Commissioner Natalie Lewis

Office of the Aboriginal and Torres Strait Islander Children's Commissioner

Submission to the Child Safety Commission of Inquiry

Systemic abuse and neglect

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QUEENSLAND Family & Child Commission

OFFICE OF THE ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN'S COMMISSIONER

Queensland Government

ACKNOWLEDGEMENT OF COUNTRY

The Office of the Aboriginal and Torres Strait Islander Children's Commissioner acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Custodians across the lands, seas and skies where we walk, live and work.

We recognise Aboriginal and Torres Strait Islander people as two unique peoples, with their own rich and distinct cultures, strengths and knowledge. We celebrate the diversity of Aboriginal and Torres Strait Islander cultures across Queensland and pay our respects to Elders past, present and emerging. We acknowledge the important role played by Aboriginal and Torres Strait Islander communities and recognise their right to self-determination, and the need for community-led approaches to support healing and strengthen resilience.

Office of the Aboriginal and Torres Strait Islander Children's Commissioner
Queensland Family and Child Commission
PO Box 15217
Brisbane City East QLD 4002
qfcc.qld.gov.au

For more information about this submission please contact:
Email: **enquiries@qfcc.qld.gov.au**
Phone: 07 3900 6000

Background

I have said much already on the issue of the State as corporate parent in our previous submission where I analysed systemic harm through the case studies of Jimmy Mansfield (pseudonym)[i] and JG (anonymised),[ii] which demonstrate the systemic harm that can arise when the State assumes parental responsibility.

The State, as corporate parent, is not merely a service provider. It is the primary duty bearer under the UN Convention on the Rights of the Child (the Convention). This includes a positive obligation to anticipate risk, mobilise supports and prevent harm, not simply respond after harm escalation. When the State assumes guardianship, it becomes the parent of last resort. This role carries a heightened duty to protect, nurture and advocate for the child. The State must meet, and exceed, the standards it expects of families.

This submission builds on previous evidence provided to the Inquiry and highlights the need for formal recognition of systemic abuse and neglect as a distinct type of harm. Statutory child protection systems across the country are predicated on a false assumption, that removal equals safety. Experience in Out-Of-Home Care does not provide children with an advantage in life. There is a growing body of evidence that shows the damaging and lifelong consequences for many children in state care[iiiiv], including compromised health and mental health outcomes[v], disrupted educational and developmental trajectories, a higher likelihood of experiencing homelessness[vi] and persistent disadvantage into adulthood and disconnection from family, community and culture. A substantial body of research shows that systemic harm is not incidental.[vii] [viii] It is a serious and ongoing form of harm created by the design and operation of child protection systems and a lack willingness to acknowledge collective responsibility and accountability across Ministerial portfolios and Government Departments for the safety and wellbeing of children in the States care.[ix] This includes entrenched, siloed governance arrangements, policies, and practices that consistently and cumulatively harm children and families in foreseeable and preventable ways.

There are currently no legislative, policy, or practice mechanisms that work effectively to identify, assess, or respond to systemically induced harm. This submission calls for meaningful action in response to evidence of the real and lasting impacts of systemic harm on children and families.

Violence

Definition

The United Nations defines violence as the umbrella term for understanding abuse and neglect in the context of the Convention:

The Convention defines violence broadly to include physical and psychological harm, neglect, maltreatment, and exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child." [x]

This definition makes clear that harm does not need to be intentional or physical to be serious. Importantly, this obligation applies not only to individual behaviour but also to institutional practices. Where government systems foreseeably expose children to harm, this engages State responsibility under the Convention.

Systemic abuse and neglect

Across the United Nations human rights system, the following concepts describe harm generated by institutions and public systems.

Structural violence: describes harm that is indirect, embedded, and normalised within social, political, and economic systems.[xi] It occurs where institutional arrangements systematically disadvantage certain groups and produce predictable inequality and suffering.

In child welfare systems, structural violence results in poorer outcomes across health, education, justice, and economic participation.[xii] Harm overlooked by the system becomes accepted as normal because of its institutionalised nature, despite its profound impacts on families affected by poverty, racism, and institutional legacy ways of working.

Structural discrimination: refers to inequity that is widespread and embedded in laws, policies, and practices, rather than arising from isolated acts or individual misconduct.

International human rights law recognises that discrimination may be direct or indirect.[xiii] Indirect discrimination occurs where systems produce disproportionate and harmful effects on particular groups. Crucially, systemic discrimination is visible to the system through the cumulative and foreseeable impacts of institutional arrangements over time.[xiv]

Epistemic violence: describes institutional systems undervalue or overrides community knowledge and lived experience in ways that delegitimises their ways of knowing, being, and valuing the world.[xv]

Systemic abuse and neglect of children and families can result from poor individual decisions or policy failures. It can also come from deeper institutional beliefs that influence what knowledge is trusted, how families are understood, and how children's lives are judged within child protection systems. These embedded rituals within institutions continue to drive the disproportionate removal of First Nations children.[xvi]

When systemic harm creates ongoing disadvantage for particular groups, governments must take targeted action to address that shared and structural harm.[xvii]

State as corporate parent

As corporate parent, the State must meet, and exceed, the standards it expects of families. However, there is currently no enforceable mechanism requiring the State to demonstrate that it is actually capable of meeting a child's identified needs before seeking guardianship. This accountability gap allows the State to assume parental responsibility without proving it can provide safe, stable, and developmentally appropriate care. This accountability gap has tangible consequences for children, as illustrated in the following case study.

Case study: Mia Buckley (pseudonym)[xviii]

This matter concerned an application by the Department of Child Safety, Seniors, and Disability Services for a Temporary Custody Order in respect of a newborn baby. The mother is Mia Buckley, a 14-year-old Aboriginal girl with an intellectual disability who was herself in the care of the Department. In October 2023, the Department's initial application for a Temporary Custody Order (TCO) was dismissed by the Court on the basis that the baby was not at an unacceptable risk of harm given the extensive support arrangements proposed for Mia and the baby within a residential care setting. In the Magistrates words:

"I found that I could not have made an order against a mother with the same degree of disability in circumstances where that mother had a supportive family. In my view, the support for Mia foreshadowed by the Department meant that the baby was not at any material risk of harm."

A second application brought by the Department just days later advised that the residential care provider refused care for the baby unless the Court made a custody order. As a result, Mia was discharged from hospital and denied access to the planned placement with her baby, leaving her effectively without support and needing to take shelter in a previous care placement. The Court found that this change in circumstances arose from the Department's failure to plan appropriately despite having months of notice of the pregnancy, and from service arrangements that were contingent on the Department securing legal custody of the baby.

The Magistrate described these circumstances as 'deeply troubling' and observed that, but for the Department's conduct and the refusal of services in the absence of an order, the statutory threshold for removal would not have been met. Nonetheless, the Court made the Temporary Custody Order on the basis that the baby would be at unacceptable risk due to the withdrawal of support and the lack of a reliable alternative care arrangement. The judgment therefore records a situation in which judicial intervention was driven by system-created risk, rather than by parental incapacity or unwillingness to care for a child at risk of immediate harm.

Assessing systemic abuse and neglect through enduring best interests

This decision demonstrates how systemic abuse and neglect can arise not from overt mistreatment, but from system design failures, governance arrangements, responsibility shifting and risk-averse practices within the child protection system. The Court found that the baby's unacceptable risk of harm was not inherent to the mother's capacity, nor due to a lack of family support. Rather, the risk was created by the Department's failure to plan appropriately and its reliance on coercive legal intervention to compensate for that failure.

This is a clear example of structural neglect, where the system creates the very conditions that justify intrusive intervention. Such an outcome is inconsistent with Article 3 of the Convention, which requires the child's best interests to be a primary consideration in all actions concerning children, now and for the rest of the child's life.

The judgment confirms the Department knew about the pregnancy for months but relied solely on obtaining a protection order instead of exploring lawful, non-coercive care options. When the Court initially refused the order on the basis that no unacceptable risk existed, the Department's funded care provider withdrew service arrangements, leaving the child exposed to risk solely because care became contingent on court-sanctioned custody. This constitutes institutional neglect, where essential supports are withheld under the coercion of parental rights being surrendered, contrary to the preventive and family-support principles embedded in child protection law and international human rights standards.

As a First Nations child, Mia's case also exposes the absence of culturally grounded care planning, including meaningful connection to family, community, and Country, and a failure to engage with the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP). Applications before the Court should be supported by evidence addressing all five elements of the ATSICPP. The Magistrate's findings regarding the lack of consideration of alternative care arrangements are consistent with a failure by the Department to meet its legislative obligations under this principle.

The Court further identifies a structural power imbalance between the Department and service providers, noting that residential care services operate as "rule takers rather than rule setters" due to their financial dependence on the Department. This locates responsibility at the level of funding, contracting, and governance systems, rather than individual workers, and reveals how institutional risk management is prioritised over child and family wellbeing.

"The circumstances of this Application are deeply troubling because if Mia is given the care the Department should be giving her, the baby's circumstances do not meet the criteria for the making of the

order sought. The only circumstances justifying the order have come about through the Department's conduct." [18]

This is a significant judicial acknowledgment that State action directly produced the risk relied upon by the Court.

The fact that Mia's newborn was subject to a protection order solely because Mia herself was in the Department's care highlights the discriminatory operation of the system, particularly for young mothers with care experiences. This undermines procedural fairness, evidentiary integrity, trust in decision-making, and the legitimacy of court outcomes.

The judgment implicitly recognises epistemic and procedural harm arising from the Department's reliance on internal assessments unsupported by evidence, which the Court rejected as unreliable. This reflects a broader systemic risk that occurs when institutional opinion is substituted for evidence, particularly in cases involving Indigenous children, children with disability, and young mothers in care. Decision-making reproduces structural bias under the guise of professional judgment. In this case, the Court was compelled to make an order it regarded as sub-optimal because the system had foreclosed all non-coercive alternatives, demonstrating how systemic neglect can drive judicial outcomes that perpetuate, rather than prevent, harm. This also exposes serious procedural shortcomings in how Mia participated in decisions that profoundly affected her.

There is no evidence that Mia was supported to express her views or that her perspectives were meaningfully considered in decision-making. Article 12 of the Convention requires that children capable of forming views are given the right to express them freely in all matters affecting them, and that those views are given due weight. The absence of any documented participation process represents a further procedural failure and undermines the legitimacy of the decision-making process.

Recommendations

This submission suggests that systemic abuse and neglect arising from the actions or inaction government systems should be formally recognised as a distinct category of harm within Queensland's child protection framework. This requires moving beyond the comfortable complacency of the annual Qld Child Protection Week slogan '*Protecting children is everybody's business*'. It requires recognition of obligations of duty bearers and acceptance of accountability, across all Government Departments that create policy, provide services or fund services necessary for the safety and wellbeing of children.

This is not about individual worker conduct. It is about how system design, funding models, policies, and risk settings can unintentionally create and compound harm for children and families.

Under the Convention, the State has a clear obligation to prevent harm, including risk of harm that is foreseeable and produced by its own systems**.** Australia has committed to these standards and therefore states and territories are accountable for their implementation.

Current frameworks focus exclusively on parental risk. There is no equivalent mechanism to identify, assess or remediate harm caused by the system itself**.** This creates a significant governance gap.

The consequence is that:

- risks are repeatedly documented but not corrected
- courts are placed in untenable positions
- children experience preventable harm
- government remains exposed to legal, reputational, and fiscal risk.

Recognising systemic harm is a practical reform. It would:

- improve decision-making
- strengthen oversight
- support frontline staff
- reduce repeat litigation
- restore public confidence.

This is about building a safer system for children, not attributing blame. Both individual actions, and by how the child protection system is designed, funded, and governed are causes of harm to children. This harm is predictable, preventable, and recurring. This submission calls for that harm to be formally recognised, measured, reported and corrected.

If systemic harm is foreseeable and preventable, the State has a legal duty to act. The following reforms translate international child rights obligations into practical system safeguards.

1. Recognise systemic neglect and abuse as a distinct harm type.

That the Queensland Government, within 12 months, amend the *Child Protection Act 1999* and associated policy frameworks to formally recognise systemic abuse and neglect by State systems as a distinct category of harm.

The amendments must:

- define systemic harm, including failures in planning, coordination, decision-making, and service delivery
- require mandatory identification and documentation of system-created risk in case planning and court applications
- mandate internal review and independent oversight where systemic harm is identified
- require regular public reporting on patterns of system-generated harm and the corrective actions taken.

2. Require a comparative harm assessment prior to removal.

That the Queensland Government mandate a comparative harm assessment for all removal decisions, effective within six months.

Decision-makers must be required to:

- explicitly compare:
    - risk in the family environment
    - foreseeable harm associated with out-of-home care
- document this assessment in all court material
- demonstrate that the removal is more protective than remaining at home.

This assessment must include consideration of:

- placement stability
- cultural continuity
- disability and mental health support capacity

- education continuity
- risk of criminalisation.

Removal should occur only where the State can demonstrate that intervention will be more protective than a child remaining at home.

3. Establish an enforceable corporate parenting standard.

That the Queensland Government, within 18 months, develop and legislate a *Corporate Parenting Standard* that sets minimum enforceable obligations when the State assumes guardianship of a child.

The standard must require the State to demonstrate, before guardianship is assumed, that it has the capacity to meet the child's identified needs across:

- safety
- disability
- health and development
- therapeutic and mental health support.
- placement stability
- relational continuity
- cultural continuity.

This should include:

- independent verification of care capacity prior to court orders being sought.
- a mandatory individualised care plan for every child, which clearly outlines capacity to provide access to requisite supports and services
- clear minimum service standards
- time-bound reviews of unmet needs.

The framework must be:

- legally enforceable
- subject to judicial scrutiny
- reviewable by independent oversight bodies.

It must enable courts and oversight bodies to:

- examine the State's exercise of parental responsibility
- intervene where failures to act on known needs contribute to:
    - placement breakdown
    - school disengagement
    - youth justice involvement
    - deteriorating wellbeing.

Conclusion

This submission seeks to demonstrate that systemic abuse and neglect are not rare mistakes – they are predictable outcomes of how the system currently operates. Known limitations, frailties and features of the system that reliably result in adverse impacts for children such as placement instability or unavailability of a placement that is safe, lack of continuity of significant relationships, delays in accessing necessary services and supports, exposure to unsafe environments, sporadic and often unreasonably limited contact with their families, slow response times and limited opportunities to have a say in the decisions that most profoundly affect them. The evidence shows that harm created by the system itself through poor planning, coordination, service delivery, and lack of accountability and not just when individuals act unlawfully and with ill intent. Clearly, budget constraints, service demand and workforce issues impact upon a systems capacity, but when those factors adversely impact the States ability to perform its statutory functions to the extent where the safety, wellbeing and best interests of a child in its care is compromised, then it is surely not unreasonable to require assessment, review and corrective action.

Evidence presented here illustrates how risks generated by the system justify intrusive interventions, turning institutional neglect into grounds for removal. This is not an isolated or accidental problem but reflects the foreseeable and preventable harm caused by systems that disproportionately affect already marginalised children in State care.

When the State produces harm while exercising its protective functions, it breaches children's rights contained in both legislation and the Convention and related international standards. International human rights law requires that children have access to effective remedies for rights breaches. Currently, there are limited mechanisms for children and families to seek redress for harm caused by State systems.

Recognising systemic abuse and neglect as a distinct harm is not merely theoretical. It is essential to ensure accountability, prevention, and redress. It is essential to meeting the enduring obligation conferred under the paramount principle of the Child Protection Act. Without clear mechanisms to identify and respond to system induced harm, children will continue to suffer from institutional failure, and courts will not have the necessary safeguards to keep from authorising sub-optimal outcomes driven by systemic risk rather than real child safety needs. Formal recognition of systemic abuse and neglect is therefore necessary to enable accountability and corrective action.

This Inquiry has a vital opportunity to drive meaningful reform, requiring the State to meet the same standards it expects of families. Systems must anticipate harm, provide support before crisis, and ensure its actions do not become a source of violence against the children it is legally and morally bound to protect.

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[xviii] Department of Child Safety, Seniors and Disability Services v Mia Buckley (a pseudonym) [2023] QChCM 8