

Queensland Family and Child Commission

Submission

To: Department of Communities, Child Safety and Disability Services

Date: 29 February 2016

Topic: Supporting families and protecting children in Queensland: a new legislative framework – Public Consultation for the review of the *Child Protection Act 1999*

The Queensland Family and Child Commission (QFCC) was established on 1 July 2014 to ensure all Queensland children and young people are cared for, protected, safe and able to reach their full potential. The QFCC is pleased to provide a submission to the Department of Communities, Child Safety and Disability Services (the DCCSDS) outlining our research, feedback and recommendations relating to the, 'Supporting families and protecting children in Queensland: a new legislative Framework – Public Consultation for the review of the *Child Protection Act 1999*'.

The QFCC supports a contemporary legislative framework for Queensland's child and family support system. The QFCC acknowledges the significant undertaking of the DCCSDS in developing this framework. The complexities of protecting children and supporting vulnerable families is a difficult area to legislate. It is important to get the balance right of supporting children and families early before statutory intervention is needed and government intervening in the private lives of families for the protection of children. This reform will shape the future directions of Queensland's child and family support system for children and families.

The QFCC would appreciate being consulted by the DCCSDS during the development of the policy and legislative proposals in relation to this review.

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Q.1 Do you have any feedback on the implementation of changes made to the *Child Protection Act 1999* introduced in the first stage of the child and family legislative reforms?

Recommendation

The QFCC recommends:

- ‘inserting an explanatory provision such as section 13C “Considerations when forming reasonable suspicion about harm to a child” to assist professionals in determining whether “there may not be a parent able and willing”’
- strengthening consultative processes and minimising operational impacts on agencies when implementing future legislative change, and
- identifying learnings to assist agencies with consistent messaging in policies and procedures when implementing future legislative change.

QFCC’s position

In light of the issues identified in the QFCC’s *Healthcheck Report – Review of Professional Reporting Behaviours* (the Healthcheck report), the QFCC recommends consideration be given to:

- ‘inserting an explanatory provision such as section 13C “Considerations when forming reasonable suspicion about harm to a child” to assist professionals in determining whether “there may not be a parent able and willing”’¹
- strengthening consultative processes and minimising operational impacts on agencies when implementing future legislative change, and
- identifying learnings to assist agencies with consistent messaging in policies and procedures when implementing future legislative change.

Supporting QFCC’s position

In December 2015, the QFCC finalised the Healthcheck report, which considered the first six months of the change management process and impact of the legislative amendments to child protection reporting requirements by professionals under the *Child Protection Reform Amendment Act 2014*.²

Positively, the Healthcheck report identified the implementation of the changes was progressing towards achieving the intent.³

Key learnings identified in the Healthcheck report were informed by quantitative data and interviews with implementing agencies including the Queensland Police Service, Queensland Health, the Department of Education and Training, Independent Schools Queensland and Catholic Education and Family and Child Connect (FaCC) and Intensive Family Support (IFS) services.⁴ Learnings in relation to the legislative consultation and improvement process included:

¹ Queensland Family and Child Commission (December 2015), *Healthcheck Report – Review of Professional Reporting Behaviours*, p4

² Queensland Family and Child Commission (December 2015), *Healthcheck Report – Review of Professional Reporting Behaviours*, p2

³ Queensland Family and Child Commission (December 2015), *Healthcheck Report – Review of Professional Reporting Behaviours*, p12

⁴ Queensland Family and Child Commission (December 2015), *Healthcheck Report – Review of Professional Reporting Behaviours*, p7

- the consistency of messaging in relation to the legislative changes was impacted by individual agencies customising training materials which were not quality assured, and
- agencies less centrally driven had experienced greater complexities with change management processes.⁵

Specifically, key issues identified in the Healthcheck report included:

- there was some confusion the legislative changes amended the threshold for statutory intervention
- families are only referred based on consent as directed by some agencies in policies and procedures, despite section 159M under the *Child Protection Act 1999* (the CPA) which enables particular prescribed entities to refer a family without consent. This may impact on families being able to get the right support at the right time and does not align with the long-term intent of the legislative changes
- consultation on the legislative changes and change management approach were impacted by the tight timeframes, including the ability for agencies to consider on the ground impacts in consultation on legislative change
- it was disputed the legislative changes simplified child protection reporting arrangements for the education sector because of the additional legislative reporting requirements for that sector
- in relation to reporting concerns to Child Safety, concerns were expressed by educational professionals they did not have the expertise to determine whether 'there may not be a parent able and willing' as required under sections 13A and 13E of the CPA, and
- it was reported the staged roll-out of the FaCC and IFS impeded the intended improvements to reporting and referral practices and impacted on the confidence of professionals in referring to the secondary system.⁶

⁵ Queensland Family and Child Commission (December 2015), *Healthcheck Report – Review of Professional Reporting Behaviours*, p3

⁶ Queensland Family and Child Commission, (December 2015), *Healthcheck Report – Review of Professional Reporting Behaviours*, pp3, 12,15,16 and 25

Q.2 What should be the purpose of Queensland's child and family legislation?

Recommendation

The QFCC recommends at a minimum, the purpose of Queensland's family and child legislation should recognise:

- providing for the protection and care of children necessary for their safety and wellbeing, and
- providing support and assistance to parents and families in protecting and safeguarding and promoting the safety and wellbeing of their children.

QFCC's position

The QFCC supports a broader purpose for Queensland's child and family legislation than that currently provided for in the CPA. In doing so, the QFCC is mindful of comments made by the Senate Community Affairs References Committee in its inquiry on out-of-home care that the 'safety and wellbeing of children must be the primary consideration for child protection authorities, and any support for families must not come at the expense of children's safety.'⁷

At a minimum, the purpose of Queensland's family and child legislation should recognise:

- providing for the protection and care of children necessary for their safety and wellbeing, and
- providing support and assistance to parents and families in protecting and safeguarding and promoting the safety and wellbeing of their children.

Supporting QFCC's position

The current purpose of the CPA is to 'provide for the protection of children.'⁸ The objective of the CPA aimed to respond to community expectations at the time that:

- 'children be protected from abuse and neglect
- children who are removed from home receive safe alternative care, and
- children who suffer abuse and neglect receive quality services which promote their emotional, physical, social and educational development.'⁹

Children being protected and receiving safe care and quality services are still valid aims to aspire to. Children still need to be protected, receive safe care and receive quality services. Article 19 of the United Nations *Convention on the Rights of the Child* (the UNCRC) requires governments to protect children from all forms of abuse and neglect from their carers and provide necessary support for children.¹⁰ Accordingly, government still has a role in achieving the original intended objective of the CPA.

⁷ Commonwealth of Australia (Senate Community Affairs Committee Secretariat) (2015), *Out of home care*, p135

⁸ *Child Protection Act 1999* (Qld), s4

⁹ Explanatory Notes, Child Protection Bill 1998 (Qld), p1

¹⁰ United Nations, *Convention on the Rights of the Child*, Availability: <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

Society has changed considerably, including in particular how families and communities have changed.¹¹ There is a need for a new purpose in line with a contemporary legislative framework to support Queensland's child and family support system. The current purpose of the CPA restricts the focus of the statutory child protection system to the safety of children in Queensland.¹² This should always be a key focus of child protection legislation and is an important responsibility of government. However, government has a broader role to play when they intervene in the lives of children who may be harmed or at risk of abuse, as well as supporting families before they reach the point of needing child protection intervention.

The purpose or objectives of child protection legislation in other jurisdictions is broader than the protection of children. While the protection of children is important, other jurisdictions recognise children's wellbeing and the need to support and assist parents, families and communities as other important purposes or objectives within their legislation. Appendix A highlights the purposes or objectives of interstate legislation.

¹¹ Parton, N (October 2009), 'How Child Centred are Our Child Protection Systems and How Child Centred Do We Want Our Child Protection Regulatory Principles To Be?', *Communities, Children and Families Australia*, Vol. 4, No. 1, pp59-64

¹² State of Queensland (Department of Communities, Child Safety and Disability Services) (2015), *Supporting Families and protecting children in Queensland: a new legislative framework*, p16

Q.3 To what extent, if at all, should Queensland’s child and family legislation set out the role of government in supporting families to care for their children? AND

Q.14 Should Queensland’s child and family legislation outline the roles and responsibilities of relevant government and non-government agencies for children’s safety and wellbeing? Why or why not?

Recommendation

The QFCC recommends the inclusion of principles in the child and family support legislation to guide the development and delivery of services to children and families by government and non-government agencies, with a particular focus on safeguarding the safety and wellbeing of children and shared responsibility of supporting families.

QFCC’s position

The complexities of defining roles in the lives of families are highlighted below in this submission. The QFCC’s preferred approach is to legislate a set of principles to guide the development and delivery of services by government and non-government agencies to children and their families. The principles should have a particular focus on supporting families, safeguarding the safety and wellbeing of children and promoting the notion of shared responsibility. See for example, section 5 of the *Child Wellbeing and Safety Act 2005* (the CSWA) in Victoria. Appendix B highlights comparisons of jurisdictions in relation to the roles of government and non-government agencies.

Supporting QFCC’s position

The QFCC supports the shared responsibility approach for supporting vulnerable families earlier. The *National Framework for Protecting Australia’s Children 2009–2020* (the National Framework) promotes the notion of a shared responsibility to protecting children and articulates the roles of key groups in relation to the National Framework.¹³

A system which seeks to place families at the forefront of being responsible for their children with support from government needs an appropriate authorising legislative framework in place. The approach adopted in recent times has been to move from a focus on protecting children to providing a holistic approach to children’s wellbeing and development.¹⁴ This shift supports the move from a child protection system to a child and family support system. Such a shift warrants a change in the legislative framework to authorise the role of government in supporting families to care for their children.

However, an appropriate and improved legislative framework should only be one element of a suite of effective tools to implement government policy to support families to care for their children and improve outcomes for children.¹⁵ While there needs to be a sound legal basis for government intervention in the private lives of families, the accessibility of support services and having the right types of supports at the right time for families is a critical element too. The child and family support

¹³ Commonwealth of Australia (2009), *National Framework for Protecting Australia’s Children 2009–2020*, p12

¹⁴ Parton, N (October 2009), ‘How Child Centred are Our Child Protection Systems and How Child Centred Do We Want Our Child Protection Regulatory Principles To Be?’, *Communities, Children and Families Australia*, Vol. 4, No. 1, pp59-64

¹⁵ Tilbury, C (February 2007), ‘The Regulation of Out-of-Home care’, *The British Journal of Social Work*, Vol. 37, No.2, pp 209-224

system needs to be flexible enough to enable this to occur and to respond to families' changing circumstances and supports needed. The supporting legislative framework should not be an obstacle to this.

Government policies do not always need to be implemented in legislation and the complexities of protecting children and supporting vulnerable families do not always lend themselves to being easily clarified in legislation. Professor Karen Healy cautions of the danger in seeking to clarify the role of the state in the lives of vulnerable children and their families, particularly by limiting the role of the state to assisting vulnerable families and resolving their issues.¹⁶

In developing an appropriate legislative framework it is important to consider how such a framework can be designed to support government intervention to protect children without weakening parental responsibility and the family unit.¹⁷ Key issues facing the design of all systems include the role of parents in the system and the scope and nature of government intervention. The legislative framework should be a mechanism to enable families to care their children, rather than disable families.¹⁸

While all interstate jurisdictions legislate in some way in relation to supporting and/or strengthening the ability of families to care for their children, the roles and responsibilities of relevant government and non-government agencies for children's safety and wellbeing broadly do not appear to be clearly defined.

The CPA prescribes principles for coordinating service delivery and the exchange of information. This provision includes the responsibilities of the State in relation to protection and care services and children and families receiving family support services and principles in relation to service providers.¹⁹ The CPA also prescribes a principle of 'the preferred way of ensuring a child's safety and wellbeing'.²⁰ In addition, one of the Chief Executive's functions relates to the provision of services for strengthening and supporting families and reducing harm to children.²¹

¹⁶ Healy, K (October 2009), 'Critical Questions about the Quest for Clarity in Child Protection Regimes', *Communities, Children and Families Australia*, Vol. 4, No.1, pp52-58

¹⁷ Parton, N (October 2009), 'How Child Centred are Our Child Protection Systems and How Child Centred Do We Want Our Child Protection Regulatory Principles To Be?', *Communities, Children and Families Australia*, Vol. 4, No. 1, pp59-64

¹⁸ Cocks, K (19 November 2012), *Human Rights of Parents with Intellectual Disability*, Speech to The Bold Network and QUT Symposium Realising the Dreams and Hopes of Parents with Intellectual Disability, p.5

¹⁹ *Child Protection Act 1999* (Qld), s159B

²⁰ *Child Protection Act 1999* (Qld), s5B(c)

²¹ *Child Protection Act 1999* (Qld), s7(1)(b)

Q.4 If the legislation sets out the role of government in supporting families, should specific provisions be included to address the unique needs of Aboriginal and Torres Strait Islander families and children?

Recommendation

The QFCC recommends including specific provisions to address the unique needs of Aboriginal Torres Strait Islander families and children which should include:

- a section to make it clear how the legislation applies to Aboriginal and Torres Strait Islander children and families
- a requirement that services and support be provided to Aboriginal and Torres Strait Islander children and families in a culturally appropriate way and language specific resources be provided where appropriate, and
- retaining section 5C of the CPA with amendment to replace the word ‘allowed’ in section 5C(a) with ‘supported’.

QFCC’s position

The QFCC supports specific provisions being included to address the unique needs of Aboriginal and Torres Strait Islander families and children. The legislation should include:

- a section to make it clear how the legislation applies to Aboriginal and Torres Strait Islander children and families
- a section requiring that services and support be provided to Aboriginal and Torres Strait Islander children and families in a culturally appropriate way and language specific resources be provided where appropriate, and
- the continuation of section 5C of the CPA with amendment to replace the word ‘allowed’ in section 5C(a) with ‘supported’. This changes the obligation of government from one of simply authorising to that of providing care and assistance to a child to enable them to develop and maintain a connection with their family, culture, traditions.

In consideration of the recommendation in the QFCC’s response to question 11 and the specific supports needed to address the unique needs of Aboriginal and Torres Strait Islander families and children, consideration should be given to including a specific section in the legislation to explain how the legislation applies to Aboriginal and Torres Strait Islander children and young people and their families.

Supporting QFCC’s position

It is well established that Aboriginal and Torres Strait Islander children are over-represented in the Queensland child protection system, as well as nationally, compared to non-Indigenous children.^{22 23}

²⁴ The reasons for this over-representation are complex and include:

- social disadvantage
- impacts of past policies
- an over-reliance on tertiary responses in the child protection system, and

²² State of Queensland (Queensland Child Protection Commission of Inquiry) (2013), *Taking responsibility: A Roadmap for Queensland Child Protection*, p349

²³ Australian Institute of Health and Welfare (2015), *Child protection Australia: 2013–14*, Child Welfare series no. 61. Cat. no. CWS 52, p15

²⁴ Commonwealth of Australia (Senate Community Affairs Committee Secretariat) (2015), *Out of home care*, p10

- misperceptions of different parenting practices.²⁵

Other contributors to the over-representation of Aboriginal and Torres Strait Islander children identified by the Senate Community References Committee Inquiry on out of home care include a 'lack of available supports and understanding of the specific needs of Aboriginal and Torres Strait Islander families'.²⁶

In light of the over-representation and social disadvantage experienced, one of the recommendations made by the Senate Community References Committee was for state and territory governments to prioritise a review of Aboriginal and Torres Strait Islander over-representation in out-of-home care as well as family support services being provided with more resourcing to address the causes of social disadvantage.²⁷

The Senate Community References Committee was also provided with evidence that, critical to the wellbeing of Aboriginal and Torres Strait Islander children, is their connection to family, community and culture.²⁸ The importance of connection to family, community and culture was also emphasised in responses from a study of 16 Indigenous young people in care.²⁹ Keeping children culturally safe when they are placed in out-of-home care is part of cultural safety.³⁰ Cultural safety also includes children and young people feeling safe to express their culture.

A lack of 'cultural competence' by child protection authorities was heard by the Senate Community References Committee as a hurdle for providing cultural support.³¹ The Child Protection Commission of Inquiry also identified cultural competence as an element needed to help resolve the over-representation of Aboriginal and Torres Strait Islander in the child protection system.³²

The Senate Community References Committee made a recommendation for a project to be included in the National Framework's third action plan (2015-2018) for services working with Aboriginal and Torres Strait children and families to be provided with compulsory cultural competence training.³³

Cultural competence is described as 'more than cultural awareness—it is the set of behaviours, attitudes, and policies that come together to enable a system, agency, or professionals to work effectively in cross-cultural situations'.³⁴

²⁵State of Queensland (Queensland Child Protection Commission of Inquiry) (2013), *Taking responsibility: A Roadmap for Queensland Child Protection*, p351

²⁶ Commonwealth of Australia (Senate Community Affairs Committee Secretariat) (2015), *Out of home care*, p78

²⁷ Ibid, pxxiii

²⁸ Ibid, p219

²⁹, Higgins DJ, Bromfield LM, Higgins JR, Richardson N, (2006), Protecting Indigenous children: Views of carers and young people on 'out-of-home care', *Family Matters*, No.75, Australian Institute of Family Studies, pp42-49

³⁰ Higgins, DJ (2010), Community development approaches to safety and wellbeing of Indigenous children, *Resource sheet no.1*, Produced by The Closing Gap Clearinghouse, Canberra: Australian Institute of Health and Welfare and Melbourne: Australian Institute of Family Studies,p6

³¹ Commonwealth of Australia (Senate Community Affairs Committee Secretariat) (2015), *Out of home care*, p220

³² State of Queensland (Queensland Child Protection Commission of Inquiry) (2013), *Taking responsibility: A roadmap to child protection*, p327

³³ Commonwealth of Australia (Senate Community Affairs Committee Secretariat) (2015), *Out of home care* pxxiii

³⁴ Baingbridge R, McCalman J, Clifford A and Tsey K (2015), Cultural competency in the delivery of health services for Indigenous people, *Issues paper no.13*, Produced for the Closing the Gap Clearing House, Canberra: Australian Institute of Health and Welfare and Australian Institute of Family Studies, p2

In practice, cultural competence requires workers to know the culture of their client and adopt a particular approach.³⁵ For example, if the client is Aboriginal then the worker should adopt an appropriate approach for working with Aboriginal children and families.

Victoria has incorporated cultural competence as part of its child and family services system. Section 59 of the CYFA allows for performance standards to be made for Community Service Organisations (CSOs), including cultural standards.³⁶ The Cultural Competence Framework informs those standards in relation to Aboriginal children, families and communities for services provided by CSOs. Victoria's *Aboriginal Cultural Competence Framework 2008* describes the benefits of cultural competence to be:

- 'greater engagement with Aboriginal communities
- immediate and future outcomes for Aboriginal children and families, and
- an appreciation of the richness and diversity of Aboriginal cultures and people'.³⁷

³⁵ State of Victoria, Aboriginal Child Care Agency (2008), *Aboriginal Cultural Competence Framework*, Melbourne: Department of Human Services, p23

³⁶ *Children, Youth and Families Act 2005* (Vic), s59

³⁷ State of Victoria, Aboriginal Child Care Agency (2008), *Aboriginal Cultural Competence Framework*, Melbourne: Department of Human Services, p25

Q.5 How should Queensland's child and family legislation promote children's rights and wellbeing?

Recommendation

The QFCC recommends:

- the promotion of children's rights in the new legislative framework by outlining the Chief Executive's, services and/or persons acting under the authority of the legislation, responsibilities in relation to supporting children's rights
- wellbeing continuing to be included as a foundation for all actions under the legislation (along with children's safety, protection, rights and best interests) with specific indicators of child wellbeing, mutually recognised within best interest's statements, within various guiding principle statements and/or detailed in the object of the legislation.

'Children exist in relationship: in relationship to their parents, their siblings, and wider family, their neighbours, their community and the society in which they live.....The focus on children's rights while an important topic, is misplaced unless it is moderated by a realistic understanding of the claims of others to be involved in the child's wellbeing'.³⁸

QFCC's position

The QFCC recommends children's rights be promoted in the new legislative framework by outlining the Chief Executive's, services and/or persons acting under the authority of the legislation, responsibilities in relation to supporting children's rights. For example, this approach was applied by Scotland in the release of their *Children and Young People Act* in 2014, Part 1 – Rights of Children, 1 – Duties of Scottish Ministers in relation to the rights of children and recognises all articles under UNCRC and includes reference to:

- taking into account the view of the child in all relevant dealings (section 1(2))
- promoting public awareness and understanding of the rights of the child (section 1(3)), and
- tabling a report to parliament regarding their actions and future plans in relation to children's rights (section 1(4)).

The QFCC also recommends, rather than specifically address child and family wellbeing in a dedicated chapter within the legislation, child wellbeing continuing to be included as a foundation for all actions under the legislation (along with children's safety, protection, rights and best interests). Further, the QFCC suggests this representation continue to be included through specific indicators of child wellbeing, mutually recognised within best interest's statements, within various guiding principle statements and/or detailed in the object of the legislation.

Supporting QFCC's position

Children's rights

Human rights have been defined as the rights and freedoms contained in the core human rights treaties to which Australia is a party³⁹. The principle treaty guiding children's rights is unarguably the UNCRC. The UNCRC treaty was ratified by Australia in 1990 and explicitly documents our agreed

³⁸ Jones, M, Basser Marks, L (1996), 'Mediating Rights: Children, Parents and the State', *Australian Journal of Human Rights* 313

³⁹ Australian Human Rights Commission (2015), *Children's Rights Report 2015*, p41

commitment and duty, as signatory to the agreement, to ensure all children within Australia enjoy the rights set out within that treaty.⁴⁰

Historically the children's rights discussion at its foundation, focused on children's vulnerability and their developmental needs rather than their autonomy. However, UNCRC has been a significant impetus in shifting the focus of children's rights from a singular view of the child as the subject of policies relating to their wellbeing, development and protection to including the child as an active participant in constructing goals and how to achieve them.⁴¹ This change in view is evidenced in a variety of legislative responses relevant to children across Australia. In the rights space however, the difficulty for child protection legislation is balancing the complexities of navigating the relationship between state, parent/family and the individual child in context of rights and freedoms⁴² are managed, legislatively, both nationally and internationally in a variety of ways.

The QFCC supports the CPA giving effect to internationally recognised children's rights statements,⁴³ however the CPA does not explicitly reference the duties of agencies or the Chief Executive in supporting or promoting the rights of the child.

Wellbeing

Alongside safety and best interests, wellbeing is recognised as being a paramount principle under the CPA and is reflected throughout child protection policy and practice and national and state frameworks. In stark contrast to traditional child protection models of incident-driven response to physical harm,⁴⁴ the new contemporary approach to child protection applies a more holistic process for addressing the safety and wellbeing needs of Queensland children. This has been evidenced following the Queensland Child Protection Commission of Inquiry (the CPCI), as the child protection sector takes bold steps to move from a risk averse approach to protection to a broader collective responsibility for child wellbeing and protection to sit with families, communities and the tertiary system as well as promoting early intervention services to address wellbeing concerns.

Many of the current, collaborative actions occurring within the child protection sector which aim to develop community capacity to recognise wellbeing matters, establishing robust policy and practice (focussed on wellbeing outcomes) are able to occur, and enact change without the support of a formal legislative instrument. However, as mentioned in the QCPCI report, *Taking Responsibility: A roadmap for child protection in Queensland*, the chief executive has the powers, authority, functions, and ultimate responsibility for ensuring the system delivers the right mix of services to children and families to promote and protect their overall wellbeing,⁴⁵ and to this end, the legislative framework has a responsibility to formally address these responsibilities in some manner.

⁴⁰ Australian Human Rights Commission (2007), *Australia's commitment to children's rights and reporting to the UN*, Availability: <https://www.humanrights.gov.au/publications/australias-commitment-childrens-rights-and-reporting-un>

⁴¹ Australian Institute of Family Studies (1996), *Citizen Child: Australian law and children's rights*, Children's rights: setting the scene, Availability: <https://aifs.gov.au/publications/citizen-child-australian-law-and-childrens-rights/1-childrens-rights-setting-scene>

⁴² Australian Institute of Family Studies (1996), *Citizen Child: Australian law and children's rights*, The child protection and welfare system, Availability: <https://aifs.gov.au/publications/citizen-child-australian-law-and-childrens-rights/6-child-protection-and-welfare-system>

⁴³ State of Queensland (Department of Communities, Child Safety and Disability Services) (2015), *Supporting families and protecting children in Queensland: a new legislative framework. Public consultation for the review of the Child Protection Act 1999*, p17

⁴⁴ Arney, F, McGuinness, K, and Robinson, G. (2009), In the Best Interests of the Child? Determining the Effects of the Emergency Intervention on Child Safety and Wellbeing, *Law in Context*, Vol. 27, No. 2, pp42-57

⁴⁵ State of Queensland (Queensland Child Protection Commission of Inquiry) (2013), *Taking responsibility: A Roadmap for Queensland Child Protection*, p66

Q.6 Should the best interests of the child continue to be the paramount principle underpinning Queensland’s child and family legislation? Why or why not?

Recommendation

The QFCC recommends the best interests of the child continue to be the paramount principle underpinning Queensland’s child and family legislation.

QFCC’s position

The QFCC supports the best interests of the child continuing to be the paramount principle underpinning Queensland’s child and family legislation.

Supporting QFCC’s position

Legislative principles formally give shape to the service and support goals of government⁴⁶ and are supported in practice by a variety of policy frameworks. Across Australia, no one jurisdictions’ legislation for the protection and care of children is the same in order to expressly provide for individual state based requirements. However, each jurisdiction does formally recognise, in legislation, the importance of the paramount principle being ‘in the best interests of the child’.⁴⁷ This consistency is arguably contributed to:

- the National Framework – The framework sets a national agenda to guide the building of capacity and strength in families and communities across the nation to drive a unified approach to protecting children and ensuring that they are happy, healthy and well supported.⁴⁸ This framework challenges communities, governments and organisations to embrace a public health model of child wellbeing, protection universal support and secondary intervention.
- the UNCRC – the treaty ‘requires that the best interests of the child must be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.’⁴⁹

When considering whether to support the continuation of the best interests of the child as being the paramount principle underpinning Queensland’s child and family legislation, the QFCC believes that any deviation of this approach would contravene our commitment under the UNCRC and to the unified National Framework’s agenda.

⁴⁶ Child Family Community Australia (August 2014), ‘Australian child protection legislation’, *CFCA Resource Sheet*

⁴⁷ Ibid

⁴⁸ Commonwealth of Australia (2009), *Protecting Children is Everyone’s Business: National Framework for Protecting Australia’s Children 2009-2020*, pp6-9

⁴⁹ Commonwealth of Australia (Australian Law Reform Commission) (1997), *Seen and heard: priority for children in the legal process*, Children’s involvement in family law proceedings, ALRC 84

Q.7 Should the legislation set out the matters to be considered in determining the best interests of the child? Why or why not? AND

Q.8 What additional factors, if any, should be considered in determining the best interests of an Aboriginal or Torres Strait Islander child?

Recommendation

The QFCC recommends:

- amending the CPA to prescribe a non-exhaustive list of matters for guidance in determining the best interests of the child
- including in the matters for consideration for determining best interests specific factors for Aboriginal and Torres Strait Islander children including the need for the child to develop and maintain a connection with their family, culture, traditions, language and community
- amend section 5D of the CPA to make specific reference to decision makers being required to have regard to the principles set out in section 5B and s5C, and
- amend section 5B(l) of the CPA to prescribe that the child should be able to maintain relationships with the child's parents and kin, if it is in the 'best interests' of the child.

QFCC's position

The CPA should be amended to:

- prescribe a non-exhaustive list of matters for consideration in order to provide guidance in determining the best interests of the child
- include in the matters for consideration for determining best interests specific factors for Aboriginal and Torres Strait Islander children including the need for the child to develop and maintain a connection with their family, culture, traditions, language and community
- expand section 5D to make specific reference to decision makers being required to have regard to the principles set out in sections 5B and 5C including:
 - the Court and the Chief Executive making decisions under the CPA, and
 - a community service making a decision or providing services under the CPA. As per the Victorian example in section 8 of the *Children, Youth and Families Act 2005* (the CYFA), and
- amend section 5B(l) of the CPA to remove 'appropriate' and prescribe that the child should be able to maintain relationships with the child's parents and kin, if it is in the 'best interests' of the child.

Supporting QFCC's position

To understand the impact of legislative changes it is important to consider how those changes can support the legal decision making process and assist in developing the capacity of decision makers to understand how to consider the best interest of the child. This is particularly relevant given the subjective nature and ultimately personal inference of the concept of 'best interest' and the difficulties that presents in a legislative context. In the family law context, best interests as a principle, has been criticised as lacking certainty⁵⁰ by some legal rights advocates.

⁵⁰ Commonwealth of Australia (Australian Law Reform Commission) (1997), *Seen and heard: priority for children in the legal process*, Children's involvement in family law proceedings, ALRC 84

While the main principle for the administration of the CPA notes the safety, wellbeing and best interests of a child as being paramount, and provides a series of general provisions in support of this view, it doesn't go as far as stating how best interests are determined.

Section 60CC of the *Family Law Act 1975* (Cwlth) lists the factors the court must consider in determining a child's best interests as:

- 'the benefit to the child of having a meaningful relationship with both of the child's parents'
- 'the need to protect the child from physical or psychological harm caused from being subjected or exposed to, abuse, neglect or family violence'
- 'any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's views'
- the nature of the child's relationship with each parent and other persons (including grandparents and other relatives)
- the extent the parent has or has not 'taken the opportunity' to participate in decision making 'about major long-term issues in relation to the child', 'spend time with the child' and 'communicate with the child'
- the extent to which the parents have or have not fulfilled their obligations to 'maintain' the child
- 'the likely effect of any changes in the child's circumstances including the likely effect on the child of any separation from' either parent or any other person they have been residing with
- the practical difficulty and expense of a child having contact with a parent 'and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis'
- the capacity of each parent, or of any other person, to provide for the child's needs, including emotional and intellectual needs
- the child's and either parent's maturity, sex, lifestyle and background (including any need to maintain a connection with the lifestyle, culture and traditions) and any other characteristics of the child the court thinks relevant
- the child's right to enjoy their Aboriginal and Torres Strait Islander culture and the likely impact a parenting order will have on that right
- 'the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents'
- 'any family violence involving the child or a member of the child's family'
- any family violence order that applies to the child or a member of the child's family
- 'whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child'
- any other fact or circumstance considered relevant by the court'.

Aboriginal and Torres Strait Islander considerations

In its report on the *Recognition of traditional Aboriginal and Torres Strait Islander child-rearing practices Response to Recommendation 22: Pathways Report, Out of the Maze*, the Family Law Council made a recommendation in relation to the Family Law Court considering the effects of parenting orders 'on the need of every Aboriginal or Torres Strait Islander child to maintain a connection with the lifestyle, culture and traditions of his or her peoples'.⁵¹

In its report *Out of the Maze*, the Family Law Pathways Advisory Group also identified that the *Family Law Act 1975* is not clear in relation to child-rearing obligations or parenting responsibilities

⁵¹ Commonwealth of Australia (Family Law Council) (2004), *Recognition of traditional Aboriginal and Torres Strait Islander child-rearing practices. Response to Recommendation 22: Pathways Report, Out of the Maze*, p8

of family members other than parents. Accordingly, the Family Law Pathways Advisory Group recommended amendment to the *Family Law Act 1975* to recognise:

- Indigenous child-rearing practices, and
- the importance of a child's cultural identity, which is critical in determining the best interests of a child.⁵²

Specifically, one of the recommendations made by the Advisory group was for section 60B(2) of the *Family Law Act 1975* to be amended.⁵³ Section 60B2 relates to the principles underlying a child's right to adequate and proper parenting. It was recommended that section 60B(2) be amended to 'include a new paragraph stating that children of indigenous origins have a right, in community with other members of their group, to enjoy their own culture, profess and practice their own religion, and use their own language.'

However, in response to the recommendations in regards to section 60B, the Family Law Council cautioned that any proposed amendment to the best interest considerations of the child relating to parenting should not establish a statutory preference for a parent to assert that one cultural, ethnic or religious background is to be preferred over another in terms of importance to the child.⁵⁴ In consideration of the best interests of the child being paramount, the Family Law Council recommended amending the *Family Law Act 1975* in keeping with the manner proposed by the *Out of the Maze* report as follows:

- section 60B(2) 'includes a new paragraph stating that children of Aboriginal or Torres Strait Islander origins have a right, in community with other members of their group, to enjoy their own culture'.

⁵² Commonwealth of Australia, Family Law Pathways Advisory Group (2001), *Out of the Maze. Pathways to the future for families experiencing separation*, pp.90,91

⁵³ Ibid, p.91

⁵⁴ Commonwealth of Australia, Family Law Council, 2004, *Recognition of traditional Aboriginal and Torres Strait Islander child-rearing practices. Response to Recommendation 22: Pathways Report, Out of the Maze*, p21

Q.9 How can the legislation best support children to express their views and wishes, and ensure their right to participate in important decision making processes that affect them?

Recommendation

The QFCC recommends strengthening the provisions in the CPA to better promote and guide a child (and their family's) involvement in decision making processes.

QFCC's position

As previously mentioned in this paper, the QFCC believes that the provisions relating to the best interests, rights and wellbeing of the child need to be strengthened from what is currently included in the CPA. While the aspects relating to the inclusion of a child in the decision making process are most easily addressed through policy and practice development, we do believe that the proposed strengthened provisions should also include specific reference to seeking the views of children as an overarching statement in Chapter 1, Part 2 (this is also consistent with the legislation of other jurisdictions). The QFCC suggests the following inclusions to the overarching statement:

- Adjusting the intent of the section in the CPA relating to 'Obtaining child's views' (section 5E) to remove 'when giving a child an opportunity...' to place the power of participation back within the frame of the child's rights to be included rather than the statutory bodies decision to include them. For example the QFCC suggests:
 - Children are supported to have their views and wishes considered in decision making processes, with consideration to their maturity and understanding.
 - The Victorian legislation outlines decision-making principles which direct the Chief Executive and community based services to include in their considerations of all relevant decisions or actions relating to a child.⁵⁵ This includes ensuring all people involved with the child are supported to provide their views where appropriate and where there is no detriment to the process. The decision making process is also defined in terms of responsibilities of each party, within the legislation. The legislation specifically outlines the extent of the support and obligation required of all parties.
 - The Northern Territory legislation similarly requires all parties, including the child, to participate, in an informed manner, in decision making processes.⁵⁶ The Northern Territory legislation also very clearly articulates 'child participation'⁵⁷ about decisions made in relation to a child.
 - Those who are most vulnerable (very young children, children with an intellectual disability, communication difficulties or Culturally and Linguistically Diverse (CALD) and/or Aboriginal and Torres Strait Islander children)⁵⁸ should also be specifically supported to share their views as is appropriate. In relation to CALD or Aboriginal and Torres Strait Islander children, a person experienced with the child's type of cultural and language background should support the child.

In consideration of decision making relating to an Aboriginal and Torres Strait Islander child, the Northern Territory legislation also specifically determines the role of the child and their kinship

⁵⁵ *Children, Youth and Families Act 2005* (Vic), s11

⁵⁶ *Care and Protection of Children Act* (NT), s.9

⁵⁷ *Ibid*, s11

⁵⁸ G-Force, *Children and young people's participation strategy*, p.5, Availability: <http://create.org.au/wp-content/uploads/2015/02/2.7-CYP-Participation-Strategy.pdf>

group in decision making processes. The addition of culturally specific information would further promote child (and kinship) involvement in decision making processes.

Supporting QFCC's position

Respect for the views of the child is acknowledged as one of the four guiding principles of the UNCRC.⁵⁹ Specifically the UNCRC, article 12 requires:

'States parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'

Legislation, policy and practice guidelines formalise the requirements of state parties to enshrine the right of children to participate in decisions about their lives, however the child protection system has the added complexity of managing a child's right to make a decision with the system's responsibility to keep a child safe and protected.⁶⁰ Supporting children to participate in decision making processes and supporting the child to make informed decisions about their lives has been identified in research as an important factor in improving outcomes in relation to:

- self-confidence and self-empowerment including an ability to control and change aspects of their lives through positive activity and decision making
- social skills in relating to and working with others, taking responsibility for their actions and negotiating with others
- positive life choices and developing a knowledge of their own rights and establishing the skills required to act autonomously as an adult.⁶¹

⁵⁹ Australian Human Rights Commission, National Children's Commissioner, (2015), *Children's Rights Report 2015*, p16

⁶⁰ G-Force, 2015, *Children and young people's participation strategy*, p3-9, Availability: <http://create.org.au/wp-content/uploads/2015/02/2.7-CYP-Participation-Strategy.pdf>

⁶¹ Ibid, p3

Q.10 How can Queensland’s child and family legislation enable families to get the support they need, when they need it, to keep their children safely at home? AND

Q.13 How can Queensland’s child and family legislation best contribute to building a community where children are safe, connected and able to thrive?

Recommendations

The QFCC recommends:

- recognition in the child and family legislation that the community, and children and families themselves, can seek assistance from community services in order for families to receive early intervention support to keep their child safely at home
- amending section 7(1)(a) of the CPA to include reference to information about children’s wellbeing and advice on how to assist families in need.

QFCC’s position

The child and family legislation should recognise the assistance that can be provided from community services for the community, as well as children and families themselves, for families to receive early intervention support to keep their children safely at home. This should include support for families with unborn children. This not only acknowledges the assistance for families to get the support they need to keep their children safely at home but also acknowledges the assistance available to the community to contribute to the safety and wellbeing of children and supporting families.

To support families and parents, section 7(1)(a) of the CPA should be amended to require relevant government agencies to provide or help provide, information for parents and other members of the community about the wellbeing of children as well as how to assist families in need, including the development of children and their safety needs. The QFCC already has a role to educate the community about services available to strengthen and support families.⁶² This recommendation is not intended to duplicate this role.

Expanding information sharing to allow service providers to share relevant information to support vulnerable children and families is discussed later in this submission. Though it is useful to point out that expanding information sharing for this purpose will enable families to get the support they need when they need it.

Supporting QFCC’s position

Families can be the most important factor in safeguarding their child from harm.⁶³ However, unfortunately some families can be the cause of the harm. Most children grow up in safe and supportive environments. Supporting families is critical to helping children experience positive life opportunities.⁶⁴ Not all families requiring support to care for their child will come to the attention of the child protection system. The CPCI report emphasised the importance of intervening early for

⁶² *Family and Child Commission Act 2014* (Qld), s9(1)(d)(i)

⁶³ Higgins, DJ, Australian Institute of Family Studies (2015), A public health approach to enhancing safe and supportive family environments for children. *Family Matters* 2015, No.96, pp39-52

⁶⁴ Baxter, J, Gray, M, and Hayes, A (2010), Australian Institute of Family Studies, ‘The best start: Supporting happy, healthy childhoods’, *Facts Sheet* 2010

families to care for their children to prevent the need for involvement in the tertiary system.⁶⁵ The point at which help should be provided to families to care for their children is difficult to determine and will be different for all families. The QCPCOI report also recognised the protection of children is a shared responsibility of the community, with parents and families having primary responsibility.⁶⁶

The QFCC has already recommended in this paper the inclusion of principles in the child and family legislation to guide service development and delivery to children and families by government and non-government agencies. The inclusion of these principles in the child and family legislation will contribute to enabling support for families to keep their children safely at home and to building a community where children are safe, connected and able to thrive by:

- embedding the notion of shared responsibility for the wellbeing and safety of children
- strengthening the ability of parents, families and communities to support their child
- prioritising the safety, health, development, education and wellbeing of the child
- providing services which meet the needs of the local community, and
- limiting government intervention.

To help families receive the right support at the right time, Queensland has already introduced Family and Child Connect services and expanded Intensive Family Support services to help families who are at-risk and vulnerable to receive services to assist them to safely care for their children at home.

The National Framework recognises the importance of families caring for their children, including families receiving support when they need it, as well as the importance of supportive communities.⁶⁷ The importance of enabling families and communities is embedded in the National Framework's third three-year action plan for 2015–2018 (the Third Action Plan).⁶⁸ The Third Action Plan recognises the need 'to strengthen the abilities of families and communities to care for their children and young people'. In order to achieve this, the Third Action Plan emphasises the importance of prevention and early intervention being provided at key times in people's lives, not just in the early years.

Some interstate jurisdictions define in legislation, provisions to assist families to receive support before reaching the point of government intervention for care and protection, such as in Victoria.⁶⁹ In New South Wales, the legislation recognises the importance of providing assistance to families to enable their child to stay at home.⁷⁰ The legislative recognition of supporting and assisting families in other jurisdictions is provided at appendix B.

Communities can also be an important resource for helping families to get support when they need it to keep their children safely at home. To help build a community where children are safe, connected and able to thrive, the community should be supported to help seek assistance for families before they reach the statutory threshold. Some jurisdictions recognise the importance of the community in contributing to the care, protection and wellbeing of children in legislation. For example, in South Australia one of the objectives under the *Children's Protection Act 1993* (the CPA SA) relates to helping the community understand the need for appropriate nurture, care and

⁶⁵ State of Queensland (Queensland Child Protection Commission of Inquiry) (2013), *Taking responsibility: A Roadmap for Queensland Child Protection*, p115

⁶⁶ Ibid, p7

⁶⁷ Commonwealth of Australia (2009), *National Framework for Protecting Australia's Children 2009–2020*, p6

⁶⁸ Commonwealth of Australia (Department of Social Services) (2015), *National Framework for Protecting Australia's Children – Third Three-Year Action Plan 2015–2018*, p.7

⁶⁹ *Children, Youth and Families Act 2005* (Vic), Part 3.1

⁷⁰ *Children and Young Persons (Care and Protection) Act 1998 No 157* (NSW), Chapter 3, Part 1

protection by promoting caring attitudes.⁷¹ The Australian Capital Territory also recognises the community under the *Children and Young People Act 2008* (the CYPA). One of the objectives is to provide for and promote children's wellbeing, care and protection in such a way that acknowledges children's 'right to grow in a safe and stable environment' and considers the responsibilities of parents, families, the community and the government.⁷²

Victoria recognises the different needs of community by encouraging the development and design of services that meet the need of each community in their principles for children under the *Child Wellbeing and Safety Act 2005* (the CWSA).⁷³ While in New South Wales, the role of the community to take responsibility for children who need care and protection is recognised in the Minister's role under the *Children and Young Persons (Care and Protection) Act 1998 No 157* (the CYPCPA).⁷⁴ Section 15 requires the Minister to encourage partnerships between families, the community, government and non-government agencies, business and corporations to take responsibility for children who need care and protection.

⁷¹ *Children's Protection Act 1993* (SA), s3

⁷² *Children and Young People Act 2008* (ACT), s7

⁷³ *Child Wellbeing and Safety Act 2005* (Vic), s5

⁷⁴ *Children and Young Persons (Care and Protection) Act 1998 No 157* (NSW), s15

Q. 11 How should the legislation reflect Aboriginal and Torres Strait Islander concepts of family, kin, community and culture? AND

Q. 12 What are your views on the way in which ‘parent’ should be defined in Queensland’s child and family legislation? Is the definition used in the Commonwealth family law applicable to Queensland’s child protection and family support service system?

Recommendation

The QFCC recommends:

- drafting a new division outlining principles for decision making and the administration of the legislation for an Aboriginal and Torres Strait Islander child, and
- defining parental responsibility under the CPA and at a minimum, the definition of ‘parental responsibility’ needs to recognise Aboriginal or Torres Strait Islander kinship obligations and child-rearing practices, cultural considerations of Aboriginal peoples and Torres Strait Islanders as two distinct cultural groups and the broader concept of family.

QFCC’s position

Similarly to child and family legislative instruments from other Australian states and territories (Western Australia, Northern Territory and Victoria), the QFCC suggests drafting a new division outlining principles for decision making and the administration of the legislation for an Aboriginal and Torres Strait Islander child.⁷⁵ This would provide for easy reference for decision makers and those members of the community seeking to understand their legislated role. The QFCC is of the view this section should reflect specific principles relating to:

- decision making considerations, processes and consultation for Aboriginal and Torres Strait Islanders children. This includes details on involving Registered Entities, members of the child’s community, extended family and kinship systems
- Aboriginal child placement principles, including priority criteria, relevant consultation and review mechanisms
- principles relating to the best interests of Aboriginal and Torres Strait Islander children including recognition of cultural connections, spirituality and collective kinship obligations
- principles relating to self-determination and self-identification, including considerations where the child has parents from two differing communities, and
- recognising cultural considerations of Aboriginal peoples and Torres Strait Islanders as two distinct cultural groups.

The current definition for ‘parent’ under s11 of the CPA adequately addresses the changing dynamics of family functioning and the classification of the role of the parent. Further, the addition of the clauses clarifying the variation of the meaning of ‘parent’ to an Aboriginal or Torres Strait Islander child addresses some of the complexities involved with recognising traditional kinship systems. However, other sections of the CPA prescribe a much narrower definition of ‘parent’⁷⁶, such as section 37 which may impact the parental responsibility role people may have for a child

⁷⁵ *Children and Community Services Act 2004* (WA), Part 2, Division 3; *Care and Protection of Children Act* (NT), s.12; *Child Wellbeing and Safety Act 2005* (Vic), Part 1.2, Division 4

⁷⁶ *Child Protection Act 1999* (Qld), ss23,37,51AA,51F,52 and 205

when matters proceed to the Childrens Court.⁷⁷ In addition, the inconsistencies of the definition of 'parent' under the CPA may impact on the continuity of service intervention or support for the child.

To bring Queensland into line with the legislative instruments of other states and territories⁷⁸ and the *Family Law Act 1975* (Cwlth), the QFCC recommends 'parental responsibility' be clearly defined under the CPA. Consideration should also be given to how this definition can be utilised (where appropriate) for other parts of the CPA (such as in relation to child protection orders) where the definition of 'parent' is narrower than that prescribed under section 11. At a minimum the definition of 'parental responsibility' needs to recognise Aboriginal or Torres Strait Islander kinship obligations and child-rearing practices, cultural considerations Aboriginal peoples and Torres Strait Islanders as two distinct cultural groups and the broader concept of family.

Supporting QFCC's position

Aboriginal and Torres Strait Islander kinship relationships reflect a level of complexity that is not captured in traditional non-Indigenous concepts of family.⁷⁹ It is for this reason that a child and family focused legislative instrument would be remiss in not specifically addressing Aboriginal and Torres Strait Islander concepts, where relevant and in conjunction with references to non-Indigenous family constructs.

The general concept of family which is broadly used within Australia, based on the Australian Bureau of Statistics definition, classifies 'family' as being 'a group of two or more people that related by blood, marriage (including de facto), adoption, step or fostering, and who usually live together in the same household'.⁸⁰ However Aboriginal and Torres Strait Islander social structures are based around collectivist⁸¹ kinship systems which apply a different terminology than a non-Indigenous system.⁸² For Aboriginal and Torres Strait Islander communities who 'place great value on social relationships, their physical and emotional bonds to country and connecting to the spirit of their ancestors',⁸³ culture can be a protective influence for children, families and communities when the necessary social conditions are in place.⁸⁴

Parental responsibility – including considerations to recognise Aboriginal and Torres Strait Islander child rearing practices and kinship systems

In 2004 the Hon Daryl Williams AM QC MP provided the Family Law Council with terms of reference to 'review the rationale for and consequences of the proposed amendments to sections 60B, 61C

⁷⁷ State of Queensland (Department of Communities, Child Safety and Disability Services) (2015), *Supporting families and protecting children in Queensland: a new legislative framework. Public consultation for the review of the Child Protection Act 1999*, pp17,19

⁷⁸ *Care and Protection of Children Act* (NT), s22; *Children and Young People Act 2008* (ACT) s15; *Children and Young Persons (Care and Protection) Act 1998 No 157* (NSW), s3; *Child and Community Services Act 2004* (WA), s3

⁷⁹ Commonwealth of Australia, Lohoar, S, Butera, N, and Kennedy, E, (2014), 'Strengths of Australian Aboriginal cultural practices in family life and child rearing', *CFCA Paper No. 25*

⁸⁰ Australian Bureau of Statistics, (2013), *Labour Force, Australia: Labour Force Status and Other Characteristics of Families*, What is a family?

⁸¹ Yeo (2003) in Commonwealth of Australia, Lohoar, S, Butera, N, and Kennedy, E (2014), 'Strengths of Australian Aboriginal cultural practices in family life and child rearing', *CFCA Paper No. 25*, p3

⁸² Morphy (2006) and Peters-Little (2000) in Commonwealth of Australia, Lohoar, S, Butera, N and Kennedy, E (2014), 'Strengths of Australian Aboriginal cultural practices in family life and child rearing', *CFCA Paper No. 25*, p3

⁸³ SNAICC (2011) in Commonwealth of Australia, Lohoar, S, Butera, N and Kennedy, E (2014), 'Strengths of Australian Aboriginal cultural practices in family life and child rearing', *CFCA Paper No. 25*, p3

⁸⁴ Commonwealth of Australia; Lohoar, S, Butera, N and Kennedy, E (2014), *Strengths of Australian Aboriginal cultural practices in family life and child rearing*, *CFCA Paper No. 25*, p1

and 68F of the *Family Law Act 1975* as part of the Commonwealth Government's response to recommendation 22 from the *Out of the Maze* report.⁸⁵ Recommendation 22 proposed the amendment of the *Family Law Act 1975* to recognise Aboriginal and Torres Strait Islander child-rearing practices. Of particular interest to the development of Queensland's own child protection legislation is the recommendation relating to section 61C of the *Family Law Act 1975* (Parental responsibility – definition and responsibilities) which should acknowledge 'unique kinship obligations and child-rearing practices of Indigenous culture'.⁸⁶ Section 61C relates to the responsibilities parents have in relation to their child.⁸⁷ The proposed amendment aimed to emphasise the importance of Aboriginal and Torres Strait Islander kinship systems and child-rearing practices.⁸⁸

The consultation process undertaken by the Family Law Council to inform their recommendations, sort the perspectives of the Aboriginal and Torres Strait Islander communities, organisations and legal bodies regarding concepts of the impacts of traditional kinship and child-rearing practices on the constructs of family.⁸⁹

Following significant consultation, the Family Law Council concluded that any amendment (to the parental responsibility section) which broadened the defined role of person with 'parental responsibility' could not be done in a practicable way so as to avoid uncertainty and preclude unintended consequences.⁹⁰ While the Family Law Council was not able to support the changes to the definition category it did suggest that an additional section be added to the *Family Law Act 1975* to specifically recognise:

'In applying Part VII (Children) of the Act to the circumstances of an Aboriginal and Torres Strait Islander child, and in identifying a person or persons who have exercised or may exercise parental responsibility for a child, the court shall have regard to the kinship obligations and child-rearing practices of Aboriginal and Torres Strait Islander culture'.⁹¹

In their findings, the Family Law Council went further to state that they did not believe that recognising kinship and child-rearing practices was the role of Commonwealth alone, given the role and involvement in other areas of Australian state and territory governments.

⁸⁵ Commonwealth of Australia, Family Law Council (2004), *Recognition of traditional Aboriginal and Torres Strait Islander child-rearing practices. Response to Recommendation 22: Pathways Report, Out of the Maze*, p4

⁸⁶ *Ibid*, p10

⁸⁷ *Family Law Act 1975* (Cwlth), s61C

⁸⁸ Commonwealth of Australia, Family Law Council, (2004), *Recognition of traditional Aboriginal and Torres Strait Islander child-rearing practices. Response to Recommendation 22: Pathways Report, Out of the Maze*, p11

⁸⁹ *Ibid*, Terms of Reference

⁹⁰ *Ibid*, p5

⁹¹ *Ibid*, p8

Q.15 How should Queensland's child and family legislation relate to other laws, including Queensland's domestic and family violence protection laws?

Recommendation

The QFCC recommends:

- consideration should be given to making the legislation clear child protection orders take precedence over protection orders under the *Domestic and Family Violence Protection Act 2012*, and
- the Childrens Court should have discretion to report matters for investigation to the Department of Communities, Child Safety and Disability Services where the circumstances indicate that a child or young person in the youth justice system may be in need of protection.

QFCC's position

The QFCC is of the view that consideration should be given as to whether the legislation needs to clearly define that child protection orders take precedence over protection orders under the *Domestic and Family Violence Protection Act 2012*. It is critical the safety, wellbeing and best interests of children and young people who may be impacted are safeguarded in determining whether child protection orders should take precedence over domestic violence orders.

To provide for the safety and wellbeing of children and young people who appear before the Childrens Court as defendants in criminal matters, the QFCC is of the view that the Childrens Court should have discretion to refer matters for investigation to the DCCSDS where the circumstances indicate that the child or young person may be in need of protection.

Supporting QFCC's position

Child protection and domestic and family violence

It is not uncommon for families who come in contact with child protection to be experiencing domestic and family violence. An analysis of households with substantiated harm between April and June 2007 found that over one-third of substantiated households (35%) had two or more incidents of domestic violence within the past 12 months.⁹² The CPCI identified domestic violence as a parental risk factor in relation to child abuse.⁹³

The complexities of domestic and family violence policy intersecting with child protection as well as family law is recognised.⁹⁴ It is therefore necessary for Queensland's child and family legislation to relate to Queensland's domestic and family violence protection laws in a way which puts the safety, wellbeing and best interests of the child as the priority. Queensland's domestic and family violence laws and child protection laws are linked. The power of the Childrens Court to make a protection order does not limit the power of the court to make a child protection order.⁹⁵

⁹² State of Queensland (Department of Child Safety) (2009), *Characteristics of parents involved in the Queensland child protection system report 6: summary of key findings*, p3

⁹³ State of Queensland (Queensland Child Protection Commission of Inquiry) (2013), *Taking Responsibility: A Roadmap for Queensland Child Protection*, p52

⁹⁴ Commonwealth of Australia, Campo, M. (2015) 'Children's exposure to domestic and family violence: Key issues and responses', *CFA paper no. 36 2015*, p2

⁹⁵ *Domestic and Family Violence Protection Act 2012* (Qld), s43

The Australian Law Reform Commission and the NSW Law Reform Commission had the view that family violence protection orders should be linked to child protection proceedings and should be in jurisdiction of the Childrens Court.⁹⁶ Where there were already proceedings in progress in the children's court for a child or young person or a member of their family, then the children's court should have the jurisdiction to hear and determine family violence protection orders involving that child or young person children and young people. Queensland's *Domestic and Family Violence Protection Act 2012* already allows this to occur. The Queensland Childrens Court can make a protection order if the Court is already hearing a proceeding for a child or young person.⁹⁷ The legislation also makes it clear that the Childrens Court can vary a protection order to ensure the terms are consistent with the proposed child protection order. The legislation seems to imply that child protection orders take precedence over protection orders. Consideration should be given as to whether the legislation needs to be clear that child protection orders take precedence over protection orders. Other jurisdictions have adopted varying legislative approaches to address the interaction between domestic and family violence and child protection. Appendix C provides a summary of this.

Child protection and youth justice

Another area which interrelates is that of child protection and youth justice. A link exists between child abuse and neglect and youth offending.⁹⁸ A child can become subject to a dual order if they commit an offence and are subject to a child protection order.⁹⁹ The Queensland Childrens Court deals with both child protection and youth justice matters.

The Australian Law Reform Commission and the NSW Law Reform Commission identified that safety issues may exist for children and young people appearing before a Childrens Court in the youth justice system but who are not subject to child protection proceedings.¹⁰⁰ An example provided was that while child protection concerns may be evident when considering the personal circumstances of the child appearing as a defendant in a youth justice matter, a court may have no other option to place a person in detention as it cannot direct a child protection agency to undertake appropriate action for the person.

To require court staff and judicial officers to report child protection concerns, it was recommended that child protection legislation be amended to provide for judicial officers and court staff to be mandatory reporters.¹⁰¹ The Australian Law Reform Commission and the NSW Law Reform Commission noted the Queensland Government's view at the time that as Queensland courts had 'unfettered capacity' to refer their child protection concerns to the child protection agency, legislative reform was not necessary.¹⁰²

In its consultation paper, the Australian Law Reform Commission and the NSW Law Reform Commission identified a proposal based on the CYFA in Victoria. Section 349 provides discretion for the court to refer the Secretary for child protection for investigation the matter of a protection

⁹⁶ Commonwealth of Australia, Australian Law Reform Commission, NSW Law Reform Commission (2010), *Family Violence —A National Legal Response: Final Report*, pp969,970

⁹⁷ *Domestic and Family Violence Protection Act 2012*, (Qld), s43

⁹⁸ Australian Institute of Family Studies, Cashmore J (2011), 'The link between child maltreatment and adolescent offending: Systems neglect of adolescents', *Family Matters 2011 No. 89*, pp31-41

⁹⁹ State of Queensland (Queensland Child Protection Commission of Inquiry) (2013), *Taking Responsibility: A Roadmap for Queensland Child Protection*, p51

¹⁰⁰ Commonwealth of Australia, Australian Law Reform Commission, NSW Law Reform Commission (2010), *Family Violence —A National Legal Response: Final Report*, p974

¹⁰¹ *Ibid*, p979

¹⁰² *Ibid*, p977

application where a child or young person is a defendant and there are grounds for making a protection application.¹⁰³ Under section 350 the Secretary must provide a report to the court within 21 days about whether a child protection application was made. To support the safety and wellbeing of children, the QFCC is supportive of this approach.

¹⁰³ *Children, Youth and Families Act 2005* (Vic), ss349,350

Q.16 Does the concept of ‘child in need of protection’ set the right threshold for determining the point at which government intrusion into the private affairs of a family are justified? Do you consider this threshold too high or too low? Why?

Recommendation

The QFCC recommends making no change to the threshold for statutory intervention and the intent of the threshold should be focused on the child’s needs.

QFCC’s position

The QFCC does not propose any amendment to Queensland’s threshold for statutory intervention. The intent of the threshold for statutory intervention should be focused on the child’s needs.

Supporting QFCC’s position

This submission has already asserted the need for a sound legal basis for government intervention in the private lives of families and an appropriate legal boundary. In establishing the threshold for when the State should intervene to remove children from their parents, the words ‘does not have a parent able and willing to protect the child from harm’ was intended to limit the State for when it could remove children from their parents.¹⁰⁴ It is still necessary to limit the State’s powers so that it intervenes for children only when absolutely necessary.

In relation to making a child protection order, it was intended that the court’s main focus should be on the needs of the child when determining if a child is ‘a child in need of protection’, rather than the parents’ actions which contributed to the harm or risk of harm.¹⁰⁵ The child’s needs is still a valid focus. The Australian Institute of Health and Welfare acknowledged that the focus in most jurisdictions has moved to the outcomes for the child and away from the actions of parents.¹⁰⁶

Section 10 of the CPA sets the threshold that ‘a child in need of protection is a child who’:

- ‘(a) has suffered significant harm, is suffering significant harm, or is at unacceptable risk of suffering significant harm; and
- (b) does not have a parent able and willing to protect the child from the harm’.¹⁰⁷

Following a recommendation from the CPCI, the word ‘significant’ was inserted in section 10 of the CPA before ‘harm’.¹⁰⁸ The explanatory notes explain that threshold has not changed, but the amendment was to emphasise for mandatory reporters that the harm must be significant.¹⁰⁹ The notion of ‘significant harm’ is consistent with some other jurisdictions, while some jurisdictions use ‘serious harm’ or just ‘harm’ for the statutory intervention threshold.¹¹⁰ There are also differences in relation to whether the actions or consequences are substantiated. Despite some difference, there is largely consistency across jurisdictions in relation to the threshold for statutory intervention.

¹⁰⁴ Explanatory Notes, Child Protection Bill 1998 (Qld), p11

¹⁰⁵ Ibid, p11

¹⁰⁶ AIHW cited in Commonwealth of Australia (Senate Community Affairs Committee Secretariat) (2015), *Out of home care*, p27

¹⁰⁷ *Child Protection Act 1999* (Qld), s10

¹⁰⁸ State of Queensland (Queensland Child Protection Commission of Inquiry) (2013) *Taking Responsibility: A Roadmap for Queensland Child Protection*, pp89,90

¹⁰⁹ Explanatory Notes, Child Protection Reform Amendment Bill 2014 (Qld), p7

¹¹⁰ Australian Institute of Family Studies (August 2014), ‘Australian legal definitions: When is a child in need of protection?’, *CFCA Resource Sheet*

Q.17 What other measures could be considered when balancing a child's right to protection from harm with the child's and family's rights to privacy and self-determination?

Recommendation

The QFCC supports:

- increasing awareness of local, secondary support services in local communities and ways in which families may be able to access support earlier
- engaging with CALD and refugee families to develop appropriate intervention responses and support. This includes ensuring families are provided with information of the procedures and processes to access services, and given details of ways to seek support and assistance from secondary services.

QFCC's position

The QFCC supports increasing awareness of local, secondary support services in local communities and ways in which families may be able to access support earlier. The QFCC also supports engaging with CALD families and refugee families to develop appropriate intervention responses and support. This includes ensuring families are provided with information of the procedures and processes to access services, and given details of ways to seek support and assistance from secondary services.

As per the recommendation in the response to question 22, amending section 159M of the CPA to broaden those services included as a prescribed entity to which the section applies will allow for further information sharing to help families to access the right supports at the right time.

Supporting QFCC's position

There are various legislative interventions which impact on the parent-child relationship, including child protection considerations. While the welfare of the child is the central premise and paramount consideration, there are reoccurring concerns around the purpose, nature and process of the intervention and the perceived outcomes for the child and the parents' rights.¹¹¹

Given that child protection and family law systems are founded on a human rights framework,¹¹² it is unsurprising that the interests of children and the interests of their parents will diverge.¹¹³ Jones and Bassar Marks argue that rather than the rights conflict existing just between the child and the parent that the conflict exists between the rights of the child, the rights of the parent and the rights of the state.¹¹⁴ Theorists identify many variations in how children's rights are applied in the contexts of their families and communities including granting children's rights as being a responsibility of both the State and the parents and the obligations and expectations of the parent/child relationship.

¹¹¹ Australian Institute of Family Studies, Harrison, M, 'Children's welfare, rights and the legal system', *Family Matters No.33*

¹¹² State of Queensland (Department of Communities, Child Safety and Disability Services) (2015), *Supporting Families and protecting children in Queensland: a new legislative framework*, p17

¹¹³ Australian Institute of Family Studies, Harrison, M, 'Children's welfare, rights and the legal system', *Family Matters No.33*

¹¹⁴ Jones, M and Bassar Marks, L (1996), 'Mediating Rights: Children, Parents and the State', *Australian Journal of Human Rights* 313

Jones and Basser Marks advocate further that the State's role in regards to family life is to establish the boundaries for the structure of society including that of the family.¹¹⁵ Rather, the roles of the family and of the individuals within the family are developed through 'common sense' but are mediated through law (see question 16 response). While it is inevitable that there are circumstances where it is appropriate for the State to intervene and mediate the rights of the child to be safe and protected, with the self-determination rights of a family, we are able to learn from precedence in other Australian states, and internationally, to establish the appropriate level of legislative boundary.

As mentioned earlier in this submission, Australia's ratification of the UNCRC obliges us to report on our progress (in relation to each article under the treaty) to the United Nations, with the objective to demonstrate compliance through the amendment of domestic law, policy and practice.¹¹⁶ In this instance, UNCRC treaty attempts to balance competing claims, views and interests, recognises the child's right to care and protection and the position of the family as the primary social unit and further recognises the obligations of the State towards both parents and children.¹¹⁷

Under the European Convention of Human Rights (ECHR), the decision to remove children from the parent constitutes a serious interference with family life under article 8 of the ECHR treaty: 'Right to respect for family life (there shall be no interference by a public authority with the exercise of this right except such is as in accordance with the law....)'¹¹⁸ While the convention does not explicitly state due process to guide the decision making process, the court pays particular interest in the involvement of the parent throughout the decision making process (judicial or administrative). How parents participate or how the rights of the parties are equally considered are not directed through legislative instruments however are considered in terms of the seriousness of the alleged abuse or neglect. In exceptional circumstances where a child is removed in an emergency following a statutory decision that the parents are an immediate danger to the child, the courts will consider the parents do not have a right to be involved or included in the removal decision making process.¹¹⁹ In the instance of emergency removal, the court considers the evidence and assessment undertaken by the statutory body which measured the impact of the removal on both the child and parent and if any alternatives to removal were considered.

In the Northern Territory, the *Care and Protection of Children Act* (the CPCA) defines a child's participation in all instances where a decision is made about the child, including being 'given the opportunity to respond to the proposed decision' and'be given assistance in expressing those views'.¹²⁰

Division 6 of the CPCA provides for the wellbeing of the child to be safeguarded through agreements established between the parent, child and other interested parties. This has been provided for in the legislative context by giving the CEO with the legislative function to arrange for mediation conferencing to discuss wellbeing concerns where the parent and child are both willing to participate and where the CEO reasonably believes the conference will be adequate to address

¹¹⁵ Ibid

¹¹⁶ Australian Institute of Family Studies, Harrison, M, Children's welfare, rights and the legal system, *Family Matters No.33*

¹¹⁷ Commonwealth of Australia (Australian Law Reform Commission) (1997), *Seen and heard: priority for children in the legal process*, Children, families and the state – The rights of children in family-state interactions, ALRC 84

¹¹⁸ Council of Europe Strasbourg, Roagna, I (2012), *Protecting the right to respect for private and family life under the European Convention of Human Rights*, Council of Europe human rights handbooks, p70

¹¹⁹ Ibid, p70

¹²⁰ *Care and Protection of Children Act* (NT), s11

issues.¹²¹ Mediation conferences are convened by a representative approved jointly by the CEO, parent and child and are able to be convened for the purposes of:

- ‘(a) establishing the circumstances giving rise to those concerns;
- (b) reviewing an arrangement that has been made for the care of the child;
- (c) making recommendations about the care of the child;
- (d) arriving at an agreement on the best means of safeguarding the wellbeing of the child’.¹²²

Cultural practice considerations to support legislative process

‘Social context and culture can protect the developing child and strengthen parental capacity in important ways that can buffer against individual and contextual risk factors’.¹²³ The scan of contemporary research has identified how important the retention of culture, cultural practices and the provision of culturally appropriate services to children and families is to preventing or enhancing tertiary child protection intervention. Also highlighted is the importance of ensuring that the (child protection) workforce and secondary support services provided in the community are culturally competent and appropriate. Cultural context is an essential part of creating interventions which may reduce child maltreatment and positively impact a child’s development trajectory.

All children, young people and families who come into contact with the child protection system will bring with them a series of pre-disposed views and opinions on the role of the tertiary system, the impact to themselves and their family and the role that the system and associated support services will play.¹²⁴ These feelings will similarly apply to CALD families and refugee families. However the New South Wales, Social Policy Research Centre also outlined common issues for these families when engaging with the child protection system:

- lack of awareness of child safety and their statutory power
- fear of authority stemming from experiences with authorities in their country of origin
- fear of the potential shame which the involvement of an authority will bring to their family
- lack of awareness of local secondary support services in their community and ways in which they may be able to access support earlier.¹²⁵

Service providers have the opportunity to empower CALD and refugee families by engaging with them to develop the intervention. This includes ensuring families are provided with information of the procedures and processes to access services, and given details of ways to seek support and assistance from secondary services.

¹²¹ *Care and Protection of Children Act (NT)*, Division 6

¹²² *Ibid*, s(4)(a-d)

¹²³ Benedetti, G (2012), *Innovations in the Field of Child Abuse and Neglect Prevention: A Review of Literature*, p11

¹²⁴ *Ibid*, p11

¹²⁵ Sawrikar, P (2010), *Comparing Culturally and Linguistically Diverse (CALD), Anglo Saxon and Indigenous families in the NSW child protection system (CPS)*

Q.18 How can Queensland’s child and family legislation support collaborative community and family-led approaches to child and family support that meet the unique needs of Aboriginal and Torres Strait Islander children, families and communities?

Recommendation

The QFCC recommends the legislation should:

- strengthen the Aboriginal and Torres Strait Islander Placement Principle to achieve its broader intent, and
- strengthen the participation of Aboriginal and Torres Strait Islander children, families and communities in decision making in the legislation.

QFCC’s position

A range of strategies are needed to support collaborative community and family-led approaches for Aboriginal and Torres Strait Islander children, families and communities. The QFCC is of the view that the legislation should:

- strengthen the Aboriginal and Torres Strait Islander Child Placement Principle to achieve its broader intent, and
- strengthen the participation of Aboriginal and Torres Strait Islander children, families and communities in decision making.

Supporting QFCC’s position

In its inquiry in relation to out-of-home care, the Senate Community Affairs References Committee heard that the lack of supports available for families to address the causes of social disadvantage and regain parental responsibility once their child was placed in care particularly impacted Aboriginal and Torres Strait Islander communities.¹²⁶

Supporting outcome 5 of the National Framework recognises the importance of families, communities and culture in helping to protect children.¹²⁷ Supporting outcome 5 aims for the support and safety of Indigenous children in their families and communities.

The CPI also emphasised the importance for the wellbeing of children to be connected to family, community and culture.¹²⁸ The Aboriginal and Torres Strait Islander Child Placement Principle aims to keep Aboriginal and Torres Strait Islander children in the child protection system connected to their family and culture.¹²⁹ The CPI recognised concerns for the welfare of Aboriginal and Torres Strait Islander children due to the low number of children being placed with Indigenous carers.¹³⁰

¹²⁶ Commonwealth of Australia (Senate Community Affairs Committee Secretariat) (2015), *Out of home care*, pp227,231

¹²⁷ Commonwealth of Australia (Department of Social Services) (2015), *National Framework for Protecting Australia’s Children – Third Three-Year Action Plan 2015–2018*, p4

¹²⁸ State of Queensland (Queensland Child Protection Commission of Inquiry) (2013), *Taking responsibility: A Roadmap for Queensland Child Protection*, p366

¹²⁹ Secretariat of National Aboriginal and Islander Child Care (2013), *Aboriginal and Torres Strait Islander Child Placement Principle: Aims and Core Elements*, p2

¹³⁰ State of Queensland (Queensland Child Protection Commission of Inquiry) (2013), *Taking responsibility: A Roadmap for Queensland Child Protection*, p366

The QFCC strongly agrees with the CPCI's views that the child's best interests should be paramount when placing a child.¹³¹

The five areas related to the aims for the Aboriginal and Torres Strait Islander Child Placement Principle are prevention, partnership, placement, participation and connection.¹³² While placement decisions are one aspect of the Aboriginal and Torres Strait Islander Child Placement Principle, the intent of the Principle is broader than placement decisions and include:

- self-determination
- protecting and recognising the rights for Aboriginal and Torres Strait Islander children, families and communities, and
- reducing the over-representation of Aboriginal and Torres Strait Islander children in the child protection system.

Improving implementation of the Aboriginal and Torres Strait Islander Child Placement Principle is a focus under the National Framework with an overarching for action under the Third Action Plan.¹³³ The States and Territories must commit to continue fully implementing the Aboriginal and Torres Strait Islander Child Placement Principle.

In Queensland, the Aboriginal and Torres Strait Islander Child Placement Principle is prescribed under section 83 of the CPA. While all jurisdictions in Australia have legislated for the Aboriginal and Torres Strait Islander Child Placement Principle, research identifies issues associated with implementation of the Aboriginal and Torres Strait Islander Child Placement Principle across jurisdictions.¹³⁴

One issue identified relates to the negativity associated with the legislative wording of the Principle with a focus on the removal and placement of children in out-of-home care.¹³⁵ It has been suggested that the intent of the understanding of the Principle needs to be enhanced. A range of strategies are needed to reinforce the broader intent of the Aboriginal and Torres Strait Islander Child Placement Principle, including strengthening the Principle in legislation.¹³⁶

As this submission has already mentioned, participation is one aspect of the Aboriginal and Torres Strait Islander Child Placement Principle. The importance of the participation of families and children in decision making and gaps in support for the participation of Aboriginal Torres Strait Islander children was acknowledged in a report developed by Secretariat of National Aboriginal and Islander Child Care (SNAICC).¹³⁷ This report identified ways to help implement the Third Action Plan.¹³⁸

Both SNAICC and the CPCI identified the Aboriginal Family Decision Making model implemented in Victoria as a practice model to be adopted to improve the participation of Indigenous children,

¹³¹ Ibid, p367

¹³² Commonwealth of Australia, Child Family Community Australia (2014), Arney F, et al, 'Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle', *CFCA Paper No.34*, p2

¹³³ Commonwealth of Australia (Department of Social Services) (2015), *National Framework for Protecting Australia's Children – Third Three-Year Action Plan 2015–2018*, pp4,7

¹³⁴ Commonwealth of Australia, Child Family Community Australia (2014), Arney F, et al, 'Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle', *CFCA Paper No.34*, p1

¹³⁵ Ibid, p14

¹³⁶ Ibid, p18

¹³⁷ Secretariat of National Aboriginal and Islander Child Care (2015), *Pathways to safety and wellbeing for Aboriginal and Torres Strait Islander children*, pp17,18

¹³⁸ Commonwealth of Australia (Department of Social Services) (2015), *National Framework for Protecting Australia's Children – Third Three-Year Action Plan 2015–2018*, p7

families and communities in decision making.¹³⁹ In relation to encouraging participation, recommendations made by SNAICC included ‘to assess legislation, policy, and procedure for enabling Aboriginal and Torres Strait Islander families and children to participate in child protection decision making’ and recommendations in relation to implementing Aboriginal Family Decision Making, including any necessary legislative change.¹⁴⁰

¹³⁹ Secretariat of National Aboriginal and Islander Child Care (2015), *Pathways to safety and wellbeing for Aboriginal and Torres Strait Islander children*, p19; State of Queensland (Queensland Child Protection Commission of Inquiry) (2013), *Taking responsibility: A Roadmap for Queensland Child Protection*, .220

¹⁴⁰ Secretariat of National Aboriginal and Islander Child Care (2015), *Pathways to safety and wellbeing for Aboriginal and Torres Strait Islander children*, p19

Q.19 How can Queensland’s child and family legislation promote the importance of permanence and provide a range of options for providing children with relational, physical and legal permanence?*

*This response addresses permanence as a collective of the concepts of relational, physical and legal permanence considerations.

Recommendation

The QFCC recommends:

- the addition of a clause under section 5B(k) addressing relational permanence, and
- the expansion of the example used for section 84 (Agreements to provide care for children) to include reference to permanence planning considerations.

QFCC’s position

Elements of permanence (relational, physical and legal) are evidenced as general principles in the CPA and are embedded in other processes and practices which fall under the CPA and policy positions. While the QFCC is of the view that significant expansion of the general principles is not required, the QFCC suggests an additional clause under section 5B(k) addressing relational permanence, for example:

- ... (iii) for the establishment of positive, nurturing and trusting relationships between the child and significant others.

The QFCC also suggest the expansions of the example used for section 84(1) to be expanded to include reference to permanence planning considerations, for example:

Note – ‘Provisions of the agreement may be included in the child’s case plan’ **and may include options regarding planning for pathways to permanence.**

Placement stability is discussed at length in response to this question and is currently included as a general principle in the CPA.¹⁴¹ Boddy highlights the critical need for the creation of permanence pathways for children in residential care who do not wish to live with an alternative family and are at the highest risk of poorer outcomes.¹⁴² Further, Boddy adds that the creation of permanence pathways should include the development of residential care as a specialised service able to respond to the significant needs of this cohort. While the QFCC does not see the need for this to be specifically reflected in the legislative instrument, we would advocate for consideration of this approach in policy and practice development.

Supporting QFCC’s position

Permanence could be meaningfully defined as recognising the key qualities of family relationships (children and adults) including recognition of a sense of belonging and connectedness to each other while establishing a continuity between past, present and future.¹⁴³ Rather than defining

¹⁴¹ *Child Protection Act 1999* (Qld), s5B(k)(i-ii)

¹⁴² Boddy, J, (2013), *Understanding Permanence for Looked After Children a review of research for the Care Inquiry*, p30

¹⁴³ *Ibid*, p1

permanence as one specific response, permanence should be differentiated to match an individual child's needs which may include:

- a child's return to their birth parents
- the establishment of shared care arrangements
- a long term care arrangement within the statutory system or family or friend care, and
- legal permanence, such as adoption.¹⁴⁴

A nurturing and stable placement is a fundamental need for a child in care and is also a vital factor for child development and improving the life outcomes for children in care as they transition to independence. Cashmore and Paxman found that children who have had one care placement which lasted 75% of their total time in care were generally more positive about their care experience, lived in more stable arrangements post care, had a greater amount of social support and had fewer instances of suicidal thoughts in the 12 months post transition to independence (post care).¹⁴⁵

A significant amount of research also examines the relationship between the characteristics of a child's placement and improved outcomes based on stability.¹⁴⁶ For example, research supports stable placements with kin over non-kinship (foster care) arrangements¹⁴⁷ as an alternative permanence option for children who are not able to be safely cared for in their home. Further, research also identifies increased placement stability for children requiring care who are placed together with siblings with the same carer.¹⁴⁸

Permanence should however, be applied through consideration of an individual child's care and placement needs based on their experiences with the system (and permanence) previously and factors including age, ethnicity, reasons for placement and developmental needs¹⁴⁹ and reviewed as a child's needs and placement requirements change over time. In practice, research also focuses attention on statutory services not becoming overly optimistic in relation to reunification with biological parents at the expense of planning long term care options for a child but rather ensuring thorough assessment and planning relating to the support required by both the family and child to prevent poor outcomes or further abuse or neglect.¹⁵⁰

National Standards

At a National level, the *National Standards for Out-of-Home Care* (NSOoHC) have been established to drive improvements in the delivery and quality of care to children across Australia and to ensure that children in care are provided with the same opportunities as other children to reach their potential in life.¹⁵¹ Of the 13 Standards identified under the NSOoHC which directly influence

¹⁴⁴ Department of Education (United Kingdom) (2014), *Topic 14 Placement stability and permanence*, p2

¹⁴⁵ Cashmore, J and Paxman, M (2006), 'Predicting after-care outcomes: The importance of 'felt' security', *Child and Family Social Work*, 11, pp232-241

¹⁴⁶ James, 2004; Leathers, 2006; Rubin et al., 2004; Gilbertson & Barber, 2003; Newton et al., 2000; Strijker, et al., 2008; Oosterman et al., 2007

¹⁴⁷ Carnochan, S., Moore, M., & Austin, M.J., (2015), *Achieving placement stability*, *Journal of Evidence-Based Social Work*, 10: 235-253.

¹⁴⁸ Oosterman, M, et al (2007), 'Disruptions in foster care: A review and meta-analysis.' *Children and Youth Services Review*, 29, pp.53-76.

¹⁴⁹ Boddy, J, (2013), *Understanding Permanence for Looked After Children a review of research for the Care Inquiry*, p1

¹⁵⁰ Ibid, p29

¹⁵¹ Commonwealth of Australia, Department of Families, Housing, Community Services and Indigenous Affairs, (2011), *An outline of National Standards for out-of-home care. A priority project under the National Framework for Protecting Australia's Children 2009-2020*, p4.

positive outcomes for children and young people, five standards relate to key areas of permanence for children. Specifically this includes:

- Standard 1 – ‘Children and young people will be provided with stability and security during their time in care.’
- Standard 8 – ‘Children and young people in care are supported to participate in social and/or recreational activities of their choice, such as sporting, cultural or community activity.’
- Standard 9 – ‘Children and young people are supported to live safely and appropriately maintain connection with family, be they birth parents, siblings or other family members.’
- Standard 10 – ‘Children and young people in care are supported to develop their identity safely and appropriately, through contact with their families, friends, culture, spiritual sources and communities and have their life history recorded as they grow up.’
- Standard 11 – ‘Children and young people in care are supported to safely and appropriately identify and stay in touch, with at least one other person who cares about their future, who they can turn to for support and advice.’¹⁵²

¹⁵² Ibid, p5.

Q.20 What is needed in Queensland’s child and family legislation to ensure that young people receive the help they need to successfully transition from care to living independently?

Recommendation

The QFCC recommends strengthening the current provision regarding transitioning from care in the CPA.

QFCC’s position

While noting that generally young people who feel adequately prepared to live independently have the support of a carer and stable placement or other supportive other,¹⁵³ the QFCC believes that the current functions relating to transition from care in the CPA (section 75) could be strengthened to improve independent living outcomes.

Under the *Family and Child Commission Act 2014* (the FCC Act), the QFCC has a legislated responsibility to, ‘promote the safety, wellbeing and best interests of children and young people’.¹⁵⁴ The FCC Act defines young person as being ‘at least 18 years but no more than 21 years, who is transitioning from being a child in care under the *Child Protection Act 1999* to independence’.¹⁵⁵

In consideration of this responsibility, the QFCC is of the view that it is in the best interests of children transitioning from, or recently transitioned from, care to strengthen the current provisions in the CPA about transitioning from care. We propose that the Victorian legislative model which succinctly addresses the minimum requirements for the Chief Executive and establishes ongoing responsibility to the age of 21 years (if in care on their 15th birthday, to align with current practice, be adopted. This recommendation is also in line with the Nationally Consistent Approach to Transition Planning (NCATP).

Furthermore, it is worth noting research findings suggest that while there is a correlation between having a plan for leaving care and good preparation,¹⁵⁶ having a plan in itself was not a guarantee of a successful transition to independence. For children who are not residing in a supportive or stable placement, additional living skills and housing provisions need to be established, as well as the provision of additional support for children with behavioural or substance abuse problems.

Supporting QFCC’s position

Transitioning to independence is one of the biggest challenges for all children as it requires the development of the skills and the means to achieve and maintain independent living.¹⁵⁷ For children who are safely within the care of their natural parent, the decision to live independently occurs generally at a later age and is based on the young person’s perceived general readiness, financial stability and social and environmental conditions. For children exiting formal care, the formal care-

¹⁵³ Australian Institute of Family Studies, Mendes, P, Johnson, G, Moslehuddin, B, 2011, ‘Effectively preparing young people to transition from out-of-home care: An examination of three recent Australian studies’, *Family Matters* No.89, pp61-70

¹⁵⁴ *Family and Child Commission Act 2014* (Qld), s.4(a)

¹⁵⁵ *Ibid*, Schedule 1, s.5

¹⁵⁶ Mendes, P, Johnson, J and Moslehuddin, B (2011), ‘Effectively preparing young people to transition from out-of-home care: An examination of three recent Australian studies’, *Family Matters*, vol. 89, pp61-70.

¹⁵⁷ Department of Families, Housing, Community Services and Indigenous Affairs, National Framework Implementation Working Group (2011), *Transitioning from out-of-home care to Independence: A Nationally Consistent Approach to Planning*, p2

givers role is dispensed at 18 and so the transition process of preparing to live independently, establishing practical assistance and key ongoing support networks or services and a plan for economic or education participation is vitally important.

The establishment of a NCATP for children exiting care is a specific priority action under the National Framework. The NCATP is further supported by the National Standards for Out-of-Home Care,¹⁵⁸ Standard 13 which requires 'children and young people have a transition from care plan commencing at 15 years old which details support to be provided after leaving care'.¹⁵⁹ The NCATP identifies a series of basic supports for a young person transitioning from care, based on individual needs, including:

- housing
- education and training
- employment
- financial security
- social relationships and support networks
- health – physical, emotional, mental and sexual
- life and after-care skills.¹⁶⁰

Despite the NCATP, each Australian jurisdiction legislates and guides practice through policies relating to transitions from care in different ways. This inconsistency consequently results in serious equity issues for Australia's young people in accessing standard supports and preparing to transition from care. Further, this inconsistency creates additional complications to vulnerable children who on transition from care move between jurisdictions.¹⁶¹

Reports in Queensland published by organisations such as CREATE (*Report Card*), provide statistics on young people's engagement with transition planning and independence readiness. The most recently published CREATE Report Card highlighted that data collected from participants indicated an increase in dialogue between the young person and their care-giver regarding transitioning to independence, however data captured did not show an increase in the number of children who knew about (national figure – 33%) or were actively involved in preparations to leave care (national figure – 48%).¹⁶² Queensland results were slightly more encouraging – 45% of respondents reported having a plan for leaving care with 63% of those reporting they were quite involved in the plans development.¹⁶³

The information below details legislative developments regarding transitioning from care both nationally and internationally for further consideration.

¹⁵⁸ Department of Families, Housing, Community Services and Indigenous Affairs, National Framework Implementation Working Group (2011), *Transitioning from out-of-home care to Independence: A Nationally Consistent Approach to Planning*, p3

¹⁵⁹ Commonwealth of Australia, Department of Families, Housing, Community Services and Indigenous Affairs, National Framework Implementation Working Group (2011), *An outline of National Standards for out-of-home care*, p7

¹⁶⁰ Ibid, p26

¹⁶¹ Australian Institute of Family Studies, Mendes, P, Johnson, G, Moslehuddin, B, (2011), 'Effectively preparing young people to transition from out-of-home care: An examination of three recent Australian studies', *Family Matters No.89*, pp61-70

¹⁶² CREATE Foundation, McDowall, Dr J (2013), *Experiencing Out-of-Home Care in Australia: The Views of Children and Young People*, p98

¹⁶³ Ibid, p98

In Victoria, the CYFA (section 16) provides for young people under 21 years of age, who on their sixteenth birthday were subject to guardianship or custody orders to be provided with relevant services and support to make their transition to living independently.¹⁶⁴ Specifically the Secretary or delegate's responsibilities include:

- (section 16(1)(g))
...“to provide or arrange for the provision of services to assist in supporting a person under the age of 21 years to gain the capacity to make the transition to independent living where the person—
 - (i) has been in the custody or under the guardianship of the Secretary; and
 - (ii) on leaving the custody or guardianship of the Secretary is of an age to, or intends to, live independently...”
- (section 16(4)(a-c))
“The kinds of services that may be provided to support a person to make the transition to independent living include—
 - (a) the provision of information about available resources and services;
 - (b) depending on the Secretary's assessment of need—
 - (i) financial assistance
 - (ii) assistance in obtaining accommodation or setting up a residence
 - (iii) assistance with education and training;
 - (iv) assistance with finding employment;
 - (v) assistance in obtaining legal advice;
 - (vi) assistance in gaining access to health and community services;
 - (vii) counselling and support.”

In a research paper written by Mendes, Johnson and Moslehuddin, an international legislative response aimed at improving the transition from care process for children was discussed:

In 2000, England introduced a new legislative document, *Children (Leaving Care) Act 2000* which significantly extended the duties and powers of the former *Children Act*¹⁶⁵ by:

..‘making provision about children and young persons who are being, or have been, looked after by a local authority.

Insertion of: ‘Preparation for ceasing to be looked after’

19A. It is the duty of the local authority looking after a child to advise, assist and befriend him with a view to promoting his welfare when they have ceased to look after him.

For each eligible child, the local authority shall carry out an assessment of his needs with a view to determining what advice assistance and support it would be appropriate for them to provide him under this Act –

- (a) while they are still looking after him; and
- (b) after they cease to look after him, and
- (c) shall then prepare a pathway plan for him.’

Specifically, the legislation rather than policy, required the statutory authority to establish a Pathway Plan¹⁶⁶ for each child by the age of 16 which concentrated on assisting the young person to build and

¹⁶⁴ State of Victoria, *Care and transition planning for leaving care: Victorian Practice Framework*

¹⁶⁵ Australian Institute of Family studies, Mendes, P, Johnson, G and Moslehuddin, B (2011), ‘Effectively preparing young people to transition from out-of-home care: An examination of three recent Australian studies’, *Family Matters No.89*, pp61-70

¹⁶⁶ Ibid, pp61-70

maintain relationships, develop self-esteem and identity, acquire practical and financial skills and knowledge.¹⁶⁷ The legislation also allows for the support provision to extend to the age of 21 years of age or more in certain cases. This approach was quickly adopted by other countries within the United Kingdom, however an evaluation found that while general experiences of young people who were planned for in this manner were positive, young people with a disability or behavioural issues felt unprepared.¹⁶⁸

¹⁶⁷ Department of Education (London), 2010, *The Children Act 198: Guidance and Regulations*, Vol. 3, *Planning transition to adulthood for care leavers*

¹⁶⁸ Australian Institute of Family Studies, Mendes, P, Johnson, G and Moslehuddin, B (2011), 'Effectively preparing young people to transition from out-of-home care: An examination of three recent Australian studies', *Family Matters No.89*, pp61-70

Q.21 How can the legislation reduce unnecessary red tape and make it easier for people to become carers, without compromising high standards of care for children living in out-of-home care?

Recommendation

The QFCC recommends:

- the legislative framework not diminish the safety of children in out-of-home care or compromise their standards of care
- improving processes to make it easier for people to become carers without the need for legislative change, and
- reviewing the expiry day for carer certificates.

QFCC's position

The QFCC supports measures to improve efficiency to recruit suitable carers but does not support measures which create risks to children living in out-of-home care and compromises their standards of care. The QFCC recommends:

- the legislative framework not diminish the safety of children and young people in out-of-home care or compromise their standards of care, and
- improving processes to make it easier for people to become carers without the need for legislative change, and
- reviewing the expiry day for carer certificates.

Supporting QFCC's position

The CPCI identified that recruiting and retaining suitable foster carers continues to be a challenge.¹⁶⁹ Carers play an invaluable role in caring and protecting for some of Queensland's most vulnerable children and young people. The QFCC supports streamlining processes to create efficiencies for suitable people to become carers. However, the QFCC does not support diminishing statutory assessment requirements which may place already vulnerable children at risk. Children's safety in out-of-home-care must not be compromised in the interests of efficiency.

The Explanatory Notes to the Child Protection Bill 1988 recognises the importance of safeguarding children who are placed in care. The Explanatory Notes state:

'It is considered that the State's duty of care to children who have been found by the court to be in need of protection cannot be properly discharged if significant information about persons in whose care these children may be placed cannot be made available to the DFYCC. These children are especially vulnerable because of their history of abuse or neglect and it is imperative that precautions are taken to ensure that they are not placed in further danger by arrangements made by the court or the DFYCC for their care.'¹⁷⁰

¹⁶⁹ State of Queensland (Queensland Child Protection Commission of Inquiry) (2013) *Taking Responsibility: A Roadmap for Queensland Child Protection*, pxxi

¹⁷⁰ Explanatory Notes, Child Protection Bill 2008 (Qld), p8

The State has a responsibility to keep children and young people safe when they are placed in out-of-home care. The *Report on Government Services 2016* reports on safety in out of-home care for the period 2014-15.¹⁷¹ Two measures are used to report on the safety in out-of-home care:

1. 'the proportion of children in out-of-home care who were the subject of a substantiation of sexual abuse, physical abuse, emotional abuse or neglect', and
2. 'the proportion of children in out-of-home care who were the subject of a substantiation where the person responsible was living in the household providing out-of-home care'.¹⁷²

The first measure 'assesses the overall safety of children in care', while the second measure 'assesses the overall safety of children in care'. In Queensland, there were 144 children each for both measures. Each measure had a proportion of children of 1.7%. This evidence that some children are being subjected to some form of abuse or neglect in out-of-home care indicates that safeguards cannot be diminished.

The QFCC notes that a carer certificate expires after one year after it is issued.¹⁷³ The carer may apply for a renewal before the certificate ends.¹⁷⁴ Consideration could be given to reviewing the appropriateness of amending the relevant provision to extend the expiry date for up to three years. An extension could only occur if safeguards to children are not diminished and would not remove the DCCSDS' responsibility to monitor the suitability of carers, such as through regular criminal history checking.

The QFCC acknowledges recommendation 12.17 from the CPCI which included streamlining the carer certification process including a review of the legislative basis for determining that carers and care service personnel do not pose a risk to children.¹⁷⁵ However, the QFCC cautions against measures which diminish the assessment of or requirements for carers and places vulnerable children at risk.

¹⁷¹ Commonwealth of Australia (Productivity Commission) *Report on Government Services 2016*, p15.16

¹⁷² Ibid, p15.17

¹⁷³ *Child Protection Act 1999* (Qld), s133

¹⁷⁴ Ibid, s134

¹⁷⁵ State of Queensland (Queensland Child Protection Commission of Inquiry) (2013) *Taking Responsibility: A Roadmap for Queensland Child Protection*, pxi

Q.22 How can Queensland’s child and family legislation provide for the sharing of information about children and families between government and non-government service providers, to achieve the right balance between families’ rights to confidentiality and privacy and the responsibility to protect a child from harm?

Recommendation

The QFCC recommends:

- the protection and care needs of a child should continue to take precedence over the protection of an individual’s privacy, and
- amending section 159M of the CPA to broaden those services included as a prescribed entity to which the section applies.

QFCC’s position

The QFCC is of the view that the protection and care needs of a child should continue to take precedence over the protection of an individual’s privacy.¹⁷⁶

The QFCC is also of the view that section 159M of the CPA should be amended to broaden those services included as a prescribed entity to which the section applies to allow for information sharing beyond the initial referral stage. This will support the provision of relevant services where a child is likely to become a child in need of protection without the necessary support.

Supporting QFCC’s position

The need for a solid basis for information where there was no risk to safety was identified by the Australian Law Reform Commission and New South Wales Law Reform Commission.¹⁷⁷ The examples included situations such as ensuring the wellbeing of a child or ensuring timely and effective service delivery.

Information sharing between government and non-government service providers should enable the protection and care of children (including those unborn) and the provision of services, support and advice to children and their families to prevent the child from being in need of protection in a timely way. Enabling the protection and care of children and support to them and their families at the right time is critical for the child. Confidentiality and privacy should not be reasons for limiting information sharing where that information is needed to protect a child from harm or prevent a child from being in need of protection.

The CPCI heard from some non-government agencies of confidentiality provisions under the CPA as being a challenge to collaborative practice and limiting information sharing.¹⁷⁸ To support the operation of the dual pathway, the CPCI identified the CPA may require amendment in relation to information sharing between government agencies. A recommendation was made that amendment to the CPA was needed for ‘appropriate information-sharing and confidentiality provisions to

¹⁷⁶ *Child Protection Act 1999* (Qld), s159B

¹⁷⁷ Commonwealth of Australia, Australian Law Reform Commission, NSW Law Reform Commission (2010), *Family Violence —A National Legal Response: Final Report*, p1441

¹⁷⁸ State of Queensland (Queensland Child Protection Commission of Inquiry) (2013) *Taking Responsibility: A Roadmap for Queensland Child Protection*, pp95,96

support community-based intake'. In Victoria, for example, community-based child and family services are authorised under the CYFA, to consult with certain entities, including community services to assess a risk to a child and determine which community-based child and family service or service agency is appropriate to provide assistance for the child or the family of the child or the mother of the unborn child.¹⁷⁹

In Victoria, the CYFA has provision to allow a community based service to make contact with other agencies or services or general 'information holders' to assist in their decision making processes in relation to providing advice and assistance to a child or their family.¹⁸⁰

It is noted that section 159C of the CPA was amended to allow information sharing without the family's consent. The QFCC is supportive of this amendment. The QFCC is also supportive of broadening information sharing for the purpose making a referral to support a child or family in order to achieve the full intent of this amendment. Accordingly, section 159M should be amended to broaden those services recognised as prescribed entities to allow for information sharing beyond the initial referral stage. This provides a balance between protecting a family's right to confidentiality and privacy and the responsibility to protect a child from harm.

¹⁷⁹ *Children, Youth and Families Act 2005* (Vic), s36

¹⁸⁰ *Ibid*, Part 3.2

Appendix A

Highlights of purposes and objectives of interstate legislation

Australian Capital Territory	New South Wales	Northern Territory	South Australia	Tasmania	Victoria	Western Australia
The objectives of the CYPA includes, among other factors, recognition of 'providing for, and promoting, the wellbeing, care and protection of children and young people in a way that takes into account the responsibilities of parents, families, the community and the whole of government for them'. ¹⁸¹	The objectives of the CYP CPA includes, among other factors, recognition of: • children and young persons receiving such care and protection as is 'necessary for their safety, welfare and well-being, having regard to the capacity of their parents or other persons responsible for them,' and	The objectives of the CPCA are to: • 'promote the wellbeing of children, including to protect children from harm and exploitation; and to maximise the opportunities for children to realise their full potential' • assist families to achieve the above objective, and • ensure anyone with responsibilities	The CPA SA recognises the need for children to reach their full potential. ¹⁸⁴ The objectives under the CPA SA include to: • ensure the safety of children • ensure the care of children enables them to reach their full potential, and • promote in the community	The objective of the CYPFA is to 'provide for the care and protection of children in a manner that maximises a child's opportunity to grow up in a safe and stable environment and to reach his or her full potential'. ¹⁸⁵ Under this section, the Minister also has a role to further the objective of the legislation in a	The main purposes of the CYFA include the provision of community services to support children and families as well as the protection of children. ¹⁸⁶	Providing for the protection and care of children is one objective under the CCSA. ¹⁸⁷ There is also a focus more broadly encompassing of families and communities with an emphasis on promoting the wellbeing of children.

¹⁸¹ *Children and Young People Act 2008* (ACT), s7

¹⁸⁴ *Children's Protection Act 1993* (SA), s3

¹⁸⁵ *Children, Young Persons and Their Families Act 1997* (Tas), s7

¹⁸⁶ *Children, Youth and Families Act 2005* (Vic), s1

¹⁸⁷ *Children and Community Services Act 2004* (WA), s9

	providing assistance to 'parents and other persons responsible for children and young persons in the performance of their child-rearing responsibilities in order to promote a safe and nurturing environment'.¹⁸²	for children has regard to the above objectives in fulfilling those responsibilities. ¹⁸³	caring approaches towards children so their nurture, care and protection needs are understood; risks to their wellbeing can be identified; and support, protection or care can be provided.	number of ways, such as by providing preventative and support services to strengthen and support families and reduce child abuse and neglect.		
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¹⁸² *Children and Young Persons (Care and Protection) Act 1998 No 157 (NSW)*, s8

¹⁸³ *Care and Protection of Children Act (NT)*, s5

Appendix B

Highlights of supporting and assisting families (including the role of government and non-government agencies) in interstate legislation

Australian Capital Territory	New South Wales	Northern Territory	South Australia	Tasmania	Victoria	Western Australia
Supporting families and the community are prescribed under the functions of the Director-General under the CYPA. The functions of the Director-General include: • providing services to strengthen and support families for their children's wellbeing, care and protection, and • supporting the community to prevent or	The focus of the role of the Minister is on promoting partnerships between government, non-government, families, corporations, business and the community to take responsibility for a child in need of care and protection.¹⁸⁹ The Secretary's role relates to the provisions of services and promoting policies	Under the CPCA the 'Northern Territory Government has responsibility for promoting and safeguarding the wellbeing of children and supporting families in fulfilling their role in relation to children'.¹⁹⁴ The Northern Territory also includes assisting families as one of the objects in the CPCA. Under section 5, one of	Functions of the Minister include: • providing services to strengthen and support families, reduce child abuse and neglect and maximise the wellbeing of children • promoting a partnership between government, local government and non-	Supporting families is prescribed in relation to the Minister's role , which includes: • providing services to strengthen and support families and reduce child abuse and neglect, and • promoting a partnership between government, local government and non-government agencies and families to take responsibility for	The CSWA outlines the role of the Minister 'to promote the co-ordination of Government programs that affect child wellbeing and safety'.¹⁹⁹ A purpose of the CYFA is 'to provide for community services to support children and families'.²⁰⁰ Under the CSWA a list of principles for children guides the	Supporting families and strengthening families are referred to under the objectives and CEO's functions, respectively.²⁰³ Factors the CEO must have regard to in carrying out their functions include: • promoting strengthening families and communities to achieve self-reliance and provide for the care and

¹⁸⁹ *Children and Young Persons (Care and Protection) Act 1998 No 157 (NSW)*, s15

¹⁹⁴ *Care and Protection of Children Act (NT)*, s7

¹⁹⁹ *Child Wellbeing and Safety Act 2005 (Vic)*, s6

²⁰⁰ *Ibid*, s1

²⁰³ *Children and Community Services Act 2004 (WA)*, ss6,21

reduce child abuse and neglect. ¹⁸⁸	and procedures, which, may include, for example, 'promoting the raising of children and young persons within families and supporting communities involved in the care and protection of children.'¹⁹⁰ One of the objectives of the CYPCPA is that there is appropriate assistance to parents and other persons responsible for children and young persons for their child-rearing responsibilities to	the objectives is to assist families to promote the wellbeing of children.	government agencies and families to take responsibility for child abuse and neglect, and • providing information or education to parents, prospective parents and the community regarding children's social, developmental and safety requirements.¹⁹⁵ One of the objectives of the	child abuse and neglect.¹⁹⁷ Functions are also prescribed for the community-based intake service which includes providing children and families with a referral service that is accessible and enables early intervention.¹⁹⁸	development and provision of services in relation to the wellbeing and safety of children.²⁰¹ The principles guide government, government-funded and community services to children and their families. The list is extensive and includes, amongst other factors, shared responsibility for promoting the wellbeing and safety of children and parents being a child's primary nurturers and government having	wellbeing of their members • promoting the wellbeing of children, other individuals, families and communities, and • encouraging collaboration between public authorities, non-government agencies and families in services and responding to child abuse and neglect.²⁰⁴ One of the principles prescribes 'that the preferred approach to safeguarding and promoting a child's
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¹⁸⁸ *Children and Young People Act 2008 (ACT)*, s22

¹⁹⁰ *Children and Young Persons (Care and Protection) Act 1998 No 157 (NSW)*, s16

¹⁹⁵ *Children's Protection Act 1993 (SA)*, s8

¹⁹⁷ *Children, Young Persons and Their Families Act 1997 (Tas)*, s7

¹⁹⁸ *Ibid*, s53E

²⁰¹ *Child Wellbeing and Safety Act 2005 (Vic)*, s5

²⁰⁴ *Children and Community Services Act 2004 (WA)*, s21

	promote a safe and nurturing environment.¹⁹¹ A child or their parent can seek assistance from the Secretary to enable their child to stay with, or return to, their family.¹⁹² A non-government agency can also seek assistance for other services on behalf of a child. To safeguard or promote the safety, welfare and well-being of a child or young person, the Secretary must provide advice, assistance, make a referral or take		CPA SA recognises the priority to be given to supporting and assisting the family to carry out its responsibilities to children.¹⁹⁶		limited intervention. Part 3.2 of the CYFA prescribes provisions 'to enable a confidential report or referral to be made about a child if there is a significant concern for the wellbeing of the child.'²⁰²	wellbeing is to support the child's parents, family and community in the care of the child'.²⁰⁵
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¹⁹¹ *Children and Young Persons (Care and Protection) Act 1998 No 157 (NSW)*, s8(c)

¹⁹² *Ibid*, s21

¹⁹⁶ *Children's Protection Act 1993 (SA)*, s3

²⁰² *Children, Youth and Families Act 2005 (Vic)*, Part 3.2

²⁰⁵ *Children and Community Services act 2004 (WA)*, s9

	other action they consider necessary. ¹⁹³ It does not matter if the child is suspected of being in need of care or protection or not.					
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¹⁹³ *Children and Young Persons (Care and Protection) Act 1998 No 157 (NSW)*, s172

Appendix C

Key aspects of linkages between domestic violence orders and child protection orders in interstate legislation

Australian Capital Territory	New South Wales	Northern Territory	South Australia	Tasmania	Victoria	Western Australia
The Childrens Court can make an interim or final DVPO protection order upon the making of an application for a care and protection order. ²⁰⁶	Making an apprehended violence order must be considered insufficient before emergency removal of a child can occur or before a warrant can be issued. ²⁰⁷	A domestic violence order does not need to be made if an order is in force for the child's protection under another Act. ²⁰⁸	An intervention order prevails over a care and protection order to the extent of any inconsistency but the Youth Court can vary or revoke the care and protection order on application. ²⁰⁹	The court may make a restraint order in addition to, or instead of, an assessment order for a child. ²¹⁰	Family violence intervention orders prevail over child protection orders. However, if the Children's Court is hearing a child protection order application, in certain circumstances the Court may revoke or vary the family violence intervention order to the extent the order is inconsistent with the proposed child protection order. ²¹¹	A court must not make a restraining order for a child who is subject to child welfare laws unless the order is made as a result of intervention by the Chief Executive Officer(child welfare) or because the child's carer has consented to proceedings. ²¹²

²⁰⁶ *Children and Young People Act 2008*, (ACT), ss459,460

²⁰⁷ *Children and Young Persons (Care and Protection) Act 1998*, (NSW), ss43,233

²⁰⁸ *Domestic and Family Violence Act* (NT), s29

²⁰⁹ *Intervention Orders (Prevention of Abuse) Act 2009* (SA), s16

²¹⁰ *Children, Young Persons and Their Families Act 1997* (Tas), s23

²¹¹ *Family Violence Protection Act 2008* (Vic), s173

²¹² *Restraining Orders Act 1997* (WA), s50B