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The Hon Mark Dreyfus KC MP
Attorney-General
Family Law Reform
Attorney-General's Department
3 – 5 National Circuit
BARTON ACT 2006

Via email: FamilyLawReform@ag.qow.au

Dear Attorney-General

The Queensland Family and Child Commission (QFCC) is pleased to provide a submission to the Exposure Draft of the *Family Law Amendment Bill 2023* (Exposure Draft). The QFCC supports reform of the family law system to ensure it is accessible, safe and meets the unique needs of all Australian children and families.

The QFCC is a statutory body of the Queensland Government. Its purpose is to influence change that improves the safety and wellbeing of Queensland's children and their families. The QFCC's work is underpinned by explicit commitments to Aboriginal and Torres Strait Islander children and their families and advancing the rights of children.

In 2021 Queensland had the highest rate of divorce of all States and Territories – at 2.6 divorces per 1,000 population. Around half of all divorces involved children, with 12,367 children impacted by divorce. The QFCC has provided feedback in relation to specific areas of the Exposure Draft, including on matters which were raised by Youth Advocates – members of the QFCC's Youth Advisory Council.

Best interests of the child

The QFCC acknowledges that the best interests of children and young people are central to operation of Part VII of the *Family Law Act 1975* (Cth) and supports the continued prioritisation of children's best interests through the proposed amendments. It considers that keeping children and young people safe from harm and listening to their views is paramount when determining their best interests. In practice, while there is a benefit to a child having a meaningful relationship with their parents, courts should not place this interest above a child's protection.



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Queensland Youth Advocates reflected on the range of potential benefits that the revised list of best interests could offer children and young people involved in family law proceedings, particularly opportunities to improve their safety and long-term mental health and wellbeing. They raised the importance of promoting children and young people's safety and needs when determining their best interests.

There is a risk that focusing too heavily on maintaining relationships with both parents and significant others could prioritise the needs of adults over the needs of the child.

At the end of the day, it should be all of those things [the proposed best interests] that are important, but the child's welfare and that the views they've expressed should come before anything else.

While legislative amendments are an important step, Youth Advocates also raised the following matters relating to support and procedures for promoting children's best interests:

- support should be available for carers and families to help them build their capacity to care for children; and
- review mechanisms are needed to ensure that arrangements remain in the best interests of children and are keeping them safe as their circumstances change.

The QFCC supports an explicit requirement to also consider the right of Aboriginal or Torres Strait Islander children to have opportunities to connect with, and maintain their connection with, their family, community, culture, Country, and language in conjunction with their other best interests. Provisions similar to this can be found in most State and Territory Child Safety legislation.

The QFCC respects the right to self-determination and the critical importance of continuing connection to kin, Country and culture in the lives of Aboriginal and Torres Strait Islander peoples. To this end, it supports amendments which will provide for Aboriginal and Torres Strait Islander peoples to participate in decision-making processes about their children, including the intent of amendments to the definition of 'family member'.

Independent Child Lawyers

Children and young people are directly affected by the outcomes of family law proceedings and parenting agreements and thus have a right to participate in associated judicial and administrative proceedings, as expressed in Article 12 of the Convention on the Rights of the Child.¹ Hearing from and acting on their voices can allow for family law proceedings to consider the views of the entire family, not just adults.

¹ United Nations Office of the High Commissioner of Human Rights, *Convention on the Rights of the Child*, 1989, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>, accessed 18 April 2018.



The QFCC acknowledges that the proposed requirement for Independent Child Lawyers to meet with children offers greater opportunities for children's voices to be heard during family law proceedings, however we question why lawyers rather than other professions, are deemed best placed to do this.

Additionally, it is important that children are able to express their views in ways that are meaningful, youth-friendly, culturally safe and do not expose them to harm or distress. Youth Advocates considered children and young people should be:

- provided with information, support and safeguards to help them voice their views—either directly or indirectly through professionals—free from repercussions;
- supported and protected to express their views in a way free from intimidation or coercion;
- provided opportunities to share their views from an earlier age;
- able to share their voice with courts through multiple avenues, not only Independent Child Lawyers;
- have access to counselling, psychological and emotional support; and
- provided clear feedback about how their views were considered in decisions and outcomes.

The QFCC supports ongoing improvements to enable children to safely and meaningfully share their views during family law proceedings. It considers that Independent Child Lawyers may not always be best placed to achieve this and further consideration should be given to other professionals or advocates who are can support children to share their views.

Harmful proceedings orders

The QFCC supports the described intent of harmful proceedings orders to enhance the power of the courts to protect parties, and their children, from the harmful effects of continuous, unjustified litigation, however it is important to promote integrity when exercising these orders and balance this with rights to access justice.

When focusing on the motivations or credibility of parents seeking family law proceedings, there is a risk that the safety and best interests of children can unintentionally become a secondary consideration.

Similarly, labelling a parent as 'harmful' or 'vexatious' in family law proceedings may have unintended consequences for other agencies' involvement with them and their children, such as influencing assumptions about parents' motivations for reporting concerns for children.

Appropriate use of these orders should thus be clearly outlined in policies and subject to rigorous decision-making and oversight mechanisms.



Other matters

While out-of-scope of the current inquiry, the following matters raised by the QFCC and Youth Advocates should be considered in future improvements to the family law system:

- access to emotional support in schools and communities for children who are experiencing family law proceedings;
- providing accessible education and information to children and families prior to and during proceedings; and
- identify opportunities to improve coordination and information sharing between the child protection and family law systems to reduce burden on families to navigate complex systems and help to keep children safe.

If you or your officers have any queries in relation to this matter, please contact strategic.policy@qfcc.qld.gov.au

Yours sincerely



Luke Twyford
Principal Commissioner
Queensland Family and Child Commission

27 February 2023

