



Queensland
Family & Child
Commission

Legislative Review

Family and Child Commission Act 2014

March 2023

Contents

Contents.....	2
Commissioners’ introduction.....	3
Background	4
Objects of the Act	7
Role of the QFCC	10
Workforce planning and development function	13
Research and evaluation function	14
Focus on First Nations children and young people.....	15
Independence of the QFCC	17
Communication and co-ordination with functions of other Government agencies	18
Roles of Principal Commissioner and Commissioner.....	20
Child Death Review Board	27
Comparison of QFCC and CDRB powers	28
Compatibility with the <i>Human Rights Act 2019</i> (Qld).....	29
ESafety	30
Additional matters	31

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Commissioners' introduction

The *Family and Child Commission Act 2014* (Qld) provides an effective foundation for the Queensland Family and Child Commission (QFCC) to conduct meaningful and effective work.

The QFCC is seen as a national leader in child death recording, reviews and prevention; youth participation; and advocacy on child rights, safety and wellbeing. Independent reviews of the QFCC in the last 24 months have confirmed its impact and influence in the child safety and youth justice systems of Queensland.

This submission outlines the QFCC's response to the discussion paper on the *Family and Child Commission Act 2014* (the Act). It identifies opportunities to keep the QFCC as a contemporary and effective Commission focussed on the safety, rights and wellbeing of Queensland's children and their families. The suggested amendments align the Commission's role with Queensland Government's commitment to reframe the relationship with Aboriginal and Torres Strait Islander peoples and give practical means to address structural inequities. Establishing and empowering a Commissioner for Aboriginal and Torres Strait Islander children, young people and families provides dedicated leadership and oversight of systems to promote and protect rights, development, wellbeing and best interests of Aboriginal and Torres Strait Islander children and families and will support meaningful participation in government reforms.

Our submission suggests amendments to the Act to:

1. Establish a dedicated, independent, appropriately empowered and resourced Commissioner for Aboriginal and Torres Strait Islander children and young people;
2. Establish compatible powers for both Commissioners to exercise in the performance of QFCC functions;
3. Add a more explicit role for the Commission to "promote the rights of children and young people";
4. Add a new objective to "promote the rights, development, wellbeing and best interests of Aboriginal and Torres Strait Islander children and young people";
5. Add new functions to "promote a culture of accountability for upholding the rights of children and young people in Queensland" and "promote the participation of children and young people in the making of decisions that affect their lives";
6. Enable the QFCC to provide leadership for e-safety within Queensland;
7. Establish a reportable conduct scheme as recommended by the Royal Commission into Institutional Responses to Child Sexual abuse; and
8. Establish a child safety scheme as recommended by the Royal Commission into Institutional Responses to Child Sexual abuse.

We are committed to influencing positive change to ensure that every Queensland child is safe, loved, respected and has their rights upheld.



Luke Twyford
Commissioner
Queensland Family and Child Commission



Natalie Lewis
Commissioner
Queensland Family and Child Commission

Background

The Queensland Family and Child Commission (QFCC) is pleased to provide input into the review of the *Family and Child Commission Act 2014* (Qld). The QFCC is a statutory body of the Queensland Government established by the *Family and Child Commission Act 2014*.

Queensland has had a children’s commission in some form since 1996. The shape and form of the commissions’ functions have evolved over time to reflect the changing focus of governments as they respond to evidence and insights from formal inquiries, system trends and data monitoring, ongoing engagement with communities and families.

The current form of the QFCC was established in 2014 as a result of the Queensland Child Protection Commission of Inquiry (the Carmody Inquiry) which introduced a significant 10-year reform agenda.

Since that time the QFCC has matured and evolved, leading critical reviews of child safety, successfully advocating for reforms, and amplifying the voices of Queenslanders with lived experience in the child safety, youth justice and other statutory systems.

Elements of the current Act that are regarded as contemporary and desirable when compared to other jurisdictions include:

1. providing for systemic and thematic analysis of the performance of systems responsible for child safety—lifting above and out of portfolio compliance reviews, and individual complaint assessments
2. defining the child safety system broadly—enabling the QFCC to consider and provide advice on the gaps between critical systems, and the issues that arise for children and families when multiple portfolios are involved in their life
3. strongly including family, as a defining feature of the work of the QFCC and the safety and wellbeing of children—immediately recognising that we need to understand family and community if we want to make improvements for children
4. requiring a Commissioner who is Aboriginal and/or Torres Strait Islander
5. embedding a strong child death review process with distinct information requesting and reporting powers
6. compelling the publication of an annual report on the performance of the system
7. providing for the Child Death Register to proactively link with child death prevention research

An independent review of the operation and performance of the QFCC’s functions, as required under section 41 of the Act (Independent Review) was tabled on 13 January 2022.¹ ACIL Allen, who conducted the independent review, found that:

“the QFCC has delivered its legislative functions to a high standard, in accordance with the intent of the legislation and recommendations of the Carmody Report and develops and maintains a significant influence within the child protection system”.

¹ ACIL Allen 2021, *Independent Review of the performance of the Queensland Family and Child Commission of its functions: Final Report* <https://documents.parliament.qld.gov.au/tp/2022/5722T18.PDF>

It identified eight areas for further consideration, including operational issues for QFCC's consideration and other matters considered as part of this legislative review. The QFCC's response to the independent review, including the action it has subsequently taken, is available on our website.²

Separately, and in preparation for the independent review, the QFCC commissioned KPMG to conduct an analysis of its impact. Specifically, the review considered:

1. if recommendations had improved child and family support systems;
2. the relevance of incomplete recommendations; and
3. how future recommendations could have a greater effect on system change.

QFCC commissioned this review to be transparent about the strengths and gaps in its performance, and to inform how future reviews could be conducted. The report is available on the QFCC's website.³ The KPMG review found that:

'the QFCC has played an important role in leading reforms across the system that supports children, young people and families in Queensland'.

The QFCC has established a strong reputation as an oversight body—increasingly focusing on children's rights, adopting youth-led approaches, extending its influence and partnerships across the system and delivering impactful recommendations which are adopted by government. The KPMG review considered 10 system reviews completed by the QFCC, featuring 208 distinct recommendations. It noted that "the QFCC has played an important role in bringing stakeholders together across agencies and systems to drive sector improvements" and "QFCC recommendations were seen as instrumental in driving reform which enabled some agencies to secure additional funding to address critical systems issues."

The current legislation uniquely positions the QFCC to observe and understand the interdependency and intersectionality of broader services and agencies who engage with children, young people and families. We are well-positioned to promote coordination and shared responsibility to address complex system issues and improve outcomes for children and young people, particularly those who experience vulnerability and disadvantage.

As of 2023, the Act is providing a basis for important QFCC work, that is improving the system of services to Queensland children and their families. The QFCC is seen as a leader in many aspects of its work, including:

- Commissioner Lewis coordinates the First Nations Caucus of Childrens Commissioners and Guardians
- Our 'Principle Focus' performance monitoring of overrepresentation in the child protection system is being championed for national implementation by SNAICC
- The QFCC is leading the national meeting of Child Death Review teams and prepares Australia's National Analysis Report on Child Deaths given its leadership in this important area
- Commissioner Twyford coordinates the Australian and New Zealand Children's Commissioners and Guardians Group

² Queensland Family and Child Commission 2022, *QFCC Response to the ACIL Allen Report*, <https://www.qfcc.qld.gov.au/sites/default/files/2022-11/QFCC%20Response%20to%20ACIL%20Allen%20review%202022.pdf>

³ Queensland Family and Child Commission 2022, *Review of the Queensland Family and Child Commission's Impact*, <https://www.qfcc.qld.gov.au/sites/default/files/2022-08/Review%20of%20the%20Queensland%20Family%20and%20Child%20Commission%E2%80%99s%20Impact.pdf>

- Our operation and implementation of the Child Death Review model is being considered by two other jurisdictions; and
- Our Youth Participation Framework and operations are being adopted at National and State levels.

In the last year the Act has enabled the Commission's staff to support and lead important work. This includes:

1. Assisting Queensland youth to provide testimony at the Mental Health Select Committee and to the Women's Safety and Justice Taskforce.
2. Successfully Advocating for the removal of spit hoods from Queensland Watchhouses.
3. Publishing the outcomes of:
 - interviews with young First Nations people in Queensland's youth justice system
 - surveys of the community – including their understanding and confidence in the child protection system
 - surveys of the child protection workforce – including the risk, issues and strengths of the system from their perspective
 - our research into: domestic violence responses to children; filicide in Queensland; swimming pool drownings; sudden unexplained deaths in infancy;
 - our review of the use of Interventions with Parental Agreement;
 - our review of the decision to place Aboriginal and Torres Strait Islander children into residential care;
 - our exploration of barriers to mental health support for young people
4. Made submissions and provided evidence to:
 - Queensland Parliament on numerous Bills and inquiries;
 - Federal Parliament on several Bills and Inquiries into: Family Law Reform; Victims and survivors of child sexual abuse;
 - Government departments on: Queensland Youth Strategy; Path to Treaty; Swimming Pool safety; Homelessness Strategy; Suicide Prevention Strategy and many more;
 - The Australian Competition and Consumer Commission on several product safety concerns.
5. Facilitated and coordinated:
 - A youth advocacy network of 50 young people engaged by the QFCC to amplify their views and opinions, share their lived experience and directly contribute to policy making processes
 - Roundtables and symposiums including into youth with high-risk behaviours, and online child sexual exploitation
 - Sponsorship of Children's Week and the Young Black and Proud program
 - video and online material relating to parenting experiences in Queensland
 - media coverage of many of the issues detailed above.

Notwithstanding the above, this submission identifies opportunities to amend the *Family and Child Commission Act 2014* (the Act) to strengthen the role and operation of the QFCC. The QFCC is thankful for the opportunity to identify amendments to the Act that may strengthen its role as a contemporary and fit-for-purpose children's and families' Commission and ensure that it can improve the safety and wellbeing of Queensland's children and their families.

Objects of the Act

Question 1 - Noting questions on particular issues (set out below), do you have any general comment about:

- (a) **Whether you consider the objects of the Act sufficiently reflect the current role of the QFCC?**
- (b) **Whether you consider that the objects of the Act are being met or ways in which the objects could be better met?**

The current objectives of the Act (as defined at section 4) establishes the QFCC to:

1. promote the safety, wellbeing and best interests of children and young people;
2. promote and advocate the responsibility of families and communities to protect and care for children and young people; and
3. improve the child protection system. 'Child protection system' is defined in the schedule to the Act to mean: generally, the system of services provided by relevant agencies to children and young people in need of protection or at risk of harm; and for the purposes of the Child Death Review Board (Part 3A), the system of services provided by relevant agencies and other entities to children and young people in need of protection or at risk of harm; and it also includes preventative and support services to strengthen and support families and prevent harm to children and young people.

These objectives provide a strong basis for the QFCC's work establishing it with core responsibilities for raising awareness, producing advice, amplifying experiences, and conducting accountability reviews. Objectives one and two are not limited to any specific government portfolio, enabling the QFCC to consider international, national, and local government efforts and circumstances relevant to the promotion of safety and wellbeing. This has seen the QFCC involved in issues including international online child sexual exploitation; Commonwealth laws including NDIS, family support payments, the National Plan for Australia's Children, and local government including the importance of libraries, the design of safe places for youth and women, and the safety of swimming pools.

The broad definition of child safety in objective three means that the QFCC's systemic oversight extends to examining services along the broad continuum of care and wellbeing for children in need of protection or at risk of harm. This includes child safety, education, health, housing, disability services, policing, justice, domestic and family violence, youth justice, housing and community services.⁴

There are possible further amendments that the QFCC considers could be made to the objectives to reflect a contemporary and fit-for-purpose commission for children, young people and families. These are to:

1. add a more explicit role to promote the rights of children and young people;
2. more explicitly confirm the QFCC's role in early intervention and prevention services; and
3. add a more explicit objective to emphasise that the QFCC is established to provide a specific and explicit role in promoting the safety, wellbeing and best interests of Aboriginal and Torres Strait Islander children and their families.

⁴ For complete definition of "relevant agency" see Schedule 1 of the Act.

A more explicit role to promote the rights of children and young people

All work undertaken by the QFCC since it was established has centred on promoting the safety, wellbeing and best interests of children and families. Over successive strategic planning cycles, and with the commencement of the *Human Rights Act 2019* (Qld), the QFCC's vision and purpose has evolved to more clearly articulate a responsibility to promote and protect the rights of children.

The QFCC is well-positioned to continue its role in advocating for children's rights and holding systems accountable for improvements when children's rights are not upheld, or the balance of rights is not in the child's best interest.

Incorporating the rights of children and young people within the objects of the Act would provide a mechanism to give practical effect to the rights of children and young people through our work, as articulated in the *Human Rights Act 2019* and the United Nations Convention on the Rights of the Child. Amending section 4(a) to introduce a role to promote the safety, wellbeing, **rights** and best interests of children and young people would provide a mandate that legitimises our proactive engagement on a range of issues that impact upon the rights of children, including, but not limited to, discrimination, disability support, equitable access to quality education and health services, family violence prevention and involvement with justice systems.

Other jurisdictions have already adopted this language for similarly intended objects. For example, the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (SA)—which establishes the functions of the South Australian Commission for Children and Young People, Commission for Aboriginal Children and Young People and Guardian for Children and Young People—refers to the rights, wellbeing and development of children and young people. This is further reflected in the functions of the Commission for Children and Young People including to *promote and advocate for the rights and interests of all children and young people, or a particular group of children and young people, in South Australia* and to *advise, and make recommendations to, Ministers, State authorities and other bodies (including non-Government bodies) on matters related to the rights, development and wellbeing of children and young people at a systemic level*.⁵

Section 4 of the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* outlines that a reference to the rights of children and young people will be taken to include a reference to rights recognised in accordance with statutory and common law, rights set out from time to time in the United Nations Convention on the Rights of the Child and the United Nations Declaration on the Rights of Indigenous Peoples and rights set out in any other relevant international human rights instruments. In the Queensland context, this would include the *Human Rights Act 2019*.

As a rights-affirming jurisdiction, we suggest that providing a clear role, regarding the promotion of rights of children and young people in Queensland, promotes compatibility with the *Human Rights Act 2019*. Associated functions would be complementary to the role of the Human Rights Commission rather than duplicative.

More explicitly confirm the QFCC role in early intervention and prevention services.

There would be merit in shifting part of the definition of 'child protection system' from Schedule 1 of the Act into section 4(c) of the Act. In particular, more clearly expressing the role of the QFCC to **"improve the child protection system including the preventative and support services that seek to**

⁵ *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (SA), s14(1)(a) and (b).

strengthen and support families and prevent harm to children and young people and the youth justice system” would provide a more explicit and clearer role for the QFCC in the services and programs that are most likely to produce long-term child safety and family wellbeing. Narrow interpretations of the third object continue to limit the child safety system to the statutory process outlined in the *Child Protection Act 1999 (Qld)*.

Schedule 1 of the Act currently defines the child protection system as the system of services provided by relevant agencies (or other entities for the purpose of the CDRB’s functions) to children and young people in need of protection or at risk of harm and includes preventative and support services to strengthen and support families and prevent harm to children and young people. Relevant agencies include oversight bodies and government agencies (and publicly funded non-government agencies) responsible for providing services or dealing with complaints in relation to Aboriginal and Torres Strait Islander policy or services, administration or justice of legal services, care of children and young people, child safety, community services, corrective services, disability services, education, housing services and public health.⁶ Children, young people and families interact with many of these service systems across their life course. This includes universal services which are available for all families, targeted and specialist supports and services for those needing additional assistance and statutory systems.

While the Act identifies the broad range of relevant agencies who comprise the child protection system, the language of ‘protection’ and ‘prevention of harm’ in the definition contributes to the perception that our role is largely limited to the statutory child protection system.

While significant focus is given to providing oversight of the child protection system, in the course of its work, the QFCC has become increasingly active in providing advice and promoting system improvements and accountability across multiple sectors that engage with vulnerable children or young people to increase and maintain their safety before they enter the statutory system. Our *Safer Pathways Through Childhood Framework*, and our *Oversight Framework*, both recognise and are built on socio-ecological models that place child safety within family wellbeing life domains that show how life outcomes are based on universal needs being met. We will not prevent children from escalating to crisis points if we only focus on the crisis points.

We recommend that the Act be amended to more explicitly reflect our current scope.

More explicitly emphasise that Commissions role to promote the safety, wellbeing and best interests of Aboriginal and Torres Strait Islander children and their families

The Commission should have a more explicit role for Aboriginal and Torres Strait Islander children and families. Under the *Safe and Supported National Framework for Protecting Australia's Children 2021-2031*: Australian, State and Territory governments have committed to the *Aboriginal and Torres Strait Islander First Action Plan 2023-2026* (released on 31 January 2023). Action 7 of the First Action Plan is to establish and strengthen advocacy through Aboriginal and Torres Strait Islander Commissioners and similar roles. This seeks to address the overrepresentation of Aboriginal and Torres Strait Islander children in child protection systems and provide improved information sharing, data development and analysis.

On this point, see response to Questions 5 and 8.

⁶ See Schedule 1 of the Act.

Role of the QFCC

Question 2 - Noting questions on particular issues (set out below), in line with the objects of the Act are the QFCC's existing functions appropriate and fit for purpose?

Section 9 of the Act provides a strong list of functions for the Commission to enable it to meet its objectives. Many of the functions align with prescribed activities and recommendations assigned to the QFCC by the Carmody Inquiry. These functions remain relevant, but the mechanisms by which the QFCC delivers them have changed. This iteration, evolution and agility in meeting the functions set in section 9 enables the QFCC to be contemporary and strategic in how it uses its resources to improve the child protection system.

Similarly, the QFCC role in “developing and coordinating a multidisciplinary research program” has waxed and waned based on the emerging need for new research – and the leadership roles played by other strong National- and State-based research institutions focussed on families and children.

The QFCC recommends that legislative amendments to the Act reflect a contemporary approach to assign functions which align with the broader purpose and objectives of the QFCC to promote the safety, wellbeing, best interests and rights of children and young people and improve systems they interact with.

Specifically additional functions:

- 1) **to “promote a culture of accountability for upholding the rights of children and young people in Queensland”**; and
- 2) **to promote the participation of children and young people in the making of decisions that affect their lives** is sought.

This is consistent with functions of the South Australian Commission for Children and Young People outlined in the *Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA)*, which include responsibilities:

- (a) to promote and advocate for the rights and interests of all children and young people, or a particular group of children and young people, in South Australia; and
- (b) to promote the participation by children and young people in the making of decisions that affect their lives; and
- (c) to advise, and make recommendations to, Ministers, State authorities and other bodies (including non-Government bodies) on matters related to the rights, development and wellbeing of children and young people at a systemic level; and
- (d) to inquire into matters related to the rights, development and wellbeing of children and young people at a systemic level (whether a Governmental system or otherwise); and
- (e) to assist in ensuring that the State, as part of the Commonwealth, satisfies its international obligations in respect of children and young people; and
- (f) to undertake or commission research into topics related to children and young people; and
- (g) to prepare and publish reports on matters related to the rights, development and wellbeing of children and young people at a systemic level; and
- (h) such other functions as may be conferred on the CCYP by or under this or any other Act.⁷

⁷ *Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA)*, s 14

This is also reflective of other children’s commissions’ legislative functions which are intentionally high-level and relate to delivering on improvements relating to the safety and wellbeing of children.⁸ Adopting this approach in Queensland would ensure that the QFCC can remain a contemporary children’s commission now and into the future—allowing it to respond to the changing needs and priorities of governments, respond to emerging issues or inquiries, and to tailor its efforts to the specific circumstances and challenges experienced by Queensland children, young people and families.

Promote and advocate for the safety, wellbeing, best interests and rights of all children and young people, or a particular group of children and young people

The QFCC’s oversight and advocacy role should be positioned as proactive, future-focussed and grounded in safety, wellbeing, rights and best interests of children and young people, towards preventing systemic harms and placing children and young people on positive trajectories as early as possible.

The Act states that it is not a function of the commission to investigate the circumstances of a particular child, young person or family and advocate on their behalf. The QFCC recognises the role of service delivery agencies to investigate or respond to individual matters relating to children, young people and families—such as the Office of the Public Guardian. However, the delineation between individual and systemic oversight functions can result in reactive engagement on entrenched system issues, rather than early identification of emerging issues and use of cooperative strategies to engage in proactive advocacy and development of solutions. The introduction of another oversight agency in the youth justice system, with the upcoming commencement of Inspector of Detention Services provides a timely opportunity to clarify roles and improve the coordination between individual and systemic oversight functions. As detailed in the explanatory note to the *Inspector of Detention Services Act 2022* (Qld), the Inspector of Detention Services can consider systemic themes which may arise from an individual’s, or groups of people’s, experiences in a place of detention.⁹

The QFCC considers that the Act be amended to enable the QFCC, in undertaking its systemic reviews, oversight and advocacy functions, to consider matters relating to the safety, wellbeing, best interests and rights of an individual, or a group of, children and young people. While administrative data, media scrutiny of emerging issues and ministerial direction all provide valuable insights into trends and matters requiring systemic advocacy and oversight by the QFCC, they may not always capture localised issues or nuances present in individual cases. In practice, this amendment should enable the QFCC to consider potential systemic issues or gaps that impact individual children and proactively advocate for systemic improvements. It is important to note that this amendment should not confer a standalone complaint handling responsibility or function but would rely on connections with existing complaints or individual advocacy processes administered by the Human Rights Commission, Office of the Public Guardian and the Ombudsman. This is discussed further in relation to Communication (Question 7).

Promote the participation by children and young people in the making of decisions that impact upon their lives

Children and young people have a significant role to play in shaping the future economic, social and cultural success across Queensland. We know that successful outcomes for children are more likely to be delivered when decisions about their lives involve them and the people significant to them (such

⁸ See, for example, Commission for Children and Young People Act 2012 (Vic) and the *Human Rights Commission Act 2005* (ACT).

⁹ Inspector of Detention Services Bill 2021 Explanatory Notes, <https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2021-006#:~:text=Under%20this%20Bill%2C%20the%20Inspector,least%20once%20every%20five%20years.>

as parents, siblings, carers, extended family and friends). Empowering children and families to share their stories as part of our work is critical—both to ensure the accuracy and integrity of our work, and to indicate to others that they are not alone in their experiences. To deliver this, we seek to amplify the voices of Queensland children and their families.

The involvement and participation of children and young people in the QFCC’s work has evolved over time, ranging from a youth-informed to a youth-led approach. The QFCC regularly works with the Youth Advocacy Network it has established to inform its work and engages Youth Advocates to provide input or lead projects and programs of work. The QFCC also facilitates other government agencies to work with Youth Advocates to inform cross-government strategies and inquiries. While the QFCC is committed to amplifying the voices of children and young people through its work, this could be legitimised through amendments to the Act. The QFCC recommends that amendments to its legislative functions include a role to ***“promote and support the participation of children and young people on matters and in decisions that impact upon their lives”***.

Further observations of section 9 (1) include:

- subsections (g) and (h) provides a significant role for the QFCC in shaping government policy through advice and collaboration;
- subsections (g) and (i) are compatible in approach, but contradictory in that only one is limited to the “child protection system”;
- subsection (j) provides a function to report to the Minister which is the Attorney-General, however there may be merit in considering in what circumstances the QFCC may report to the Minister/s responsible for the portfolios of Child Safety, Children, Youth, and Youth Justice.
- section 26 of the Act provides further functions to section 9. These are functions of the Principal Commissioner, rather than the Commission, and relate to the Child Death Register. Separating functions between the Commission and Commissioners, and between the QFCC, the Child Death Register and the CDRB creates a matrix of responsibilities for some QFCC staff and has the potential to create confusion and inefficiencies.

Workforce planning and development function

Question 3 - Noting other jurisdictions do not necessarily have a specific workforce development and planning function – do you have a view as to whether the QFCC should have a legislated workforce planning and development function?

If QFCC continued its workforce planning and development function – do you have any feedback/views on how this can be carried out?

Section 9(1)(c) of the Act sets out a function to develop and review workforce planning and development strategies for the child protection system by collaborating with relevant agencies, the private sector and education providers. This stemmed from recommendations from the Carmody Inquiry which identified a clear need for this work to be coordinated centrally.

In its formative years, the QFCC delivered on these recommendations, including by releasing the *Workplace Practice Self-Assessment Toolkit* to support organisations undertake assessments of their workplace practices and implementing several projects and initiatives in collaboration with sector partners under the *Strengthening our Sector Strategy* and associated Action Plans. Building on the *Strengthening our Sector Strategy*, the QFCC also commenced the Workforce Futures initiative, working with peak bodies, government, and non-government departments to monitor emerging trends across the sector, and reporting findings back to the sector to help inform their future workforce planning.

To allow the QFCC to focus on its core business and emerging needs, resources allocated to this function were reduced and reallocated to higher priorities, particularly due to the limited role the QFCC had in directing implementation or operation of other agencies' workforce initiatives including those under the strategy. We note that children's commissioners in most other jurisdictions do not have specific workforce development and planning functions for the child protection system but perform more general functions to provide advice or undertake inquiries which could consider workforce issues.

The QFCC's work in alignment with this function is now delivered through consideration of system reviews, policy positions and data monitoring activities replacing our leadership role in strategy development. The QFCC regularly surveys the sector's workforce to understand and monitor their perspectives about practice and capability issues, with findings shared with sector leaders and informing other QFCC projects. Similarly, the QFCC can consider, and advocate for improvements to, broader workforce issues through more general functions. As discussed in response to Question 2, the QFCC has embedded a focus on workforce issues through its broader program of work—including through system reviews, policy positions and data monitoring activities. It also continues to work with peak bodies and other sector leaders to advocate and promote improvements for service delivery to children and families.

Maintaining a role for the QFCC in assessing, providing advice and making recommendations on workforce capability and capacity is essential to our functions and responsibility to assess the performance and improve the system. However, an explicit function to develop workforce strategies is not necessary.

Research and evaluation function

Question 4 - Does the Act as currently drafted adequately support the QFCC's research and evaluation function or are there any ways you think the QFCC should be performing this function?

Section 9 of the Act sets out functions to:

- inform and educate the community about research relevant to the child protection system,
- develop and coordinate a multidisciplinary research program to inform policies and practices, in consultation with stakeholders and relevant agencies,
- assist relevant agencies evaluate the efficacy of their programs and identify the most effective service models.

Since its establishment, the QFCC has regularly engaged with the research community to coordinate research and communicate research findings with our stakeholders, including through research scans, summaries and hosting Research in the Round events, showcasing work of Australian researchers. Researchers routinely access the child death register to inform better prevention strategies and the CDRB funds annual research into key areas of concern in the system.

The QFCC's work to deliver on this function has transformed in response to the changing needs of stakeholders who undertake evaluations. Many agencies are conducting their own evaluations, often engaging external consultants, and should evaluation support be required, several other capability building resources exist, such as the Better Evaluation website, the *Queensland Government Program Evaluation Guidelines* and the Queensland Government Statistician's Office.

Internal analysis of the QFCC's research activities showed some were having limited impact, and other stakeholders were better positioned to deliver these activities. The ACIL Allen Independent review supported this finding, assessing the function of developing and coordinating a multidisciplinary research program as low perceived impact. As such, the QFCC's efforts are better placed to share the findings and evidence it collates for the purpose of informing other organisations' research activities, partnering with research organisations and promoting findings to the wider community as part of its public awareness role.

In the last year research conducted by the QFCC has had significant impact. Our analysis of swimming pool deaths was sent to all local governments resulting in policy shifts; our filicide research received significant attention; our domestic violence research focusing on the impact on children formed a core part of our submission to the Government reforms in this area; and our research on SUDI highlighted important improvements to safe sleeping and home visiting programs. We also undertake youth-led research and conduct qualitative research through surveys and interviews of Queenslanders.

The QFCC has published *Safer Pathways Through Childhood* – a five-year plan setting out the research agenda to better inform child death prevention activities. This includes research on SUDI, sepsis related deaths, suicide prevention, fatal assault and neglect, and drowning.

The QFCC recommends that legislative functions relating to research be clarified. The remit and scope of the QFCC's research functions should be less explicit about developing and coordinating a multidisciplinary research program providing more agility to fund, facilitate and contribute to research. A further change to remove the limitation that it is research relevant to the child protection system. Instead, the QFCC can play a role in informing and educating the community about all issues impacting children, young people and families.

Focus on First Nations children and young people

Question 5 - Do you consider the Act currently enables the QFCC and commissioners to provide sufficient focus on the interests of, and issues impacting, Aboriginal and Torres Strait Islander children, young people and families?

If not, what improvements should be considered (in particular in relation to the Commissioner's role) to support an enhanced focus on first nations children to help address the over representation of first nations children in the child protection system?

The QFCC recommends a more explicit commitment to promoting and advocating for the needs of Aboriginal and Torres Strait Islander children and their families is added as an objective to the Act and a new associated function is included to raise awareness, advocate and promote accountability for upholding their safety, rights and wellbeing.

Under the Act, one of the two commissioners must be an Aboriginal or a Torres Strait Islander.¹⁰

The Act currently describes the ways in which both commissioners perform their functions, being that they must:

- ensure the interests of Aboriginal people and Torres Strait Islanders are adequately and appropriately represented,
- respect and promote the role of Aboriginal and Torres Strait Islander service providers in supporting Aboriginal and Torres Strait Islander families and communities to protect and care for their children and young people; and
- be sensitive to the ethnic or cultural identity and values of children, young people and their families¹¹.

In application, the Act provides guidance on how the commissioners undertake the work of the commission, as opposed to the role of the commission. The Act does not provide a clear portfolio to the Commissioner, distinct from the Principal Commissioner, or sufficiently deliver on commitments by all Australian, State and Territory Governments to establish and strengthen advocacy of Aboriginal and Torres Strait Islander Commissioners in each jurisdiction.

It does not prescribe a clear mandate to focus on issues of particular concern or those that impact adversely and disproportionately on the safety, wellbeing, rights and best interests of Aboriginal and Torres Strait children and young people. Further, key issues such as functional independence, clarity of purpose and functions and equitable powers and resourcing remain unresolved (discussed further in response to Question 8).

The QFCC considers that a new dedicated function of the commission, allocated to a Commissioner to lead, should include **“promoting the safety, wellbeing, rights and best interests of Aboriginal and Torres Strait Islander children”**. It is important that this role and function is safeguarded in legislation.

Additionally, it would be an option to explicitly include the role of the QFCC and Commissioner, in the functions and powers to include “promoting, advocating, evaluating and reporting on” the

¹⁰ Family and Child Commission Act 2014, s11

¹¹ Family and Child Commission Act 2014, s23

overrepresentation of Aboriginal and Torres Strait Islander families and children in statutory systems – broader than the child protection and youth justice systems and including their underrepresentation in terms of equitable access to universal and targeted services and support.

A dedicated focus on First Nations children and young people should be safeguarded in legislation through:

1. the addition of an explicit objective;
2. the inclusion of an explicit function “to promote and uphold the rights, safety, well-being and best interests of Aboriginal and Torres Strait Islander children in Queensland” and
3. the establishment of a dedicated, independent, appropriately empowered and resourced Commissioner (or Guardian) for Aboriginal and Torres Strait Islander Children and Young People.

Independence of the QFCC

Question 6 - To better align with other jurisdictions, consideration is being given to including provisions/amendments to make it clear that the commissioner must act independently and impartially – do you have any view on this? For example, section 18 may be amended to provide that in performing its functions, the Commissioner is to act independently and impartially.

The QFCC is positioned as a statutory authority that is responsible through an agency to a Minister. This administrative trail may be interpreted as limiting the QFCC's perceived independence, in turn impacting the QFCC's reputation with stakeholders and its ability to effectively exercise its oversight functions and influence positive changes across the system.

The QFCC supports amendments to section 18 of the Act which direct it to act independently and impartially in the performance of its functions.

Further, under section 22, the QFCC is subject to the directions of the Minister in performing its functions and must comply with a direction given by the Minister. Provisions which relate to the CDRB's independence could also be applied to the QFCC and exercised by both commissioners. Under section 29F, the CDRB is required to act independently and in the public interest and:

- is not subject to direction by the Minister or anyone else about how it performs its functions; and
- despite section 22, a commissioner is not subject to direction by the Minister in performing the commissioner's functions as the chairperson or other board member.

Notwithstanding this, the Minister may still ask the CDRB to carry out a review or consider a state system or issue as part of a review, if the Minister considers it would be appropriate, having regard to the purpose of the CDRB.

Communication and co-ordination with functions of other Government agencies

Question 7 - Does the Act adequately support effective communication and/or coordination between the QFCC and other Government entities, such as the Office of the Public Guardian? If not, how could this be improved?

In any complex, evolving system, with different oversight agencies involved, there will be unintended tensions, gaps and overlaps between the functions and responsibilities of each agency, which can impact on the effective operation of the oversight system as a whole. For example, the sharp delineation between individual and systemic oversight functions of the Office of the Public Guardian and the QFCC can result in reactive engagement on entrenched system issues rather than early identification of emerging issues and use of cooperative strategies to engage in proactive advocacy and development of solutions.

The interface between the QFCC and other statutory bodies is often managed relationally or, where the focus is on the exchange of information, through the establishment of formal mechanisms such as memorandums of understanding. The QFCC considers that amendments to the Act could establish a referral process in relation to the performance of particular functions within and between oversight agencies. Similar provisions are currently reflected in the *Inspector of Detention Services Act 2022* (Qld), which provide a legislated framework to guide referral to the Health Ombudsman, the Human Rights Commission, the Ombudsman or the Public Guardian, on matters relevant to their functions and in the performance of their functions.¹² The introduction of a referral scheme between entities, such as the QFCC, the Ombudsman, the Office of the Public Guardian and the Human Rights Commission may promote more effective coordination and limit unnecessary efforts and duplication of inquiries carried out under their respective authorising acts.

If, for example, another agency considers that a matter should be considered by either of the commissioners in the exercise of their functions or powers, a process for referral articulated within the Act may provide clarity and improve the level of cooperation and collaboration across the oversight bodies. Sharing data, research and expertise on issues of common concern is not intended to undermine the individual mandates of each entity, but build confidence in, and the capacity of, the system of oversight in Queensland.

Request for information to inform delivery of functions

To support performance of the QFCC's functions, the Principal Commissioner exercises Section 35 of the Act to request information from a public entity considered necessary to perform the functions. However, this section limits the scope of the Principal Commissioner's ability to request information to information that is not confidential (unlike Part 3 – Child Death Register – which permits requests relating to confidential information). This section presents challenges for the QFCC in the performance of its functions, particularly in relation to performing systemic oversight, and would benefit from amendments to reflect section 27 of the Act in relation to compliance and requesting confidential information. Section 27 currently states the Principal Commissioner can ask a public entity for information considered necessary for the performance of the commissioner's functions. This includes

¹² Inspector of Detention Services Act 2022 (Qld), s20

confidential information. Compared to section 35, section 27 also limits the reasons that a public entity may choose not to comply with the request.

If this suggested amendment is not pursued, and alternative, to more accurately define confidential information will be necessary as it is highly likely that any review of the performance of the child safety or youth justice system is going to require consideration of personal information.

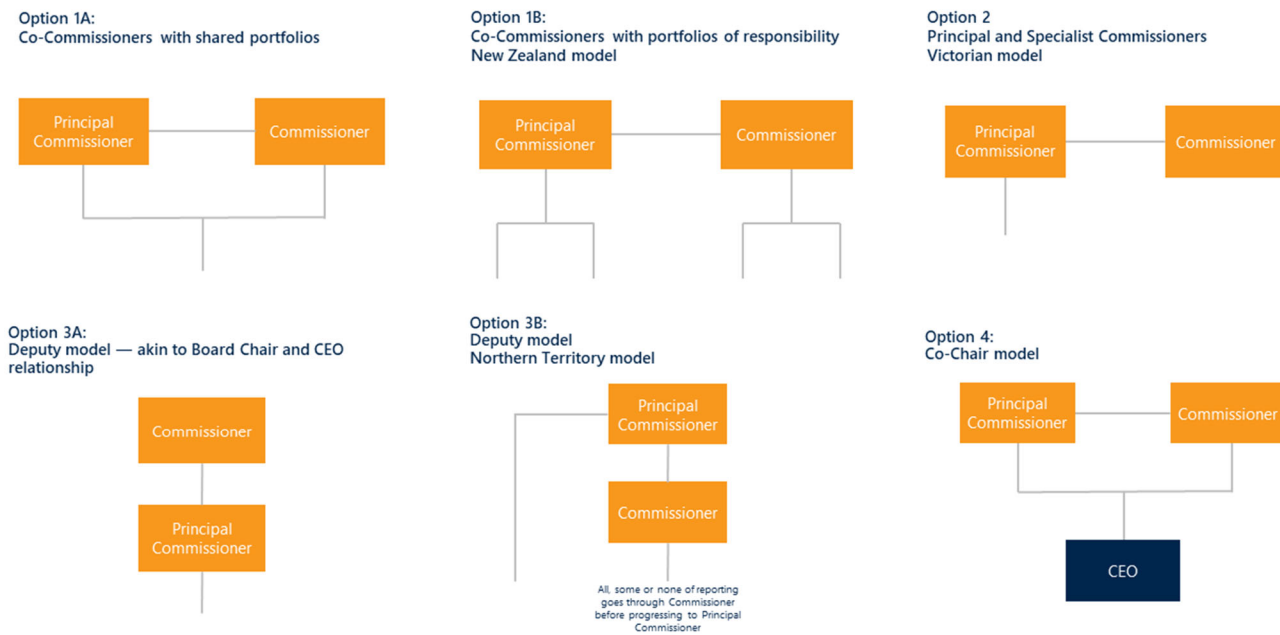
Roles of Principal Commissioner and Commissioner

Question 8 - Do you consider that the roles between the Principal Commissioner and the Commissioner should be clarified in the Act?

The Act currently provides for two commissioners with several clauses providing distinction between their otherwise complementary roles. These distinctions between the two roles include:

1. One commissioner must be the Chair of the Child Death Review Board section 29W)
2. The Principal Commissioner has an additional function “to control the QFCC (section 19)”.
3. The Principal Commissioner also has functions related to the Child Death Register, under sections 25 and 26 of the Act.
4. Under section 20, the Commissioner (who is not the Principal Commissioner) has a function to ensure that the QFCC adequately and appropriately performs its functions to:
 - 1) promote and advocate the responsibility of families and communities to protect and care for children and young people (under section 9(1)(b)(i)); and
 - 2) develop and review workforce planning and development strategies for the child protection system by collaborating with relevant agencies, the private sector and education providers (under section 9(1)(c)).

It is not clear why section 20 articulates the two functions for the non-Principal Commissioner that are functions of the commission and detracts from, as opposed to augmenting the performance of core functions. Section 19 also provides for a power hierarchy between the commissioners that is intended to place accountability for public sector leadership and resources with one, but that can also be used to impact the work of the other. Further, section 38 enables the Principal Commissioner to delegate powers to the Commissioner who is not the Principal Commissioner, but this has not occurred in practice. In 2022, the commissioners worked to identify models for the separation of functions and roles. It is important to note that the consideration of potential operating models was limited to the context of QFCC’s existing legislative framework. This included looking at all models in Australia and New Zealand. Models assessed are presented below.



This process identified that “A clear distinction between Principal Commissioner and Commissioner’s roles, responsibilities and accountabilities will drive efficiency across the QFCC.” While both commissioners share ownership of the QFCC’s objectives and need to work together to ensure that QFCC meets its legislative functions, a clear and agreed differentiation of who is responsible for discrete processes and outputs is critical. This was considered to provide sufficient latitude and authority to make timely decisions within respective portfolios but did not extend to the delegation of specific powers to the Commissioner.

The model agreed between the two current commissioners was that:

1. Both would share accountability to:
 - Set QFCC’s strategy and priorities.
 - Set QFCC’s advocacy agenda.
 - Provide advice to the Minister.
 - Influence, engage and advocate across government and agencies, the sector and across the broader community.
2. The Principal Commissioner would:
 - Control the commission as per legislative requirement.
 - Chair the CDRB; directing activities and ensuring it appropriately performs its functions.
 - Line manage the value chain directorates (i.e. System Review, Advocacy) as well as Governance, Media and Corporate Services.
 - Oversee corporate functions and processes, including HR, finance, WHS, ICT and corporate governance.
 - Lead whole-of-commission workforce planning, capability development and communications.
3. The Commissioner would:
 - Line manage First Nations and Child Rights Strategy, Accountability and Partnerships.
 - Ensure the collection and monitoring of data captures necessary information relating to First Nations children and young people, and child rights.
 - Lead the development and implementation of processes that further embed child’s rights into the QFCC’s work and outputs.

- Lead whole-of-commission cultural competency capability building to strengthen engagement with First Nations communities and stakeholders.
- Provide leadership and give expert advice on First Nations and child rights issues and relevant reform agendas (e.g., Closing the Gap; DFV; Our Way).
- Project lead deliverables that primarily focus on the rights of children and First Nations children and families and deliverables that both commissioners agree primarily have a First Nations focus.

This arrangement is not specified in the current Act and is open to change based on the persons appointed to the roles of commissioners. The program of work currently undertaken by the QFCC, the establishment of priorities and allocation of resources is legally all at the discretion of the Principal Commissioner, noting their role to control the commission. The QFCC believes that there is a significant opportunity for government to improve the legislation to provide a clear role for a dedicated, independent, appropriately empowered and resourced Commissioner for Aboriginal and Torres Strait Islander Children and Young People. This would be an expanded role with clearly separate and independent functions from the Principal Commissioner, independence in the exercise of powers and there would be equality in the remuneration and status of both commissioners.

As outlined in our response to question 5, and to ensure equal prioritisation of matters relating to Aboriginal and Torres Strait Islander children and young people, one of the commissioners should have distinct responsibility for promoting and upholding the rights, safety, wellbeing and best interests of individual, or a group of, Aboriginal and Torres Strait Islander children and young people, with the assigned functions and powers to support this role.

Aboriginal and Torres Strait Islander children and young people in Queensland, and indeed across the country, experience widespread and persistent discrimination and disadvantage, impacting on current and future generations. There is an urgent need and imperative to establish a dedicated Commissioner for Aboriginal and Torres Strait Islander Children and Young people to provide oversight and accountability for systems and services to improve the preservation and protection of the rights of Aboriginal and Torres Strait Islander children and young people. The disproportionately high rates of intervention by government agencies in the lives of Aboriginal and Torres Strait Islander children and families, and the poor outcomes achieved for Aboriginal and Torres Strait Islander children and young people has long been a critical concern for communities. A key element of addressing these inequities is the establishment of adequate oversight and accountability mechanisms dedicated to the promotion and protection of the rights, wellbeing and development of Aboriginal and Torres Strait Islander children and young people in Queensland.

There is also increasing recognition across jurisdictions of the importance and value of a dedicated model for Aboriginal and Torres Strait Islander children and young people. The Queensland Government has committed to significant reforms to reframe the relationship with Aboriginal and Torres Strait Islander Queenslanders. Path to Treaty is a significantly important way to come together and negotiate a new way of working in partnership for the Queensland Government and Aboriginal and Torres Strait Islander peoples—one that is underpinned by self-determination and actioned through truth telling, empowerment and agreement making.¹³

¹³ Queensland Government 2020, Treaty Statement of Commitment and response to recommendations of the Eminent Panel, <https://documents.parliament.qld.gov.au/tp/2020/5620T1358.pdf>

Closing the Gap, including the Partnership Agreement and Priority Reforms¹⁴, reflects a commitment from all Australian governments and Aboriginal and Torres Strait Islander representatives to a fundamentally new way of developing and implementing policies and programs that impact on the lives of Aboriginal and Torres Strait Islander people. Several targets within Closing the Gap are directly relevant to the rights, wellbeing and development of Aboriginal and Torres Strait Islander children and young people.¹⁵

The QFCC considers that a dedicated Commissioner for Aboriginal and Torres Strait Islander Children and Young people should form part of the QFCC with equal legislative recognition, independence and tenure and workforce to the existing Principal Commissioner. This aligns with current government priorities. Such a role would be an advocate for Aboriginal and Torres Strait Islander children and families with authority to make representations to government across all social and economic issues.

Priority Reform 3 of Closing the Gap includes that mainstream government agencies and institutions that deliver services and programs to Aboriginal and Torres Strait Islander people undertake systemic and structural transformation. This enhanced Commissioner role would be well-positioned to contribute to the monitoring of progress and to provide independent advice to support progress. Independent oversight and production of publicly accessible, equity focussed data is consistent with the commitment to accountability and transparency in relation to outcomes for First Nations people.

Further, the *Aboriginal and Torres Strait Islander First Action Plan 2023-2026*,¹⁶ contains specific commitments for the establishment of independent, effective and empowered Aboriginal and Torres Strait Islander children's commissioners. The action plan asserts that taking a child's-rights approach in implementation will support Aboriginal and Torres Strait Islander children and young people to thrive in life. Like all children and young people, Aboriginal and Torres Strait Islander children have a right to grow up safe, connected and supported to reach their full potential. This right is enshrined in both the United Nations Convention on the Rights of the Child and the United Nations Declaration on the Rights of Indigenous Peoples. Aboriginal and Torres Strait Islander children also have the right to exercise agency in decision-making on matters that affect their lives, and the right, in community with other members of their group, to enjoy their culture, religion and language. This action commits to establishing advocacy and accountability roles in all jurisdictions to amplify the voices of Aboriginal and Torres Strait Islander children and young people, drive systemic reforms to support their rights and wellbeing, and hold governments and services accountable. The action also aligns with the United Nations' benchmark guidelines for human rights institutions the 'Paris Principles'¹⁷ in recognising that oversight and advocacy roles need to be independent from government and equipped with adequate powers and resources to fully engage and contribute their knowledge.

Aboriginal and Torres Strait Islander children and young people often fall through the cracks of our rigidly segmented systems. Aboriginal and Torres Strait Islander children and young people are impacted by 'buck passing' between the Commonwealth and State and Territory governments, as well

¹⁴ Closing the Gap, *Closing the Gap National Partnership Agreement* <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap>

¹⁵ Such as targets to reduce overrepresentation in child protection and youth justice systems, improve infant health, improve engagement in high quality, culturally appropriate early childhood education, improve educational and employment engagement and outcomes, decrease family violence and abuse and increase engagement in cultures and language. See Closing the Gap, *Closing the Gap targets and outcomes*, <https://www.closingthegap.gov.au/national-agreement/targets>

¹⁶ Aboriginal and Torres Strait Islander First Action Plan 2023-2026 under Safe and Supported: the National Framework for Protecting Australia's Children 2021-2031.

¹⁷ United Nations, Principles relating to the Status of National Institutions (The Paris Principles), General Assembly Resolution 48/134, adopted 20 December 1993

as between government departments and agencies. A Commissioner for Aboriginal and Torres Strait Islander Children and Young people could play a vital role in providing a dedicated point of accountability for Aboriginal and Torres Strait Islander children and young people and supporting strategies for more effective collaboration and coordination both between and within governments.

The QFCC considers that such an amendment would match other Australian jurisdictions where there are distinct commissioner roles with their own budget allocation and shared corporate services. As outlined in Table 1, the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (SA) sets out corresponding functions for the Commissioner of Children and Young People and the Commissioner for Aboriginal Children and Young People.

Under the South Australian legislative framework, both commissioners are empowered to advocate for children and young people in South Australia, with a dedicated focus on the needs and experiences of Aboriginal children and young people. This approach recognises the unique needs and experiences of Aboriginal children and young people and ensures systemic advocacy specifically considers the issues affecting their lives.

Table 1: Comparison of commissioners' functions—Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA)

Functions of the Commissioner for Children and Young People	Functions of the Commissioner for Aboriginal Children and Young People
<p>(a) to promote and advocate for the rights and interests of all children and young people, or a particular group of children and young people, in South Australia; and</p> <p>(b) to promote the participation by children and young people in the making of decisions that affect their lives; and</p> <p>(c) to advise, and make recommendations to, Ministers, State authorities and other bodies (including non-Government bodies) on matters related to the rights, development and wellbeing of children and young people at a systemic level; and</p> <p>(d) to inquire into matters related to the rights, development and wellbeing of children and young people at a systemic level (whether a Governmental system or otherwise); and</p> <p>(e) to assist in ensuring that the State, as part of the Commonwealth, satisfies its international obligations in respect of children and young people; and</p> <p>(f) to undertake or commission research into topics related to children and young people; and</p> <p>(g) to prepare and publish reports on matters related to the rights, development and wellbeing of children and young people at a systemic level; and</p> <p>(h) such other functions as may be conferred on the CCYP by or under this or any other Act.</p>	<p>(a) to promote and advocate for the rights and interests of Aboriginal children and young people, or a particular group of Aboriginal children and young people; and</p> <p>(b) to promote the participation by Aboriginal children and young people in the making of decisions that affect their lives; and</p> <p>(c) to advise, and make recommendations to, Ministers, State authorities and other bodies (including non-Government bodies) on matters related to the rights, development and wellbeing of Aboriginal children and young people at a systemic level; and</p> <p>(d) to inquire into matters related to the rights, development and wellbeing of Aboriginal children and young people at a systemic level (whether a Governmental system or otherwise); and</p> <p>(e) to assist in ensuring that the State, as part of the Commonwealth, satisfies its international obligations in respect of Aboriginal children and young people; and</p> <p>(f) to undertake or commission research into topics related to Aboriginal children and young people; and</p> <p>(g) to prepare and publish reports on matters related to the rights, development and wellbeing of Aboriginal children and young people at a systemic level; and</p> <p>(h) such other functions as may be conferred on the Commissioner by or under this or any other Act</p>

The *Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA)* serves as a model for a contemporary children’s commission in Queensland to create effective oversight and advocacy mechanisms for First Nations and non-Indigenous children and young people. The legislation would also provide clarification on how the Commissioner’s role is to interact with the Principal Commissioner and Chair of the Child Death Review Board and other Queensland oversight bodies and

advocates.¹⁸ This is particularly important to avoid any duplication or uncertainty associated with the scope of the Commissioner's role.

The Act should provide that the Commissioner for Aboriginal and Torres Strait Islander Children and Young people should consult with and engage Aboriginal and Torres Strait children, young people, families and communities in the performance of the Commissioner's functions under the Act, and in particular seek to engage Aboriginal and Torres Strait Islander children, young people, families and communities whose ability to make their views known is limited for any reason. The Commissioner for Aboriginal and Torres Strait Islander Children and Young People should undertake monitoring and reporting of Queensland's performance and contribute to Commonwealth compliance with its international human rights obligations, with respect to Aboriginal and Torres Strait Islander children and young people, particularly in relation to the UN Convention on the Rights of the Child (CRC) and the UN Declaration on the Rights of Indigenous Peoples. Ideally, the establishment should be supported by separate and adequate resourcing, specifically for the Commissioner to undertake prescribed functions and progress a distinct program of work.

The delivering of this new Commissioner's functions would require them to exercise powers which are currently only exercised by the Principal Commissioner. This includes:

- sharing and requesting information and data about Aboriginal and Torres Strait Islander children and young people from public entities, relevant to the performance of the Commissioner's functions and in relation to raising issues of particular significance to Aboriginal children and young people or a particular group of Aboriginal and Torres Strait Islander children or young people
- initiating system reviews or inquiries, including those stemming from individual matters impacting Aboriginal and Torres Strait Islander children and young people, or a particular group of Aboriginal and Torres Strait Islander children and young people¹⁹
- making recommendations to the Minister to inform actions to promote the safety, wellbeing, rights and best interests of Aboriginal and Torres Strait Islander children and young people.

¹⁸ See, for example, Sections 32 of the *Commission for Children and Young People Act 2012* (Vic) as an example of a legislative provision providing for the need to avoid unnecessary duplication of the work of different authorities and bodies.

¹⁹ See, for example, Sections 15-17 *Children and Young People (Oversight and Advocacy Bodies) Act 2016*

Child Death Review Board

Question 9 - Noting the CDRB has been operating for just over two years (since 1 July 2020), at this stage, do you think any changes are required to better support the current role of the CDRB?

During its first two years of operation, the CDRB reviewed the deaths of 110 children, and made 16 recommendations to improve the design and delivery of systems and services to children, young people and families in Queensland. Its recommendations are broad and far reaching, directed at a range of government agencies and requiring cross-sectoral collaboration and coordination to address systemic issues. The QFCC considers that the current legislative powers, functions and operations of the CDRB, as currently defined in the Act, are supporting it to effectively fulfil its role as an external and independent model for reviewing systems following the deaths of children.

However, there are broader operational and legislative improvements (outside of the *Family and Child Commission Act 2014*) which would support CDRB operations.

Chapter 7A of the *Child Protection Act 1999* (Qld) includes provisions for agencies to carry out reviews of their involvement with a child known to the child protection system if they provided services or responses within 1 year prior to the child's death. Agencies apply discretion in determining the timeframe considered in scope for their reviews, although at a minimum consider the 12 months prior to the death incident.²⁰ In practice, this means there may be missed opportunities to identify whether services adequately considered the child's vulnerabilities and cumulative needs over a longer period of time. The Chairperson of the CDRB, has periodically requested additional information from agencies beyond the 12-month timeframe which has identified opportunities for earlier intervention and recognition of cumulative harm to children and young people, particularly in the context of suicide.

Further, the absence of service delivery to a child within the 1 year prior to their death may itself be indicative of agency-level or systemic issues requiring review. For example, under the current model, reviews are not automatically triggered when a compulsory school-aged child has not attended or engaged with school in the 1 year prior to their death. In these cases, children may be receiving education through other models (such as through a non-state school) or be disengaged from school. In the case of the latter, the lack of service delivery should raise concerns and indicate a need to review gaps or barriers—rather than removing the need for a review.

Recruitment and membership

To support continuity of CDRB operations, the QFCC recommends that a membership pool be established to help fill CDRB vacancies as they arise. Legislative amendments to the Act are not specifically required to enable this change, however, the QFCC welcomes the opportunity to work with the Department of Justice and Attorney-General to implement succession planning for the CDRB membership.

²⁰ The State of Queensland (Queensland Family and Child Commission) 2022, *Operational guidelines*, <https://www.qfcc.qld.gov.au/sites/default/files/2022-07/Operational%20guidelines%20for%20internal%20agency%20reviews.pdf>; *Child Protection Act 1999*, s245L

Comparison of QFCC and CDRB powers

Question 10 - Noting that the QFCC and the CDRB have separate and distinct functions – do you have any views on whether any amendments are required in relation to this?

Initiate and define system reviews or inquiries

The CDRB and the QFCC both play an important role in promoting the safety and wellbeing of Queensland's children and their families, but they differ in their primary functions. The CDRB typically initiates a review following the death of a child (or following matters of serious injury on exception and by request of the Minister), with the focus on identifying systemic improvements needed and opportunities to prevent avoidable deaths. Comparatively, the QFCC is better positioned to initiate and undertake proactive system reviews and provide advice or recommendations to prevent harm to children and promote their safety and wellbeing.

The QFCC recommends that functions, similar to that exercised by the CDRB under s29H of the Act, are made available to the QFCC to initiate and define system reviews which align with its purpose and objectives. In implementing these amendments, consideration should be given to supporting the proposed commission's role to initiate system reviews stemming from individual matters (see Question 2).

Compatibility with the *Human Rights Act 2019* (Qld)

Question 11 - Do you have any views whether the Act is compatible with the *Human Rights Act 2019* (Qld)?

Amendments to the Act could improve and increase the Queensland's ability to demonstrate compliance with the *Human Rights Act 2019* (Qld) by giving practical effect to the United Nations Convention on the Rights of the Child. As well as the human rights laid out in the *Human Rights Act 2019*, children and young people have rights that recognise they have special needs to help them survive and develop to their full potential. Children also have the right to special protection because of their vulnerability to exploitation and abuse.

Incorporating the rights of children and young people in the Act would legitimise the QFCC's engagement on a range of issues that impact Queensland children. An example of how the QFCC could give effect to children's rights is set out in section 5 of the South Australian *Children and Young People (Oversight and Advocacy Bodies) Act 2016*. It states that:

Each State authority must, in carrying out its functions or exercising its powers, protect, respect and seek to give effect to the rights set out from time to time in the United Nations Convention on the Rights of the Child, the United Nations Declaration on the Rights of Indigenous Peoples and any other relevant international human rights instruments affecting children and young people.²¹

The QFCC would welcome the introduction of similar provisions within our legislation.

²¹ Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA), s5

ESafety

Question 12 - Given the work already happening at a national and state level about online safety for children and families, the intention is to look at options to best give effect to this recommendation through existing functions. Do you have any views about this?

In their 2017 report, *Classification of child exploitation material for sentencing purposes*, the Queensland Sentencing Advisory Council (QSAC), recommended the establishment of a Queensland E-safety commissioner and that this be based within the QFCC. The QFCC acknowledges the importance of a local approach, consistent messaging about online safety and ensuring that current resources and information are available to Queensland children and parents. Following the 2015 Queensland Organised Crime Commission of Inquiry (the Byrne Report), the QFCC developed and released the *Out of the Dark* campaign—educating parents, children and young people about how to recognise, prevent and respond to online child sexual grooming. The QFCC has invested significant effort in informing and educating the community about online child sexual abuse including by:

- publishing links to preferred online safety service providers
- producing resources to provide tips and hints for adults to help children and young people to stay safe online
- hosting events with online safety experts and advocates
- promoting resources produced by other stakeholders, including the Queensland Police Service
- consulting with children and young people to develop campaign content.

Since this time, the work of the Commonwealth Office of the Children’s eSafety Commissioner has continued and developed. Queensland government agencies have continued to progress and promote the safety of children online, including through the Department of Education’s Respectful Relationship Education Program and the recently launched Respectful Relationship Hub—developed in response to recommendations made by the Women’s Safety and Justice Taskforce. The Queensland Police Service also has targeted and readily available resources and information to protect and promote online safety. The QFCC has recently conducted work with young people on safety, has continued its close relationship with the Daniel Morcombe Foundation, Bravehearts and other Queensland non-government organisations active in this area, and plays a key role in sharing safety messages through its media and communication channels.

With multiple activities and responsibilities for online safety at the State- and Commonwealth-level, it can be challenging to identify where gaps exist, or conflicting messaging is being promoted. Rather than producing additional resources and messaging around online safety, the QFCC considers that it is best positioned to support relevant agencies to coordinate activities and to provide advice about topics that are important to children and young people across Queensland and effective channels to communicate with them. We currently work closely with both the QFCC’s Youth Advisory Council and Youth Advocates, so that we are informed by their experiences and priorities and our messages are well targeted.

A new legal role and responsibility for e-safety would fit with the QFCC’s existing functions and work, however the design of the programs and services to be delivered under this new function would need to be carefully considered and costed.

Additional matters

Reportable Conduct and Child Safe Standards

The QFCC has advocated for the implementation of Child Safe Standards and a Reportable Conduct Scheme in Queensland to give effect to recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse.

There are strategic links between the child safe standards and reportable conduct scheme, and the QFCC's functions to oversight the system and promote and advocate for child safety.

Recommendations from previous QFCC reviews have resulted in improvements to systems designed to keep children safe—such as the blue card (working with children check) and the foster care system. The QFCC also hosts the CDRB, with strong legislative powers to review and make recommendations to improve the systems that impact on children and young people.

The introduction of these two schemes would complement the role and responsibilities of the QFCC, bringing further protection of the safety, wellbeing, rights and best interests of children and young people in Queensland.

We recommend amendments to the Act to assign responsibility of these schemes to the QFCC.

Section 40

As part of its annual report, the Commission is required to include information in relation to:

- (i) Queensland's performance in relation to achieving State and national goals relating to the child protection system;
 - Example for subparagraph (i)— The commission may report about progress in relation to the reforms recommended in the report titled 'Taking Responsibility: A Roadmap for Queensland Child Protection' made by the Queensland Child Protection Commission of Inquiry.
- (ii) Queensland's performance over time in comparison to other jurisdictions;
- (iii) Queensland's progress in reducing the number of, and improving the outcomes for, Aboriginal and Torres Strait Islander children and young people in the child protection system.

Consideration should be given to separating the QFCC's role in monitoring and reporting on system performance from the annual report. The annual report should focus on the QFCC's activities and achievements towards its objectives, distinct from reports about the performance of the broader system in Queensland. Equally the section 40 report should receive prominence as the important independent, accountability mechanism that is made publicly available.