

Telephone: 07 3900 6000
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The Hon Craig Crawford MP
Minister for Child Safety
Minister for Seniors and Disability Services
Department of Child Safety, Seniors and Disability Services
PO Box 15397
CITY EAST QLD 4002

Via email: non-familybasedcareandtertiarysupportmailbox@cyjma.qld.gov.au

Dear Minister Crawford

Thank you for providing the Queensland Family and Child Commission (QFCC) with the opportunity to make a submission to the Queensland Residential Care System Review (the Review). As Principal Commissioner Luke Twyford is undertaking formal oversight of the Review, I am taking this opportunity to incorporate the work and insights gathered by the QFCC in undertaking its systemic functions more broadly. The response is directed by the QFCC's commitment to Aboriginal and Torres Strait Islander children and their families, and to advancing children's rights.

I welcome the Review and see this as an opportunity to reimagine the system and authentically embed the principles of child rights, in particular the principles of best interests and participation, and the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP). The *Child Protection Act 1999* defines permanency as legal, relational and physical stability. It is created by ensuring a child enjoys a stable legal status, ongoing and trusting relationships with people (including extended family and community members) and stable living arrangements. Permanency planning must also be in accordance with the ATSICPP, to ensure that children remain connected to kin, country and culture. The QFCC acknowledges the Queensland Government's positive efforts in legislating all five elements of the ATSICPP. However, I remain concerned about implementation and the need for 'active efforts' at all significant decision points in a child's life.

Principle of best interests

A paramount principle of the *Child Protection Act 1999* is the best interests of a child, which means that all actions, decisions, and interventions regarding a child should prioritise their best interests, both in the present and for their future. The over-reliance on residential care placements in Queensland hinders the principle of best interests by failing to consider individual and holistic needs and has shown to lead to poorer outcomes and institutionalisation. This environment can perpetuate harm, rather than providing the nurturing and supportive environment that children and young people deserve.

Children and young people have previously shared their experiences with the QFCC about being in residential care. They shared their feelings of being stigmatised and labelled as 'misbehaved children' and how this created lasting impacts on the way they perceive themselves.¹ Children and young people

spoke about being criminalised because of police being called in response to actions that would not be treated as criminal in a family home. The reality for many of these children is that they are dealing with the impacts of trauma from previous experiences of abuse and neglect. Children living in residential care have a right to be cared for in a way that recognises the impacts of their trauma and responds in a way that helps them recover to live their fullest lives. This work was undertaken in 2017 and led to a *Joint agency protocol to reduce preventable police call-outs to residential care services*,ⁱⁱ however we know that the findings and need for a better response are still true today.

The *Young people's perspectives on residential care, including police call-outs* paperⁱⁱⁱ summarises the views of young people with experience in residential care services. Young people spoke about the impact regular placement movements had on their sense of belonging and connection with others and the anxiety created during placement changes. Young people spoke of the impacts that placement decisions and the location of residential care placements had on their education, including missing school and not getting enough support to attend school. The limited residential care placements also mean that children and young people are moved away from their families and communities.

Whenever possible, the best interests principle emphasises the importance of maintaining family connection and keeping children and young people within their families or kinship networks. This is because evidence has consistently shown that children tend to have better outcomes when they can stay connected with their families. Every child is unique, and their needs and circumstances should be individually assessed and addressed. Residential care often involves a one-size-fits-all approach, which may not be suitable for all children and young people. To truly uphold the best interests of children, it is essential to promote a diverse range of care options and prioritise family preservation and community-based solutions whenever possible.

Participation of children and young people

The *Queensland Child Rights Report 2023*^{iv} launched in August, acknowledges the recent amendments to the *Child Protection Act 1999* to reinforce children's rights and strengthen the voices of children and young people in the child protection system. The amendments establish the right of children and young people to be consulted on, and take part in, decisions that affect their lives, including about their health, education, living arrangements and contact with family.

We welcome these amendments and the significant opportunity they enable to improve outcomes for children, young people and their families. In practice, a balance must be struck between the safety of a child and their right to meaningful participation. This critical challenge for the child protection system can be met by adopting a child rights approach, which would require processes and models to be centred around the needs of children and young people, rather than the system.

Through the *Rights, Voices, Stories*^v project the QFCC heard that what matters most to children and young people with experience in the child protection system is identity, stability, health and wellbeing, feeling safe and loved, and being treated with equity and fairness. Being able to participate in decision-making allows children and young people to have agency in their lives and exercise their rights. To ensure meaningful participation, children and young people must feel safe to express themselves freely.

"In 20 case plans I was only ever present for one. The only reason was because I broke the door down to get in."ⁱⁱⁱ



Children and young people involved in the child protection system currently have minimal say in where they live. There is an opportunity to embed into practice the child and youth participation principles enshrined in the *Child Protection Reform and Other Legislation Amendment Act 2022*. The QFCC urges adherence to the safeguards outlined in the *Child Protection Act 1999*, particularly with regards to where they live and the reviews of placements.

First Nations children and young people

The QFCC has a commitment to promoting and safeguarding the rights of all children and young people, with a particular focus on the way in which Aboriginal and Torres Strait Islander children's rights are upheld and safeguarded. The trends in Queensland show that Aboriginal and Torres Strait Islander children and young people are being placed in residential care at an increasing rate and at a younger age than non-Indigenous children and young people. The QFCC is concerned that children and young people are being placed in residential care because of the ongoing systemic pressures and lack of available family-based care placement options rather than to meet the ongoing needs and rights of individual Aboriginal and Torres Strait Islander children.

This is occurring at a time in Queensland when the statutory child protection system is undertaking a generational reform and the focus has been on addressing the disproportionate levels of representation and adverse outcomes experienced by Aboriginal and Torres Strait Islander children, young people and families as a result of statutory intervention.

The ATSI CPP is a key legislative framework intended to safeguard the rights of Aboriginal and Torres Strait Islander children and young people involved in or at risk of entering the child protection system, including distinct cultural rights. Placement of an Aboriginal and Torres Strait Islander child or young person in residential care conflicts with the Aboriginal and Torres Strait Islander child placement hierarchy in the *Child Protection Act 1999*, and with a holistic understanding of the interrelated child placement principle more broadly.

"It was too "white" for me...I felt like I had to be someone else to fit in".^{iv}

The QFCC's 2021 *Principle Focus: A child-rights approach to systemic accountability for the safety and wellbeing of Queensland's First Nations children*^{vi} paper presented data and evidence about the experience of children and young people in out-of-home care. It found that despite the ATSI CPP being enshrined in the *Child Protection Act 1999*, there is limited evidence of consistent implementation to a standard of active efforts at significant decision points for Aboriginal and Torres Strait Islander children or young people.

This prompted further review to analyse *The decision to place an Aboriginal and Torres Strait Islander child or young person in residential care*,^{vii} examining the implementation of the ATSI CPP to a standard of active efforts at the point of deciding to place an Aboriginal and Torres Strait Islander child or young person in residential care. The QFCC review found that while there is sound reflection of the intent of the ATSI CPP in legislation and policy the evidence of implementation of the ATSI CPP, when making a practice decision to place an Aboriginal and Torres Strait Islander child or young person in residential care, is minimal at best across the Queensland child protection system.

Placing children and young people in residential care is often opposed to a deliberate decision based on the best interests of the child and the most suitable option at a point in time. More often, residential care is perceived as the only option (and sometimes first option) in an over extended system to place



children somewhere. These perspectives place the problem as an external system factor (i.e., a placement supply issue) and do not recognise the responsibility of the child protection system to actively implement the ATSCPP. That is, engaging with Aboriginal and Torres Strait Islander families early and at every significant decision point to identify and adequately support family-based care options (including, family preservation, family mapping or finding and reunification).

The QFCC is encouraged by Child Safety's commitment to reduce the number of Aboriginal and Torres Strait Islander children in residential care, including the current review of the system. To achieve this, active efforts is required to be put into maintaining the focus on family restoration and reunification through the identification of kinship; approaches that enable the provision of requisite supports to kin; and addressing the existing disincentives and barriers for family to engage as kinship carers. Active efforts are iterative and must be assessed, reassessed, and readdressed consistently through the practice of making significant decisions that impact Aboriginal and Torres Strait Islander children and young people.

I am committed to supporting and actively engaging in a transformational reform agenda to achieve the best possible outcomes for children and young people. While I look forward to seeing the final report, I am encouraged by your willingness to consider and act on opportunities to improve as they arise. I was particularly encouraged by the agreement to urgently progress a review of placement decisions for all Aboriginal and Torres Strait Islander children and young people in residential care. The outcomes of such a process will provide valuable insights for ongoing systems improvement, but more importantly, real and meaningful outcomes for Aboriginal and Torres Strait Islander children, young people and their families. In the context of the QFCC's oversight functions, particularly in my role leading the Commissions work on overrepresentation of First Nations children in out of home care, I would welcome the opportunity to engage proactively with this work.

Finally, in the coming week, I will be releasing a report, with recommendations for Governments consideration, to address the issue of the Blue Card as a barrier to increased use of cultural kinship care for Aboriginal and Torres Strait Islander children.

If you or your officers have any queries in relation to this matter, they may contact me via email at

[REDACTED]

Yours sincerely

[REDACTED]

Natalie Lewis
Commissioner
Queensland Family and Child Commission
5 October 2023



Queensland Family and Child Commission Resources

- [i Criminalisation of children living in out-of-home care in Queensland](#)
- [ii Joint agency protocol to reduce preventable police call-outs to residential care services](#)
- [iii Young people's perspectives on residential care, including police call-outs](#)
- [iv Queensland Child Rights Report 2023](#)
- [v Rights, Voices, Stories](#)
- [vi Principle Focus: A child-rights approach to systemic accountability for the safety and wellbeing of Queensland's First Nations children](#)
- [vii The decision to place an Aboriginal and Torres Strait Islander child or young person in residential care](#)

