
- provide this data to persons or organisations considered by the Chief Executive to be conducting genuine research, and
- report publicly about trends and patterns identified.

## Legislation and policy amendments

Blue Card Services should provide government with a proposal outlining the funding and resource implications. The *Blue Card and Foster Care Systems Review*<sup>2</sup> is considering the broader policy implications and any legislative changes necessary to support this recommendation, including any changes to data systems or research functions arising from the implementation of Recommendation 28.1.

**Reason:** *Providing better access to blue card data will assist in building community understanding of its value and limits. It will also be useful in developing a stronger evidence base about the risks to children in service settings in Queensland. This provides an opportunity for employers, regulators and peak bodies to initiate proactive measures to enhance the safety of children.*

<sup>2</sup> In September 2016 the QFCC was asked to undertake a whole-of-system review of the *Working with Children (Risk Management and Screening) Act 2000* and its operation. This review will include a review of the assessment, approval and monitoring processes for foster and kinship carers. This is referred to as the *Blue Card and Foster Care Systems Review*. See section 1.6 of this report for further detail.

## Assessing the suitability of individuals providing regulated home-based services to children

**28.3** The QPS and Blue Card Services work together to identify changes required to the *Working with Children (Risk Management and Screening) Act 2000* to facilitate the proactive release of any information about international criminal history that comes to the attention of the QPS to Blue Card Services. All criminal history held by the QPS about a blue card holder or applicant should be provided to Blue Card Services as standard procedure to inform its assessment of the individual's ongoing eligibility.

**Legislation  
and policy  
amendments**

Work should begin immediately on changes to policies and procedures necessary to support this recommendation. The *Blue Card and Foster Care Systems Review* is considering any legislative change required to enable sourcing and use of international criminal history (beyond what may come to the attention of the QPS) for blue card screening as a matter of course.

**Reason:** *It is critical for the safety of children that all available criminal history information relevant to an individual's child-related employment is provided to Blue Card Services for assessment. This should include international criminal history, where this is known to the QPS.*

**28.4** The DET and Child Safety Services work with Blue Card Services to develop a consistent definition of 'regular visitor' for regulated home-based services to be included within the *Working with Children (Risk Management and Screening) Act 2000*. This should consider legislative amendments to require that changes to the blue card status of 'regular visitors' should be disclosed to the 'notifiable person'.

**Legislation  
and policy  
amendments**

**Reason:** *There is inconsistency across foster/kinship care, family day care and stand-alone care as to how visitors to the home are defined, and whether they are required to hold a blue card. Creating a consistent definition of 'regular visitor' will allow blue card requirements across all regulated home-based services to be aligned.*



- 28.5** Blue Card Services and the DET amend the *Working with Children (Risk Management and Screening) Act 2000* to require all adult household members of stand-alone care services to hold a blue card.

**Legislation and policy amendments**

**Reason:** *Stand-alone care is the only regulated home-based service that does not require adult household members to hold a blue card. This means adult household members do not undergo blue card screening, despite their access to children. Requiring adult household members of stand-alone care services to hold a blue card will bring stand-alone care into alignment with requirements for foster care, kinship care and family day care services.*

- 28.6** The DET works with Blue Card Services and other relevant agencies to identify the most appropriate model to make sure family day care educators and stand-alone carers are subject to the same level of suitability screening as foster and kinship carers. This will include a review of child protection history, as well as traffic and domestic violence history where relevant.

**Legislation and policy amendments**

**Reason:** *Aligning suitability screening processes across regulated home-based services reflects the similarities in the service environments. In implementing this recommendation, agencies should consider relevant findings made during the course of the broader Blue Card and Foster Care Systems Review, including deciding which agency is best placed to undertake this process.*

- 28.7** The DET and Child Safety Services mandate that ‘regular visitors’ to all regulated home-based services must hold a current blue card.

**Legislation and policy amendments**

**Reason:** *Currently, ‘regular visitors’ to foster and kinship care households may be required to hold a blue card. Blue cards are not required for ‘regular visitors’ to family day care or stand-alone care residences. Requiring all ‘regular visitors’ to regulated home-based services to hold a blue card will provide additional safeguards for children in these environments. The term ‘regular visitor’ will be defined under Recommendation 28.4.*

- 28.8** Child Safety Services updates its policies and procedures to require the consideration of other regulated services provided from the home during the initial foster or kinship carer assessment, upon renewal of carer certificates, and at the point of time carer information is updated.

**Improvements  
to policies and  
procedures**

The DET updates its policies and procedures to require approved providers to consider other regulated services provided from the home when engaging family day care educators and at the point of time educator information is updated.

**Reason:** *It is possible for carers to operate a range of child-related services from their home. Co-location of services may impact on the quality of care provided to children. Identifying other child-related services provided from the residence of a carer or educator will assist in assessing any impacts on the quality of services provided to children.*

- 28.9** The OPG's Community Visitor Program considers whether other home-based services are being conducted from the residence during visits. The OPG should use this information in its assessment of whether the child's needs are being met and to inform the prioritisation of its visits. The OPG should also provide this information to Child Safety Services to support its ongoing assessment.

**Improvements  
to policies and  
procedures**

**Reason:** *The OPG's Community Visitor Program has a function under section 56 (1) (f) of the Public Guardian Act 2014 to inspect foster homes and report on their appropriateness and make sure children's needs are being met. The provision of more than one service from a foster home may be relevant to the quality of care provided.*

## Sharing information to respond to potential risks in regulated home-based services

**28.10** The QPS works with Blue Card Services and relevant government agencies to expand provisions under the *Working with Children (Risk Management and Screening) Act 2000* to allow:

**Legislation and policy amendments**

- the Police Commissioner to provide Blue Card Services with information about a person, once they have been informed they are a suspect<sup>3</sup> in an investigation about a disqualifying offence, and
- Blue Card Services to immediately notify the relevant regulatory body if the person is involved in a regulated home-based service (including adult household members).

Work should begin immediately on changes to policies and procedures necessary to support this recommendation. The *Blue Card and Foster Care Systems Review* is considering any legislative changes necessary to support the sharing of information about a person who is a suspect in a disqualifying offence.

**Reason:** *Sharing information earlier about individuals who are suspects in these most serious offences (e.g. child sexual offences, child homicide or possession of child exploitation material) improves the ability for regulatory agencies to respond to protect all children. This better establishes the balance between investigating and prosecuting criminal offences and maintaining the safety of children who may be exposed to individuals suspected of committing serious child-related offences.*

**28.11** Blue Card Services amends the *Working with Children (Risk Management and Screening) Act 2000* to include the DET within the definition of ‘notifiable person’. This will allow the DET to be notified of changes to the blue card status of individual family day care educators and adult household members.

**Legislation and policy amendments**

**Reason:** *Currently, the DET is not notified of changes to the blue card status of family day care educators. Instead, this information is provided to the approved family day care provider. As the regulator of the family day care system in Queensland, the DET should have visibility of potential risks to children in family day care environments.*

<sup>3</sup> The term ‘suspect’ in this instance refers to a person the Queensland Police Service reasonably suspects to have committed an offence. Reasonable suspicion is defined as a belief based on facts. See section 4.1.4 of this report for further detail.

**28.12** The QPS updates its *Operational Procedures Manual* requiring officers to inquire about the following when investigating an offence where a child is the victim:

- regulated employment undertaken by a blue card holder, and
- any regulated services provided from a relevant residential address.

**Improvements to policies and procedures**

**Reason:** *It is important for the QPS to have a full understanding of households providing services to children. Direct access to relevant blue card information (see Recommendation 28.1) during the early stages of an investigation will assist the QPS to quickly identify potential risks to other children and thus share information with regulatory agencies.*

**28.13** The QPS develops a decision-making framework to guide officers in sharing information to protect all children.

**Improvements to policies and procedures**

**Reason:** *Current QPS decision-making frameworks focus predominantly on sharing information under the Child Protection Act 1999. Further guidance is required to assist officers to share information about risks to children in circumstances falling beyond the scope of this Act. The QPS has begun work on this important initiative.*

**28.14** The DET and Child Safety Services update relevant policies and procedures outlining the range of risk management strategies to be followed, including increased monitoring:

- when information becomes known about the provision of more than one home-based service, and
- upon receipt of information from Blue Card Services about a suspect in a disqualifying offence.

**Improvements to policies and procedures**

The DET should work with family day care regulators in other jurisdictions to establish and prescribe best practice for frequency of visits. This should be considered as part of its current work developing an improved risk-based framework for Queensland.

**Reason:** *Upon receipt of information about risks an individual may pose to children, regulatory bodies must be equipped with a range of responses enabling them to take appropriate action.*

- 28.15** Blue Card Services reviews the blue card application form, particularly for regulated home-based services, to include clear guidance for applicants to make sure they nominate the appropriate employer.

**Improvements to policies and procedures**

**Reason:** *Accurate information about an individual's employer is critical to making sure the correct person or entity is notified of changes to an individual's blue card status.*

### Additional findings, implementation and monitoring

- 28.16** The QFCC refers all additional findings from the review (section 5.1 of this report) to relevant agencies for further consideration of required systemic improvements.

**Implementation**

**Reason:** *While the review identified a range of findings outside the scope of the terms of reference, these still require a response by the agencies concerned.*

- 28.17** The governance group established under Recommendation 29 of *When a child is missing: Remembering Tiahleigh – A report into Queensland's children missing from out-of-home care* provides oversight of the implementation of the recommendations made in this report.

**Implementation**

**Reason:** *The established governance group is best placed to monitor the implementation of all recommendations of this report as supplementary recommendations of the *When a child is missing* report.*

# 1 Introduction

## 1.1 Background to the review

On 30 October 2015, 12-year-old Tiahleigh Palmer, was reported missing to the QPS when it was discovered she was not at school.

Tiahleigh was found deceased on 5 November 2015. At the time of her disappearance, Tiahleigh was living in foster care.

In the wake of these tragic events, the QFCC was asked to undertake a whole-of-government systems review of the arrangements in place for responding to children missing from out-of-home care, and to consider whether all government agencies worked together effectively in responding to Tiahleigh's disappearance.

The Premier released *When a child is missing: Remembering Tiahleigh – A report into Queensland's children missing from out-of-home care (When a Child is Missing report)* on 11 July 2016. The report highlighted a number of system inadequacies and made a range of recommendations. These were aimed at improving consistency in guidance for agencies and carers in responding to such serious situations in the future.

The Premier accepted all recommendations of the report and requested an update on the progress of their implementation within three months of the report being released.

Recommendation 28 of the report instructed the QFCC to:

*...review legislation, policies and practices relating to information sharing between all parties, particularly the QPS, Child Safety Services and DET as responsible agencies for undertaking internal risk assessments and decision-making about the safety for all children in regulated service environments.*

The implementation of this recommendation is the subject of this report.

## 1.2 Terms of Reference

Regulated services are those child-related services for which participating individuals must hold a blue card, as governed by the *Working with Children (Risk Management and Screening) Act 2000*.

Regulated services provided from the home (defined below in section 1.2.1) mimic the environment and experience of care provided by a child's family. However, the valued characteristics of these home-based services can be open to abuse due to their private nature. As a result, regulated home-based services are the focus for this systems review, particularly where more than one service is provided from the home.

### 1.2.1 Defining regulated home-based services

Regulated home-based services are early childhood education and care services provided from private homes and family-based out-of-home care arrangements. There are five categories of regulated home-based services in Queensland:

- foster care
- kinship care
- provisionally approved care
- family day care, and
- stand-alone care services.

Child Safety Services maintains responsibility for foster, kinship and provisionally approved carers, by regulating, funding and monitoring all three types of care.

Family day care is a national system, regulated and monitored under the National Quality Framework (NQF). In Queensland, the NQF is administered by the DET.

Stand-alone care services are similar to family day care services but are not connected with the NQF and the national system. They are mostly small-scale care services operating in regional and remote areas<sup>4</sup>. Stand-alone carers are not engaged by a family day care service or provider, but are usually provided in the home of the carer<sup>5</sup>. However, this type of service can also operate outside a private home, such as in a church hall. This review is focused on stand-alone care services offered in the home of the carer.

Stand-alone services fall outside the scope of the National Law and National Regulations<sup>6</sup> and are regulated by the *Education and Care Services Act 2013*. Like family day care, the DET is the regulatory body administering this Act.

### 1.2.2 Recommendation 28 Terms of Reference

The Terms of Reference for the review developed by the QFCC in consultation with stakeholders are as follows:

1. Review the legislation, policies and procedures of the Queensland Police Service, Department of Communities, Child Safety and Disability Services, the Department of Justice and Attorney-General – Blue Card Services and the Department of Education and Training which guide the sharing of information to protect children in regulated service environments, focused on those services provided in the home.
2. Consider whether any impediments exist for these agencies in disclosing and sharing information about individuals in home-based services, where this is relevant to the safety of the children who access or may access these environments.

<sup>4</sup> Explanatory Notes, Education and Care Services Bill 2013 (Qld), p1.

<sup>5</sup> Department of Education and Training 2015, *Stand-alone care under the Education and Care Services Act 2013*, Queensland Government, Brisbane, p. 1, accessed 24 June 2016, <http://deta.qld.gov.au/earlychildhood/pdfs/ecs-act/stand-alone-care.pdf>.

<sup>6</sup> The National Law refers to the *Education and Care Services National Law (Queensland)*. The National Regulations refers to the *Education and Care Services National Regulations (NSW)*.

3. Consider whether the Queensland Police Service would benefit from inclusion of a decision-making framework in its guidelines to inform the appropriate release of information about individuals who may pose a risk to children in home-based services.
4. Consider the benefits of establishing a centralised data system to record regulated services, particularly those which are co-located and home-based.

## 1.3 Authority to access information

The QFCC conducted the review under Part 3 of the *Family and Child Commission Act 2014* (the Act).

Information required from government agencies to support the review was formally sought under section 27 of the Act.

## 1.4 Structure of the report

*Recommendation 28 Supplementary Review: A report on information sharing to enhance the safety of children in regulated home-based services (Recommendation 28 Supplementary Review)*, provides key findings and recommendations arising from the review.

The review of the regulatory structure of home-based services, and the legislation, policies and procedures that govern information sharing identified three broad areas for improvement.

These areas form the basis for the structure of this report.

**Chapter 2** details the need for greater visibility of home-based services by regulatory bodies. This is particularly relevant where households are providing more than one home-based service to children. Creating a centralised system (i.e. a register) for recording and reporting on all home-based services, including those that are co-located, will facilitate more effective information sharing between agencies responsible for the safety of children accessing these environments.

**Chapter 3** reviews the pre-employment screening and suitability assessment processes undertaken for each

type of regulated home-based service. Aligning the requirements for approval across foster/kinship care, family day care and stand-alone care is necessary to make sure children experience the safest possible environments when accessing home-based services. This will require legislative and policy amendments to address impediments to information sharing about individuals in regulated home-based services, where this is relevant to the safety of children.

**Chapter 4** describes improvements to processes for monitoring regulated home-based services and responding to potential risks in these environments. This includes improving decision-making frameworks for the QPS to guide information sharing with relevant agencies. The QPS has already begun work on this important issue.

## 1.5 Methodology and approach of the review

The QFCC sought the views and cooperation of a range of agencies in understanding barriers and impediments to information sharing.

The QFCC engaged a range of key stakeholders, including Child Safety Services, the DET, the QPS, the Office of the Public Guardian (OPG), the Department of Justice and Attorney-General (DJAG) and Blue Card Services, to gain an understanding of existing information sharing legislation, policies and procedures between these departments.

The QFCC formed a working group for the review with senior officer representatives of government agencies to co-ordinate any immediate action or improvements as a result of the review.

The review team considered:

- existing research to establish the risks to children in home-based service environments
- data from Child Safety Services, the DET and Blue Card Services about the number of regulated home-based services in Queensland; the number of households providing more than one regulated home-based service; and blue card suspensions of carers or educators
- legislation, policies and procedures of relevant agencies about when, how and with whom information is shared, and

- information from Child Safety Services, the DET, Blue Card Services and the QPS outlining responses to foster/kinship carers or family day care educators suspended or cancelled on the basis of information received from the QPS.

From August 2016, the QFCC met with key stakeholders to discuss the early findings in the report and consult on proposed recommendations.

## 1.6 Other review mechanisms

The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) is also considering improvements to information sharing between government and non-government organisations. The review considered the public findings of the Royal Commission to date. The QFCC will continue to monitor the outcomes of this inquiry to make sure recommendations for information sharing in Queensland align with any broader recommendations of the Royal Commission.

Additionally, in September 2016 the Director-General of the Department of the Premier and Cabinet (DPC) wrote to the QFCC on behalf of the Premier, requesting a whole-of-system review of the *Working with Children (Risk Management and Screening) Act 2000* and its operations. As part of this review, the QFCC will review the assessment, approval and monitoring processes for foster and kinship carers. Throughout this report, this review is referred to as the *Blue Card and Foster Care Systems Review*<sup>7</sup>.

The issues identified in this supplementary review are discrete and complementary to the wider review, meaning there is no impediment to early action. Agencies, such as the QPS, have begun implementing improvements in response to this review. The findings and recommendations of this supplementary review will be referred to these broader reviews for consideration, as appropriate.

<sup>7</sup> More information about this review is available on the Queensland Family and Child Commission's website: <https://www.qfcc.qld.gov.au/examination-foster-care-and-blue-card-services>.



## 2 Benefits of a centralised system to record home-based services

*Creating a centralised system (a register) will provide greater visibility of home-based services, inform decisions, and facilitate information sharing between relevant agencies*

### 2.1 Summary of findings

The QFCC was specifically asked to consider the benefits of developing a centralised system to record regulated home-based services as part of its review, particularly where these services are co-located.

The review identified that creating a register to identify all home-based services, including those households providing more than one service, will promote the safety of all children in these environments. The register is intended to enhance, rather than replace, existing information sharing arrangements. It will improve the ability of regulatory agencies to quickly identify co-located home-based services, inform decision-making and subsequently share information about any risks in these environments.

#### 2.1.1 Understanding the need for safeguards in home-based service environments

The review considered existing research about the risks of harm to children in all service settings, including where services are provided from the home. This information was used to establish the benefits of centralising records of home-based services.

There is limited Australian-based research specifically about the relative risks of service environments for children<sup>8</sup>. However, research regarding risks of harm to children more broadly identifies areas which can be

<sup>8</sup> The Royal Commission into Institutional Responses to Child Sexual Abuse has recently released a report into risk factors for institutional sexual abuse. This report identifies risk factors that broadly align with those identified by this review. The Royal Commission into Institutional Child Sexual Abuse 2016, *Risk profiles for institutional child sexual abuse: A literature review*, Commonwealth of Australia, Sydney.

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.

#### 2.1.2 Visibility of home-based services in Queensland

As at March 2016, Child Safety Services reported 5,159 approved carers in Queensland – 3,673 foster carers, 1,346 kinship carers and 140 provisionally approved carers<sup>9</sup>. Together, these households provided care for 8,024 children<sup>10</sup>.

As at June 2015, there were 142 family day care services in Queensland<sup>11</sup>, providing care to 36,950

<sup>9</sup> Department of Communities, Child Safety and Disability Services 2016, *Carer families, by carer type and region, Queensland*, Queensland Government, Brisbane, accessed 9 September 2016, <https://www.communities.qld.gov.au/childsafety/about-us/our-performance/ongoing-intervention-phase/carers>.

<sup>10</sup> Department of Communities, Child Safety and Disability Services 2016, *Children in out-of-home care, by primary placement and Indigenous status, Queensland*, Queensland Government, Brisbane, accessed 9 September 2016, <https://www.communities.qld.gov.au/childsafety/about-us/our-performance/ongoing-intervention-phase/living-away-from-home>.

<sup>11</sup> This figure includes 'in-home care', defined as educators who provide flexible care and developmental activities in the child's own home. In-home care services are not the focus of this review.

children<sup>12</sup>. More recent data from the Australian Children's Education and Care Quality Authority listed 155 family day care services in Queensland as at August 2016<sup>13</sup>.

As a result of the regulatory structure of family day care service environments, there is no central record of the total number of family day care residences and individual educators associated with the 155 services. Approved family day care providers may operate a number of family day care services, which in turn engage individual educators to provide care from their home.

Assessing and approving family day care educators is the responsibility of the approved providers and not of the DET. In this system, each approved provider holds the details of the individual educators engaged by the family day care services. The DET is the regulatory agency responsible for monitoring and enforcing compliance of the entire family day care system.

There is limited data available about the number of stand-alone care services in Queensland. The most recent Early Childhood Education and Care Services Census in Queensland (2015) provides data on family day care, long day care, kindergarten, limited hours care and outside school hours care services<sup>14</sup>. While stand-alone care services are regulated, they are not licensed or approved by the DET. Therefore, stand-alone care is not covered by reporting on services licenced under the National Law or under other Acts administered by the DET.

### 2.1.3 Co-located home-based services

It is possible for a single household to provide both foster/kinship care and family day care or stand-alone care services. The number and age of children present in the household may have implications for the level

of supervision provided to children in the home, or the ability of the carer to meet the expected standards of care. It is important for the QPS, Child Safety Services and the DET to be fully aware of all child-related services provided from a home. This will improve information sharing and co-ordination of responses should issues arise with the quality of care, including alleged criminality.

### Identifying co-located home-based services

Currently, each type of home-based service is regulated separately, making it difficult to identify how many households are providing more than one home-based service. The QFCC has worked closely with the regulatory agencies to manually compare administrative datasets relating to foster/kinship carers and family day care educators. On 16 August 2016, Blue Card Services identified 97 households in Queensland believed to be conducting more than one regulated home-based service. This number needs to be examined further.

The DET, the QPS, Child Safety Services and Blue Card Services will lead a strategy to verify the co-located services and conduct site visits to each of these households. The objective of the visits will be to assess the services being provided from the home and any impacts on children. Any findings from this activity will be considered in developing a centralised data system (a register) for recording home-based services.

### Developing a register of home-based services

Information about individuals providing home-based services is currently contained in an administrative dataset managed by Blue Card Services. Creating a register of all home-based services, including those that are co-located, may be achieved by modifying existing blue card information systems.

Improving the way this data is classified and accessed by relevant government agencies will facilitate this. For example, refining categories of employment collected via blue card application forms could identify foster carers providing family day care services. Changes to systems and databases of other agencies may be required to create comparable datasets.

<sup>12</sup> Australian Government Department of Education and Training 2015, *Early Childhood and Child Care in Summary, June Quarter 2015*, Australian Government Department of Education and Training, Canberra, accessed 1 August 2016 <https://docs.education.gov.au/documents/early-childhood-and-child-care-summary-june-quarter-2015>.

<sup>13</sup> Australian Children's Education & Care Quality Authority 2016, *NQF Snapshot Q2 2016*, Australian Children's Education & Care Quality Authority, Sydney, accessed 7 September 2016, [http://files.acecqa.gov.au/files/Reports/2016/NQF\\_Snapshot\\_Q2\\_2016.pdf](http://files.acecqa.gov.au/files/Reports/2016/NQF_Snapshot_Q2_2016.pdf).

<sup>14</sup> Information received from the Department of Education and Training, 10 October 2016.

## Access to centralised information about home-based services

Enabling relevant government stakeholders to contribute to and access this register is critical to informing policy and practice decisions.

Child Safety Services, as the regulator of foster and kinship care, should have access to this information to inform carer approvals and placement decisions. The DET, as the regulator of family day care could use this information to give direction to approved providers about conditions to be placed on the number and ages of children in the home.

The QPS should have line of sight to the register to access up-to-date information when visiting a residential address. This will assist in identifying potential risks to children.

Similarly, the Community Visitor Program operated by the OPG will require access to information about co-located services to inform their visits to children living in out-of-home care.

The register will also facilitate information sharing between these regulatory bodies about potential risks to children in these environments.

## Building an evidence base about the safety of children in Queensland

There is a role for broader information sharing to better understand the safety of children in Queensland. Providing persons conducting genuine research with access to administrative data will help to build a stronger evidence-base about risks of harm to all children, including those in out-of-home care or accessing regulated home-based services.

For example, there may be benefit in expanding the legislative functions of Blue Card Services to enable it to provide genuine researchers with access to de-identified blue card data. This will enable trends and patterns to be identified in demographics of blue card holders and applicants; reasons for refusal, cancellation or suspension of blue cards; and blue card employment categories.

Reporting publicly on the trends and patterns identified will promote greater understanding of risks

to children in service settings. This will also help identify initiatives that can be implemented to address these risks.

## 2.2 Recommendations

### Improvements to data systems

#### *Recommendation 28.1*

Blue Card Services immediately begins work to establish a centralised system (i.e. a register) for recording and reporting on all child-related employment or businesses conducted from the home. This may be achieved through modifying existing blue card information systems.

The system will be able to identify co-located services, including foster/kinship care, family day care and stand-alone care. In establishing the register, Blue Card Services should consider:

- developing better defined blue card categories to identify discrete employment and business types
- the QPS having line of sight to the register to access up-to-date information when police attend a residential address to identify potential risks to children
- Child Safety Services and the DET providing information to inform the register, and
- making information available to agencies, including the DET, Child Safety Services, the OPG, and relevant non-government agencies to assist with regulating and/or monitoring home-based services.

The *Blue Card and Foster Care Systems Review* is considering any legislative change required to support the release and sharing of this information.

**Reason:** *Developing a centralised system for recording all home-based services, including those that are co-located, will increase visibility of these services, inform decision-making and facilitate information sharing between agencies to promote the safety of all children. Blue Card Services currently holds information about all child-related employment or businesses conducted from the home. This information will form the basis of the register.*

## Legislation and policy amendments

### *Recommendation 28.2*

Blue Card Services expands its legislative functions to include a responsibility to:

- classify blue card data according to relevant factors and analyse this data to identify trends or patterns relevant to risks to children
- provide this data to persons or organisations considered by the Chief Executive to be conducting genuine research, and
- report publicly about trends and patterns identified.

Blue Card Services should provide government with a proposal outlining the funding and resource implications. The *Blue Card and Foster Care Systems Review*<sup>15</sup> is considering the broader policy implications and any legislative changes necessary to support this recommendation, including any changes to data systems or research functions arising from the implementation of Recommendation 28.1.

**Reason:** *Providing better access to blue card data will assist in building community understanding of its value and limits. It will also be useful in developing a stronger evidence base about the risks to children in service settings in Queensland. This provides an opportunity for employers, regulators and peak bodies to initiate proactive measures to enhance the safety of children.*

<sup>15</sup> In September 2016 the QFCC was asked to undertake a whole-of-system review of the *Working with Children (Risk Management and Screening) Act 2000* and its operation. This review will include a review of the assessment, approval and monitoring processes for foster and kinship carers. This is referred to as the *Blue Card and Foster Care Systems Review*. See section 1.6 of this report for further detail.

# 3 Improving systems for assessing and approving regulated home-based services

*Improving information sharing about individuals in regulated home-based services including primary carers, household members and regular visitors will create safer environments for children*

## 3.1 Summary of findings

The QFCC reviewed legislation, policies and procedures relevant to assessing and approving home-based services and sharing information to support these assessments. This section outlines improvements to the assessment and approval processes for individuals providing home-based services.

### 3.1.1 Assessment and approval processes for educators and carers

#### Blue card pre-employment screening system

Providing information to Blue Card Services is essential for rigorous pre-employment screening.

Blue Card Services assesses and monitors all individuals involved in child-related employment, such as sporting coaches, babysitters and childcare services. The first stage of assessing an individual's suitability to work with children in Queensland is their eligibility to hold a blue card.

The QPS provides information about an individual's Australian criminal history to Blue Card Services to enable them to undertake pre-employment screening. Blue Card Services can also request disciplinary information from a range of regulatory bodies, including Child Safety Services and the DET<sup>16</sup>.

International criminal history is not screened by Blue Card Services as a matter of course due to

the complexity of obtaining and assessing this information<sup>17</sup>. The QPS is only able to obtain international criminal history from Interpol for law enforcement purposes. If information about a person's international criminal history comes to the attention of the QPS during the performance of its functions, the information may be limited in nature and may not represent a complete or current international criminal history for that individual.

Under the *Working with Children (Risk Management and Screening) Act 2000*, Blue Card Services may request this information from the QPS<sup>18</sup>. However, the QPS can only provide international criminal history if it is already within its possession<sup>19</sup>.

The review has identified an opportunity for more proactive sharing of information held by the QPS. Any information about an individual's international criminal history that comes to the attention of the QPS should be proactively provided to Blue Card Services. This will inform an assessment of that individual's eligibility to hold a blue card.

This will make sure any criminal history information (national or international) held by the QPS is considered by Blue Card Services as a matter of course. This process will also alleviate administrative burden on Blue Card Services in identifying whether the QPS holds international criminal history and making a subsequent request for this information.

<sup>16</sup> Public Safety Business Agency, Blue Card Services 2014, *Guidelines for dealing with information obtained under Chapter 8 of the Working with Children (Risk Management and Screening) Act 2000*, Queensland Government, Brisbane, p. 5.

<sup>17</sup> Information received from Blue Card Services, 26 September 2016.

<sup>18</sup> *Working with Children (Risk Management and Screening) Act 2000*, s. 311.

<sup>19</sup> *Working with Children (Risk Management and Screening) Act 2000*, s. 312 (2).

Blue Card Services has identified a number of barriers to accessing information from other government agencies to inform the blue card screening process<sup>20</sup>. These issues were beyond the scope of this review. The QFCC will work with Blue Card Services to fully explore improvements to information sharing about individuals in child-related employment as part of the broader *Blue Card and Foster Care Systems Review*.

### Suitability of carers and educators

All individuals providing foster/kinship care, family day care or stand-alone care services are required to hold a blue card. There are key differences in additional assessment processes of foster/kinship carers, family day care educators and stand-alone carers, despite the similar nature of the settings in which care is provided.

Foster and kinship carers must undergo a rigorous suitability screening process. This involves assessment interviews of the carer and all household members; a review of household safety; pre-service training (foster carers only); and health and wellbeing questionnaires. The criminal and child protection history of the applicant and other adult household members is also assessed, and where necessary, domestic violence and traffic history<sup>21</sup>.

Assessing child protection, domestic violence and traffic history can reveal potential risks to children. This information is assessed for working with children checks in some states and territories<sup>22</sup>.

The DET has responsibility for assessing and approving applications for provider, service and supervisor certificates for family day care. Family day care educators are engaged and monitored by the family day care service and the approved providers, and are

not approved by the DET<sup>23</sup>. Family day care educators must hold, or be working towards, a Certificate III qualification. The home must also be assessed by the approved provider<sup>24</sup>.

Stand-alone care services are not required to hold a service approval<sup>25</sup> to operate a service out of their home. There is also no requirement for stand-alone carers to be formally qualified<sup>26</sup>.

Given the similarities between the service settings of regulated home-based services, there is benefit in aligning the assessment of family day care educators' and stand-alone carers' suitability with that undertaken for foster and kinship carers. Assessing child protection history, as well as domestic violence and traffic history (where relevant), represents an opportunity to identify individuals who may pose a risk to children in home-based services. This will enable assessors to make a more informed decision regarding approval.

Sharing additional information for more robust screening processes will have resource implications. Further work is required to identify the most appropriate model to achieve the intended benefits. This includes identifying resource impacts for the agency best placed to undertake suitability screening for family day care educators and stand-alone carers. Agencies should work together in deciding what child protection information should be released to inform this assessment. The release of child protection history for this purpose must maintain the confidentiality of the notifier, which is protected under section 186 of the *Child Protection Act 1999*.

<sup>20</sup> Information received from Blue Card Services, 26 September 2016.

<sup>21</sup> Department of Communities, Child Safety and Disability Services, *Prospective carer fact sheet 6: Foster and kinship care – Steps to becoming a foster carer*, Queensland Government, Brisbane, p. 2, accessed 24 June 2016, <https://www.communities.qld.gov.au/resources/childsafety/foster-care/steps-becoming-foster-carer.pdf>.

<sup>22</sup> Other states and territories that currently assess child protection and domestic violence information for working with children checks include the Australian Capital Territory, Tasmania and Northern Territory (Royal Commission into Institutional Responses to Child Sexual Abuse 2015, *Working with Children Checks Report*, Commonwealth of Australia, Sydney, p. 135).

<sup>23</sup> Department of Education and Training, Early Childhood Education and Care 2015, *Regulatory requirements for a family day care educator*, Queensland Government, Brisbane, accessed 14 June 2016, <http://deta.qld.gov.au/earlychildhood/pdfs/regulatory-requirements-family-day-care.pdf>; Australian Children's Education & Care Quality Authority 2014, *Guide to the Education and Care Services National Law and the Education and Care Services National Regulations 2011*, Australian Children's Education & Care Quality Authority, Sydney, p. 14.

<sup>24</sup> Department of Education and Training, Early Childhood Education and Care 2015, *Qualifications for family day care services*, Queensland Government, Brisbane, accessed 20 July 2016, <http://deta.qld.gov.au/earlychildhood/workforce/family-day-care-services.html>; *Education and Care Services National Regulations (NSW)*, s. 116.

<sup>25</sup> A service approval is an assessment process undertaken by the DET. This allows family day care services to operate and engage educators.

<sup>26</sup> Department of Education and Training 2015, *Stand-alone care under the Education and Care Services Act 2013*, Queensland Government, Brisbane, p. 2, accessed 24 June 2016, <http://deta.qld.gov.au/earlychildhood/pdfs/ecs-act/stand-alone-care.pdf>.

### 3.1.2 Adult household members

Within the foster/kinship care system, all adult household members must hold a blue card, and be assessed for their suitability<sup>27</sup>. Approved providers must also assess whether all adult household members of a family day care residence hold a blue card and are fit and proper persons<sup>28</sup>.

Currently, other adult household members in stand-alone care environments are required to apply for and maintain a blue card only when requested by the DET<sup>29</sup>.

All adult household members of regulated home-based services should be required to hold a blue card to promote the safety of children.

### 3.1.3 Regular visitors

Individuals frequently present at regulated home-based care services should be assessed for their eligibility to be involved in child-related employment to create safe environments for all children.

Child Safety Services advises foster and kinship carers that regular visitors to their home may require a blue card<sup>30</sup>. This depends on the frequency of their visits and the type of contact they will have with children. While family day care educators must keep a record of all visitors to their residence, these visitors are not required to hold a blue card<sup>31</sup>. There are no guidelines regarding visitors to the home for stand-alone care services.

Developing a standard definition of regular visitor and legislative requirements for these visitors to hold a blue card will provide additional safeguards for children in regulated home-based services.

### 3.1.4 Assessing other services provided from the home

Identifying other child-related services being provided from the residence of carers and educators will assist all regulators to assess any impact on the services provided. Both Child Safety Services and the DET consider the number and ages of children at the residence in regulating foster/kinship care and family day care/stand-alone care respectively. Where services are co-located, it may be appropriate to place additional conditions on the number or ages of children at the residence to promote appropriate levels of supervision.

Child Safety Services already undertakes a multi-faceted approval process for foster and kinship carers. However, there is an opportunity for Child Safety Services to record and consider the provision of other home-based services during the initial assessment of carers.

Requiring approved providers to consider this information would also improve the assessment of family day care educators. Stand-alone carers do not currently undergo any additional assessment beyond the blue card pre-employment screening process (see section 3.1.1 of this report). Assessing the impacts of other services provided from the home is an important factor in considering the safety of children in stand-alone care environments.

Identifying other services being operated from a residence aligns with developing a centralised system (a register) for recording and reporting on child-related employment or businesses conducted from the home.

<sup>27</sup> Department of Communities, Child Safety and Disability Services, *Prospective carer fact sheet 6: Foster and kinship care – Steps to becoming a foster carer*, Queensland Government, Brisbane, p. 2, accessed 24 June 2016, <https://www.communities.qld.gov.au/resources/childsafety/foster-care/steps-becoming-foster-carer.pdf>.

<sup>28</sup> *Education and Care Services National Regulations* (NSW), s. 163.

<sup>29</sup> *Education and Care Services Act 2013*, s. 190.

<sup>30</sup> Department of Communities, Child Safety and Disability Services, *Prospective carer fact sheet 8: Foster and kinship care – blue cards*, accessed 1 September 2016, <https://www.communities.qld.gov.au/resources/childsafety/foster-care/carer-blue-cards.pdf>.

<sup>31</sup> *Education and Care Services National Regulations* (NSW), s. 165.

## 3.2 Recommendations

### Legislation and policy amendments

#### Recommendation 28.3

The QPS and Blue Card Services work together to identify changes required to the *Working with Children (Risk Management and Screening) Act 2000* to facilitate the proactive release of any information about international criminal history that comes to the attention of the QPS to Blue Card Services. All criminal history held by the QPS about a blue card holder or applicant should be provided to Blue Card Services as standard procedure to inform its assessment of the individual's ongoing eligibility.

Work should begin immediately on changes to policies and procedures necessary to support this recommendation. The *Blue Card and Foster Care Systems Review* is considering any legislative change required to enable sourcing and use of international criminal history (beyond what may come to the attention of the QPS) for blue card screening as a matter of course.

**Reason:** *It is critical for the safety of children that all available criminal history information relevant to an individual's child-related employment is provided to Blue Card Services for assessment. This should include international criminal history, where this is known to the QPS.*

#### Recommendation 28.4

The DET and Child Safety Services work with Blue Card Services to develop a consistent definition of 'regular visitor' for regulated home-based services to be included within the *Working with Children (Risk Management and Screening) Act 2000*. This should consider legislative amendments to require that changes to the blue card status of 'regular visitors' should be disclosed to the 'notifiable person'.

**Reason:** *There is inconsistency across foster/kinship care, family day care and stand-alone care as to how visitors to the home are defined, and whether they are required to hold a blue card. Creating a consistent definition of 'regular visitor' will allow blue card requirements across all regulated home-based services to be aligned.*

#### Recommendation 28.5

Blue Card Services and the DET amend the *Working with Children (Risk Management and Screening) Act 2000* to require all adult household members of stand-alone care services to hold a blue card.

**Reason:** *Stand-alone care is the only regulated home-based service that does not require adult household members to hold a blue card. This means adult household members do not undergo blue card screening, despite their access to children. Requiring adult household members of stand-alone care services to hold a blue card will bring stand-alone care into alignment with requirements for foster care, kinship care and family day care services.*

### Improvements to policies and procedures

#### Recommendation 28.6

The DET works with Blue Card Services and other relevant agencies to identify the most appropriate model to make sure family day care educators and stand-alone carers are subject to the same level of suitability screening as foster and kinship carers. This will include a review of child protection history, as well as traffic and domestic violence history where relevant.

**Reason:** *Aligning suitability screening processes across regulated home-based services reflects the similarities in the service environments. In implementing this recommendation, agencies should consider relevant findings made during the course of the broader Blue Card and Foster Care Systems Review, including deciding which agency is best placed to undertake this process.*



### *Recommendation 28.7*

The DET and Child Safety Services mandate that ‘regular visitors’ to all regulated home-based services must hold a current blue card.

**Reason:** *Currently, ‘regular visitors’ to foster and kinship care households may be required to hold a blue card. Blue cards are not required for ‘regular visitors’ to family day care or stand-alone care residences. Requiring all ‘regular visitors’ to regulated home-based services to hold a blue card will provide additional safeguards for children in these environments. The term ‘regular visitor’ will be defined under Recommendation 28.4.*

### *Recommendation 28.8*

Child Safety Services updates its policies and procedures to require the consideration of other regulated services provided from the home during the initial foster or kinship carer assessment, upon renewal of carer certificates, and at the point of time carer information is updated.

The DET updates its policies and procedures to require approved providers to consider other regulated services provided from the home when engaging family day care educators and at the point of time educator information is updated.

**Reason:** *It is possible for carers to operate a range of child-related services from their home. Co-location of services may impact on the quality of care provided to children. Identifying other child-related services provided from the residence of a carer or educator will assist in assessing any impacts on the quality of services provided to children.*

### *Recommendation 28.9*

The OPG’s Community Visitor Program considers whether other home-based services are being conducted from the residence during visits. The OPG should use this information in its assessment of whether the child’s needs are being met and to inform the prioritisation of its visits. The OPG should also provide this information to Child Safety Services to support its ongoing assessment.

**Reason:** *The OPG’s Community Visitor Program has a function under section 56 (1) (f) of the Public Guardian Act 2014 to inspect foster homes and report on their appropriateness and make sure children’s needs are being met. The provision of more than one service from a foster home may be relevant to the quality of care provided.*

## 4 Monitoring and responding to risks in regulated home-based services

*Changes to legislation, policies and procedures will support better decision making by agencies and enable earlier sharing of information about risks an individual may pose to children*

### 4.1 Summary of findings

There are multiple legislative instruments governing information sharing about regulated home-based services. The interactions between the various legislative provisions can be complex, particularly in the family day care system where the National Law and Commonwealth privacy legislation applies.

This can make it difficult for officers to identify when and with whom information can be shared when responding to a potential risk of harm to children in regulated home-based services.

#### 4.1.1 Monitoring and compliance

All regulatory agencies have functions and powers regarding monitoring and compliance activities. However, there are some opportunities to improve existing systems.

#### Foster and kinship care

Child Safety Services has a range of monitoring and compliance activities available to make sure children receive appropriate care. These include:

- renewal of approval certificates
- standards of care reviews, and
- reviews of carers suitability.

Children living in out-of-home care receive regular visits from both their Child Safety Officer and from the independent Community Visitor Program, operated by the OPG.

#### Family day care and stand-alone care

Approved providers act as the primary monitors of family day care educators. The approved provider must assess educators' residences as suitable environments annually<sup>32</sup>. The approved provider is also required to monitor the education and care being provided to make sure this meets the legislative requirements<sup>33</sup>.

Authorised officers of the DET are also responsible for monitoring and enforcing compliance with the National Law for family day care. Monitoring activities include both announced and unannounced visits to family day care services. The DET does not routinely inspect the premises of individual educators, although it can instruct approved providers to do so. There is currently no prescribed frequency of inspections of family day care services<sup>34</sup>. However, the DET is developing an improved risk-based framework for taking regulatory action and making regulatory decisions. This framework is based on assessing risk to children's health, safety, wellbeing, and educational and developmental outcomes<sup>35</sup>.

<sup>32</sup> *Education and Care Services National Regulations* (NSW), s. 116.

<sup>33</sup> Information received from the Department of Education and Training, 6 October 2016.

<sup>34</sup> Productivity Commission 2016, 'Early childhood education and care', *Report on Government Services 2016*, Commonwealth of Australia, Canberra, p. 3.45.

<sup>35</sup> Information received from Department of Education and Training, 22 September 2016.

### Department of Education and Training - Family day care taskforce

In November 2016, the DET announced a taskforce focused on targeted monitoring of family day care services in Queensland. This taskforce is identifying family day care services at risk of non-compliance with the National Law and National Regulations, particularly where this non-compliance may pose a risk to the health, safety and wellbeing of children.

The taskforce is considering a range of factors including the services' general compliance history; size of service and period of operation; notifications and complaints received; and information from other jurisdictions in which the approved provider operates services.

The DET is publishing information about serious enforcement action taken as a result of this taskforce on its website.

Under the *Education and Care Services Act 2013* the DET can investigate complaints and notifications of non-compliance and take action against a stand-alone care service. This includes directing stand-alone carers not to provide care or issuing a prohibition notice<sup>36</sup>.

Opportunity exists for the DET to develop more detailed information about monitoring and compliance actions relating to stand-alone care services.

Ongoing monitoring of carers and educators also occurs as part of the blue card screening process, discussed in further detail below.

#### 4.1.2 Sharing information about a child under the *Child Protection Act 1999*

A child in need of protection is defined by the *Child Protection Act 1999* as a child who has suffered, is suffering, or is at unacceptable risk of suffering significant harm and who does not have a parent able

<sup>36</sup> *Education and Care Services Act 2013*, ss. 190 and 196-203.

and willing to protect them<sup>37</sup>. Generally, these are children within the child protection system.

There is clear guidance in legislation and policy about sharing information related to a relevant child<sup>38</sup>, who is or may be in need of protection.

The QPS has reporting obligations to notify Child Safety Services of a reasonable suspicion of significant harm to a child where it is believed the child may not have a parent able and willing to protect them<sup>39</sup>. The QPS has clear decision-making frameworks within its *Operational Procedures Manual (OPM)* for assessing what information can be shared with relevant agencies under section 159M of the *Child Protection Act 1999* about a relevant child.

Child Safety Services may also share relevant information about a relevant child with prescribed entities and service providers. The DET is considered a prescribed entity under the *Child Protection Act 1999*. The DET is therefore able to share information about a child within the family day care or stand-alone care system who is, or may be, in need of protection.

#### 4.1.3 Sharing information under other acts about a child at risk

A child may be at risk of suffering significant harm, but still have a parent considered able and willing to protect them. Such situations still require an agency response. There are limited QPS policies and procedures guiding information sharing in circumstances which fall outside the *Child Protection Act 1999*.

As described above, the QPS has clear guidelines for decision-making about the release of information about a 'relevant child' as defined by the *Child Protection Act 1999*. This includes a flowchart for understanding what information can be released to particular agencies or service providers under section 159M of the *Child Protection Act 1999*.

<sup>37</sup> *Child Protection Act 1999*, s.10.

<sup>38</sup> A relevant child means – a child in need of protection or a child who may become a child in need of protection if preventative support is not given to the child or the child's family (*Child Protection Act 1999*, s.159BA).

<sup>39</sup> *Child Protection Act 1999*, s. 13A and 13E.

However, there is limited guidance available for officers in circumstances falling outside the scope of this decision-making framework. For example, sharing information about a child who experiences harm while attending a family day care service, but whose parents are able and willing to protect them, is not guided by the existing decision-making framework.

It is not clear what information can be shared in responding to such cases, or with which agencies or services. The decision-making framework referred to above does direct officers to consider whether information can be shared under section 10.2 of the *Police Service Administration Act 1990*. However, there are no guidelines available for interpreting this important discretionary legislative provision.

As the lead agency investigating offences against children, the QPS has a critical role in sharing information with relevant individuals and agencies about any risks of harm to children. Sharing information as soon as possible allows agencies, including regulatory bodies, to enact appropriate responses to protect children.

#### Work underway as a result of this review

The QPS has started a project to review legislation, policy and practice in relation to information sharing to protect all children. This project responds to the need for more support and guidance for QPS officers' decision-making about information sharing.

Objectives of this project include developing:

- a central resource hub, accessible to all QPS officers, identifying the type of information that can be shared, under what authority, with whom, and at what stage of an investigation to ensure the safety of children. This resource is expected to be available to officers in 2017.
- a standardised process to record the information provided to other agencies in relation to children at risk of harm<sup>40</sup>.

Developing further decision-making frameworks to assist officers in sharing information will make sure appropriate information is being shared with all relevant agencies about risks to all children in home-based services.

Guidelines for Child Safety Services are also primarily concerned with children subject to Child Safety Services' intervention. There are provisions to enable the information to be shared with the QPS in cases that may have involved the commission of a criminal offence relating to a child.

Within the family day care system, there are mechanisms in place requiring the DET to be notified of incidents and complaints<sup>41</sup>. The interaction between the National Law and the Commonwealth privacy regime creates a complex legislative environment, which is navigated by individuals involved in the family day care system on a daily basis. This complexity does not easily facilitate information being disclosed to other agencies.

Legislation governing stand-alone care services provides a permissive framework for information sharing. For example, the DET can disclose information about these services where it directly relates to child protection and welfare, or if permitted under another act, such as the *Child Protection Act 1999*<sup>42</sup>. The DET may also share information with stand-alone carers (including information about a person residing in the home who is a disqualified person)<sup>43</sup>, and may refer complaints to other agencies 'as appropriate'<sup>44</sup>. However, there is no further guidance for stand-alone carers and officers of the DET in interpreting these provisions.

<sup>40</sup> Information received from the Queensland Police Service, 29 September 2016.

<sup>41</sup> Australian Children's Education & Care Quality Authority 2014, *Guide to the Education and Care Services National Law and the Education and Care Services National Regulations 2011*, Australian Children's Education & Care Quality Authority, Sydney, p. 113.

<sup>42</sup> *Education and Care Services Act 2013* (Qld), s. 217 (d); *Child Protection Act 1999*, ss. 159BA, 159C and 159M.

<sup>43</sup> *Education and Care Services Act 2013* (Qld), s. 192.

<sup>44</sup> Department of Education and Training 2014, 'Complaints Management and Compliance under the *Education and Care Services Act 2013*', *Policy and Procedure Register*, Queensland Government, Brisbane, p. 2.

The DET has an opportunity to provide additional guidance to officers across the family day care and stand-alone care systems about information sharing. This will assist in interpreting how this legislation should be used to enhance the safety and wellbeing of children in all home-based services.

#### 4.1.4 Sharing information about an individual who may pose a risk to children

##### Investigating allegations of harm

The QPS is responsible for making all necessary inquiries to protect and preserve life. The QPS also has a responsibility for reporting significant harm, or risk of significant harm, where there may not be a parent able and willing to protect the child, in accordance with the *Child Protection Act 1999*.

When investigating offences where a child is the victim, the OPM directs QPS officers to make relevant inquiries about whether a suspect<sup>45</sup> has a current blue card<sup>46</sup>. Officers should inquire about the blue card status of any person relevant to an investigation, as well as the provision of home-based services from a relevant residential address. It is important this is addressed during the early stages of an investigation. Providing additional guidance on how these inquiries should be made will allow officers to identify an individual's involvement in child-related employment. This will enable a more accurate assessment of risks an individual may pose to children.

This could be achieved by providing QPS officers with direct and immediate visibility of records of all home-based services provided to children through a technical interface with blue card data systems.

##### Providing information about offences to Blue Card Services

The QPS notifies Blue Card Services daily, via an automated system, of any changes to the criminal history of blue card holders. This system monitors the

status of the current 680,000 blue card holders in Queensland<sup>47</sup>.

The Police Commissioner may release investigative information to Blue Card Services about a blue card holder who is a suspect in particular types of offences<sup>48</sup>. This may occur where:

- the person has been formally notified about the investigation
- there was sufficient evidence available to establish each element of the alleged offence, and
- a decision has been made not to charge the person because the complainant has died or withdrawn their complaint<sup>49</sup>.

Sharing investigative information allows Blue Card Services to assess the person's eligibility to remain in child-related employment, even though charges have not been laid.

There is benefit in changing legislation to allow the QPS to share information with Blue Card Services when a blue card holder is a suspect in a disqualifying offence (e.g. child sexual offences, child homicide or possession of child exploitation material<sup>50</sup>). This will allow Blue Card Services to commence early assessment of the risks posed by the individual. This will also enable Blue Card Services to notify the regulatory bodies where the individual is associated with a regulated home-based service. Regulatory bodies can then initiate risk management responses while the QPS investigation continues.

<sup>45</sup> The *Operational Procedures Manual* references the term 'suspect/offender'. However, the term suspect is not defined in Queensland legislation or the *Operational Procedures Manual*.

<sup>46</sup> Queensland Police Service 2016, 'Chapter 7 – Child Harm', *Operational Procedures Manual*, Queensland Government, Brisbane, Issue 52.1, Public edn, p. 70.

<sup>47</sup> Public Safety Business Agency 2016, *Annual Report 2015–16*, Queensland Government, Brisbane, p. 26, accessed 6 October 2016, <http://www.psba.qld.gov.au/publications/annualReport/Documents/PSBA%20Annual%20Report%202015-16.pdf>.

<sup>48</sup> *Working with Children (Risk Management and Screening) Act 2000*, s. 305.

<sup>49</sup> *Working with Children (Risk Management and Screening) Act 2000*, s. 305.

<sup>50</sup> See the *Working with Children (Risk Management and Screening) Act 2000*, Schedule 4.

### Example of early information sharing

The QPS investigates an allegation that Person A is in possession of child exploitation material. The QPS reasonably believes Person A has committed this offence and Person A has been notified they will be interviewed. The QPS notifies Blue Card Services.

Blue Card Services identifies that Person A holds a blue card as a family day care educator. Blue Card Services notifies the DET that Person A is a suspect in a disqualifying offence. Blue Card Services gathers information to conduct a re-assessment of Person A's blue card, which could include updated police information and/or disciplinary information from the DET.

The DET undertake an assessment, and take appropriate action from the risk management responses outlined in its policies and procedures (see Recommendation 28.14). This could include undertaking an unannounced monitoring visit to the educator's home, in consultation with the QPS.

Without this information being shared, children may be at continued risk from persons suspected of having committed a disqualifying offence. Opportunities to increase safeguards may also be missed.

Sharing information earlier about individuals who are suspects in these most serious offences improves regulatory agencies' ability to respond earlier to protect all children. This better establishes the balance between investigating and prosecuting criminal offences and maintaining the safety of children who may be exposed to individuals suspected of committing serious child-related offences.

There may also be benefit in amending the *Working with Children (Risk Management and Screening) Act 2000* to allow for immediate suspension of an individual's blue card at the point they become a suspect in a disqualifying offence. This will be referred to the broader *Blue Card and Foster Care Systems Review* for consideration.

A single definition of the term 'suspect' may support QPS officers' decision-making about sharing this information. This term is not currently defined in legislation or policy<sup>51</sup>. Officers are provided with guidance on investigating, identifying and processing persons suspected of having committed a criminal offence. This guidance is provided across a variety of documents including the *Police Powers and Responsibilities Act 2000*, the OPM and the *Digital Electronic Recording of Interviews and Evidence Manual*<sup>52</sup>. There may be benefit in including consolidated information to define 'suspect' within the OPM. This report uses the term 'suspect' to refer to a person the QPS reasonably suspects to have committed an offence, where 'reasonable suspicion' is defined as a belief based on facts<sup>53</sup>.

### Notifying employers and regulators about changes to blue cards

Blue Card Services assesses all the information it receives to identify whether an individual's blue card should be suspended or cancelled. Changes to the status of an individual's blue card must be reported to relevant 'notifiable persons'<sup>54</sup>.

Child Safety Services is notified about changes to the blue card status of foster and kinship carers. The DET is notified about changes to the blue card status of stand-alone carers. For family day care educators, changes to blue card status is shared with the approved family day care provider which has engaged the educator, rather than with the DET.

Amending legislation to include the DET as a notifiable person for family day care educators will provide it with greater visibility of the family day care system. This will also enable the DET to take appropriate action where an individual may pose a risk to children.

51 Information received from the Queensland Police Service, 14 September 2016.

52 Information received from the Queensland Police Service, 7 October 2016.

53 *Encyclopaedic Australian Legal Dictionary*, LexisNexis Australia, Chatswood NSW, accessed 5 October 2016.

54 Notifiable persons are specific entities and individuals who must be given written notice when an individual has been issued with a positive or negative prescribed notice or exemption notice. They are most commonly employers of individual card holders, however, also include service providers and regulatory bodies in some circumstances. *Working with Children (Risk Management and Screening) Act 2000*, ss. 342 and 292.

Effective information sharing about changes to the blue card status of individuals is dependent upon the ability of Blue Card Services to identify and notify the individual's employer.

Blue Card Services and the DET have identified there is often confusion among family day care applicants about who should be listed as their employer on the application form - the family day care service or the approved provider<sup>55</sup>.

There is an opportunity for Blue Card Services to promote a consistent understanding about the appropriate person or entity to be nominated as an employer for all individuals involved in home-based services. This will make sure the right people and agencies are notified at the right time about changes to an individual's blue card status.

### Work underway as a result of this review

The QFCC sought information from Blue Card Services on the number of recorded foster/kinship carers and family day care educators who had their blue card suspended or cancelled between 1 July 2013 and 30 June 2016\*.

During this period:

- 18 foster/kinship carers had their blue card suspended or cancelled, and
- 4 family day care educators had their blue card suspended or cancelled.

There are some data disparities across agencies on the number of blue card suspensions and cancellations. The QFCC will provide details of these cases to the regulatory agencies in order to identify the cause of these discrepancies.

In support of this review, the QPS has conducted a proactive audit of cases where a change in police information resulted in a suspension or cancellation of an individual's blue card. The objective of this audit was to establish when information was shared and with whom to identify opportunities for process improvements.

As a result of the *Recommendation 28 Supplementary Review* report, the QPS has begun developing a standardised process to record the information provided to other agencies in relation to children at risk of harm. This will generate consistency and transparency in decision making about information sharing and provide a basis for future audits to assist with system reviews and continuous improvement.

\* Information provided by Blue Card Services, 29 September 2016. Note, individuals may not have been active carers at the time their blue card was suspended or cancelled.

<sup>55</sup> Information received from the Department of Education and Training, 26 August 2016 and Blue Card Services, 14 September 2016.

## 4.2 Recommendations

### Legislation and policy amendments

#### *Recommendation 28.10*

The QPS works with Blue Card Services and relevant government agencies to expand provisions under the *Working with Children (Risk Management and Screening) Act 2000* to allow:

- the Police Commissioner to provide Blue Card Services with information about a person, once they have been informed they are a suspect<sup>56</sup> in an investigation about a disqualifying offence, and
- Blue Card Services to immediately notify the relevant regulatory body if the person is involved in a regulated home-based service (including adult household members).

Work should begin immediately on changes to policies and procedures necessary to support this recommendation. The *Blue Card and Foster Care Systems Review* is considering any legislative changes necessary to support the sharing of information about a person who is a suspect in a disqualifying offence.

**Reason:** *Sharing information earlier about individuals who are suspects in these most serious offences (e.g. child sexual offences, child homicide or possession of child exploitation material) improves the ability for regulatory agencies to respond to protect all children. This better establishes the balance between investigating and prosecuting criminal offences and maintaining the safety of children who may be exposed to individuals suspected of committing serious child-related offences.*

<sup>56</sup> The term 'suspect' in this instance refers to a person the Queensland Police Service reasonably suspects to have committed an offence. Reasonable suspicion is defined as a belief based on facts. See section 4.1.4 of this report for further detail.

#### *Recommendation 28.11*

Blue Card Services amends the *Working with Children (Risk Management and Screening) Act 2000* to include the DET within the definition of 'notifiable person'. This will allow the DET to be notified of changes to the blue card status of individual family day care educators and adult household members.

**Reason:** *Currently, the DET is not notified of changes to the blue card status of family day care educators. Instead, this information is provided to the approved family day care provider. As the regulator of the family day care system in Queensland, the DET should have visibility of potential risks to children in family day care environments.*

### Improvements to policies and procedures

#### *Recommendation 28.12*

The QPS updates its *Operational Procedures Manual* requiring officers to inquire about the following when investigating an offence where a child is the victim:

- regulated employment undertaken by a blue card holder, and
- any regulated services provided from a relevant residential address.

**Reason:** *It is important for the QPS to have a full understanding of households providing services to children. Direct access to relevant blue card information (see Recommendation 28.1) during the early stages of an investigation will assist the QPS to quickly identify potential risks to other children and thus share information with regulatory agencies.*



### *Recommendation 28.13*

The QPS develops a decision-making framework to guide officers in sharing information to protect all children.

**Reason:** *Current QPS decision-making frameworks focus predominantly on sharing information under the Child Protection Act 1999. Further guidance is required to assist officers to share information about risks to children in circumstances falling beyond the scope of this Act. The QPS has begun work on this important initiative.*

### *Recommendation 28.14*

The DET and Child Safety Services update relevant policies and procedures outlining the range of risk management strategies to be followed, including increased monitoring:

- when information becomes known about the provision of more than one home-based service, and
- upon receipt of information from Blue Card Services about a suspect in a disqualifying offence.

The DET should work with family day care regulators in other jurisdictions to establish and prescribe best practice for frequency of visits. This should be considered as part of its current work developing an improved risk-based framework for Queensland.

**Reason:** *Upon receipt of information about risks an individual may pose to children, regulatory bodies must be equipped with a range of responses enabling appropriate action to be taken.*

### *Recommendation 28.15*

Blue Card Services reviews the blue card application form, particularly for regulated home-based services, to include clear guidance for applicants to make sure they nominate the appropriate employer.

**Reason:** *Accurate information about an individual's employer is critical to making sure the correct person or entity is notified of changes to an individual's blue card status.*

# 5 Additional findings, implementation and monitoring

## 5.1 Summary of findings

The terms of reference for this review enabled the QFCC to refer any findings outside of scope to relevant agencies for consideration. The review identified a range of findings outside the scope of the terms of reference. These still require a response by the agencies concerned.

These additional findings are grouped by the agencies responsible for further consideration.

### 5.1.1 The Department of Education and Training

Approval of family day care providers is ongoing, with no renewal process. Renewal processes may be an opportunity to monitor risks to children in family day care environments. Introducing a renewal process would require amendment to the National Law.

There is opportunity to provide further guidance on sharing information, about risks identified during supervisor certification, with the QPS and Child Safety Services, over and above the policies provided by the Australian Children's Education & Care Quality Authority.

There may be benefit in centralising records of individual family day care educators, which are currently held by each family day care provider, rather than the DET.

There would be benefit in the DET providing further guidance about the information that can and should be shared under the National Law with other agencies in Queensland.

There would be benefit in providing policy guidance to assist officers in interpreting the permissive legislative framework for sharing information about stand-alone care services.

### 5.1.2 Queensland Police Service

There may be benefit in the QPS developing policies or procedures to clarify when the release of information is likely to prejudice an ongoing investigation. This would support the Police Commissioner in deciding not to release investigative information on these grounds.

### 5.1.3 Blue Card Services

There would be benefit in Blue Card Services providing support for, and monitoring and compliance with, child and youth risk management strategies for home-based services.

### 5.1.4 All agencies

In line with the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse, there would be benefit in clarifying the relationship between privacy laws and the information sharing provisions contained in other legislation. This should explicitly state where information sharing under a particular act does not contravene or breach the applicable privacy law.

## 5.2 Recommendations

### *Recommendation 28.16*

The QFCC refers all additional findings from the review (section 5.1 of this report) to relevant agencies for further consideration of required systemic improvements.

**Reason:** *While the review identified a range of findings outside the scope of the terms of reference, these still require a response by the agencies concerned.*

### *Recommendation 28.17*

The governance group established under Recommendation 29 of *When a child is missing: Remembering Tiahleigh – A report into Queensland’s children missing from out-of-home care* provides oversight of the implementation of the recommendations made in this report.

**Reason:** *The established governance group is best placed to monitor the implementation of all recommendations of this report, as supplementary recommendations of the When a child is missing report.*

