

# The next chapter in child protection legislation for Queensland

Consultation report

May 2017



supporting  changing  
families futures

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# BACKGROUND

The Queensland Government is committed to implementing the recommendations made by the Queensland Child Protection Commission of Inquiry (QCPCOI) to improve Queensland's child protection and family support system through its *Supporting Families Changing Futures* reform program (the reform program).

The comprehensive review of the *Child Protection Act 1999* (the Act), which commenced in September 2015, is a key commitment of the reform program.

New, contemporary child protection legislation will underpin the wide ranging reform program and help ensure Queensland's children and young people are safe, protected and able to reach their full potential.



# TOWARDS NEW CHILD PROTECTION LEGISLATION FOR QUEENSLAND: A TIMELINE

- July 2013** QCPCOI recommended a review of the Act.
- December 2013** Queensland Government accepted the recommendations of the QCPCOI, committing to thoroughly review the Act to ensure it provides a contemporary legislative framework for the new child protection and family support system.
- May 2014** First stage of legislative reforms commenced to establish new oversight structures for child protection.
- January 2015** Further legislative reforms commenced to consolidate and clarify reporting requirements.
- September 2015** First stage of consultation on the review of the Act commenced with the release of the public discussion paper *Supporting families and protecting children in Queensland: a new legislative framework*
- April 2016** *Supporting Families Changing Futures: Advancing Queensland's Child Protection and Family Support Reforms* is released, to demonstrate the Queensland government's ongoing commitment to implementing QCPCOI recommendations, in partnership with the non-government sector, peak bodies and communities.
- March 2016** First stage of consultation on the review of the Act concludes. Around 350 stakeholders attended 16 statewide community consultation forums, and 50 submissions were received in response to the public discussion paper.
- July 2016** Second stage of legislative reforms commenced to support a new court work model.
- October 2016** Second stage of consultation on the review of the Act commenced with the release of *The next chapter in child protection for Queensland: Options paper*
- January 2017** Second stage of consultation on the review of the Act concludes.



# FIRST STAGE OF CONSULTATION ON THE REVIEW OF THE ACT

The review of the Act commenced in September 2015 with a six month public consultation on the discussion paper *Supporting families and protecting children in Queensland: a new legislative framework*. The discussion paper was available on the department's website [www.communities.qld.gov.au](http://www.communities.qld.gov.au) and Get Involved at [www.getinvolved.qld.gov.au](http://www.getinvolved.qld.gov.au)

The discussion paper sought the views of Queenslanders on a range of broad foundation issues about the possible role and purpose of legislation in improving opportunities and life outcomes for children, young people and their families who are in contact with the child protection system.

This consultation was the start of a conversation with the people of Queensland about what laws we need in place, both now and into the future, to keep children and young people safe and able to reach their full potential, and to support families and communities to safely care for their children.

We heard from children and families with experience of the child protection system, non-government service providers who support them, our government partners, peak bodies, legal bodies, education institutions and advocacy groups about the important issues for new legislation.

## Consultation

- 348 people participated in 16 community forums across Queensland
- 51 written submissions were received in response to the discussion paper
- Over 100 Aboriginal and Torres Strait Islander people participated in one-on-one, small group and yarning circle consultations

## What we heard from stakeholders

We heard that Queensland's child protection legislation should:

- promote the safety, wellbeing and best interests of a child now and throughout their lives
- underpin the *Supporting Families Changing Futures* reform program
- prioritise meaningful participation of children and families in decisions that affect them
- be less complex, and more accessible, to people who use it
- be enabling, rather than unnecessarily prescriptive
- address the disproportionate representation of Aboriginal and Torres Strait Islander children
- embed a shared responsibility across government, non-government service providers, families and communities.



# SECOND STAGE OF CONSULTATION ON THE REVIEW OF THE ACT

The second stage of consultation on the review of the Act commenced in October 2016.

*The next chapter in child protection for Queensland: Options paper* (the options paper) set out options for how the Act could be redesigned, in response to what we heard from the first stage of consultation on the review of the Act. The options paper was available on the department's website [www.communities.qld.gov.au](http://www.communities.qld.gov.au) and Get Involved at [www.getinvolved.qld.gov.au](http://www.getinvolved.qld.gov.au) Stakeholders were invited to comment on all of the options across 13 key topics, or only those that interested them. We asked for feedback on which options stakeholders supported, if any of the options had any unintended consequences, and if there were any other options that needed to be considered.

We talked with Queenslanders about the options paper through statewide community forums and other targeted consultations.

People were also invited to make written submissions. Submissions closed on 16 January 2016.

Through the consultation we heard from a wide range of people about their views on the proposed options for new legislation. This included children and young people, parents, carers, peak bodies, service providers, legal professionals, educational institutes, government advisory groups and our government partners.

## Consultation

- 250 people participated in nine community forums in Ipswich, Beenleigh, Caboolture, Townsville, Mackay, Roma, Cairns, Brisbane and Rockhampton.
- 128 written submissions were received in response to the options paper.
- Aboriginal and Torres Strait Islander people from eight communities across Queensland participated in one-on-one, small group and yarning circle consultations.



## What we heard from stakeholders

This section of the report addresses the key themes and broad feedback provided by stakeholders. To ensure confidentiality we have not named stakeholders.



### **A broader purpose and strengthened principles**

Stakeholders generally supported a broadened purpose of the Act and strengthened principles. Feedback indicated that people felt it was important that legislation recognise the role of the state in not only protecting children, but also in supporting families to safely care for and protect their children, and to promote a child's wellbeing.

Some stakeholders proposed a dedicated piece of legislation on child and family wellbeing, separate from legislation for the tertiary child protection system.

There was also support for expanding the paramount principle to include a focus on longer-term life outcomes when decisions are made about a child. This could expand the paramount principle to be, for example, 'the safety, wellbeing and best interests of the child now and throughout their lives'.

However, while stakeholders supported this option, it was also recognised that the paramount principle should continue to encourage a focus on planning and meeting immediate safety needs while allowing a holistic approach to providing long-term support to children and families.

Some stakeholders raised concerns that expanding the paramount principle to include a longer-term focus could be perceived as a commitment to ongoing state intervention in the lives of families, although this is not the intention.

Many stakeholders recognised the benefits of providing more guidance in legislation on what is meant by a child's 'best interests', as this may help to support more consistent decision making.



### **Addressing the disproportionate representation of Aboriginal and Torres Strait Islander children**

We heard from Aboriginal and Torres Strait Islander children and young people that they have better outcomes when they are more strongly connected to their community and culture. Stakeholders commented that it is important to recognise the differences between Aboriginal and Torres Strait Islander culture and traditions in the Act. This includes the definitions of family and parent reflecting Aboriginal and Torres Strait Islander family structure.

Feedback also showed strong support for moving towards greater self-determination for Aboriginal and Torres Strait communities as a strategy to address the disproportionate representation of Aboriginal and Torres Strait Islander children in the tertiary child protection system. This includes greater participation in decision making, oversight and service delivery and ensuring that the voices of grandparents and elders in decision making are recognised.



We heard suggestions from Aboriginal and Torres Strait Islander communities about how self-determination could be realised. This could include ensuring effective participation in all processes that impact on the safety and wellbeing of Aboriginal and Torres Strait Islander children, supporting communities to have a greater role in developing and delivering solutions, and delegation of authority where, for example, a community board or a community panel could have a role in decision making.

There was broad support from a wide range of stakeholders for moving towards delegation of some functions and powers to an Aboriginal and Torres Strait Islander entity in relation to a child who is subject to a child protection order. However it was also acknowledged that it may likely take a long time to achieve and that delegation models need to be adequately resourced to help ensure success. Aboriginal and Torres Strait Islander communities suggested that capacity of the relevant organisations needs to be built before this can be fully achieved, and there may need to be a phased approach to delegation of responsibility.

Stakeholders told us that additional principles should be added to the Act that explicitly recognise all five domains of the Aboriginal and Torres Strait Islander Child Protection Principle — prevention, partnership, placement, participation and connection.



### **A shared responsibility across government for child protection and wellbeing**

There was broad support for legislation to recognise the shared responsibility across government for child protection and wellbeing, noting that that this approach is in line with legislation in other places such as New Zealand, Scotland and Victoria.

This includes coordination of decision making and services to meet the care, protection and wellbeing of children, and support vulnerable families.

Stakeholders generally supported including a requirement for a whole-of-government action plan or strategy in legislation, and greater accountability for government agencies responsible for the wellbeing of children.



### **A contemporary quality and safeguards framework**

Stakeholders generally supported developing and applying a quality and safeguards framework for the Act. Some stakeholders noted possible models such as the child safe organisation framework being considered by the Royal Commission into Institutional Responses to Child Sexual Abuse, the National Disability Insurance Scheme quality and safeguards framework, or the Hope and Healing Framework (a trauma-informed therapeutic framework which will be rolled out by the department across Queensland by December 2018 to all funded residential care services to improve the quality of residential care provided to children and young people).

Some stakeholders noted that a quality and safeguards framework could be a way to help ensure culturally appropriate service delivery to Aboriginal and Torres Strait Islander children, young people, families and communities.



Stakeholders supported clarifying the out-of-home care service licensing requirements in the Act, including clarification of the interface between licensing and service standards requirements (Human Services Quality Framework).

There were mixed responses to the option to specify minimum qualifications for people working in residential care. While most stakeholders agreed that appropriate training, support and supervision were necessary for people working in residential care, some noted concerns about introducing minimum qualifications. Concerns included the need for additional resourcing, unintended consequences including reducing labour mobility from other sectors into residential care and vice versa, and that qualifications form only a part of the relevant skills needed given the different roles in residential care and different needs of children and young people in care.



### Meaningful participation by children in decision making

There was clear support for a broad rights-focus throughout the legislation and for including a preamble that recognises United Nations human rights instruments such as the United Nations Convention on the Rights of the Child and the United Nations Declaration on the Rights of Indigenous Peoples.

Stakeholders consistently agreed that legislation should make it clear that a child or young person has the right to have their views heard about decisions that affect them, in ways that are appropriate for the child's or young person's age. Stakeholders noted that the Aboriginal and Torres Strait Islander Child Placement Principle domain of 'participation' could guide the meaningful participation of Aboriginal and Torres Strait Islander children and young people.

Some stakeholders noted that children and young people should not be required to give their views if they are unwilling to do so.

There were differing perspectives on whether the Charter of Rights should be revised and expanded to apply to all children involved in the system. Some stakeholders were concerned that applying the Charter of Rights more broadly may dilute its focus and intent.



### Child wellbeing

Stakeholders were broadly supportive of providing guidance in legislation about what is meant by the concept of child wellbeing. This would help the department to better assist vulnerable families to voluntarily access the support they need. Some stakeholders cautioned against providing a prescriptive list to define wellbeing.

There was consistent support for principles and provisions to encourage working with families at each point of their involvement in the system.

Feedback indicated support for legislation to enable the use of an assessment and service response in place of an investigation, where appropriate, with adequate safeguards in place.

There was mixed feedback on including a requirement that the Childrens Court must be satisfied that the department has taken all reasonable efforts to provide support to the child and family. Stakeholders cautioned that such a requirements would not prevent the Childrens Court from making an order where there is a clear need for protection.





### Working with families with parental agreement

There was mixed support for outlining in legislation, the roles and responsibilities of non-government services engaged by the department to support a child and their family during the development and agreement a case plan for the duration of a care agreement.

Feedback indicated broad support for clarifying parents' rights during the process of developing and agreeing on a case plan, and their responsibilities for the duration of the care agreement. Stakeholders also agreed that the development of a care plan should clearly recognise Aboriginal tradition and Island custom. This could include providing for broader representation from the community, family and kinship group in the development of, and agreeing on, the agreement.

Enabling a family care agreement for more than one child, such as siblings, based on a single case plan was also supported.

There was mixed support for extending child protection care agreements longer than currently allowed, noting that this may impact on achieving stability for a child. Stakeholders indicated that there needs to be a balance between giving parents enough time to change, and children's need for stability and permanency.

Stakeholders considered there was benefit in enabling the department to reasonably direct a parent to do, or refrain from, doing something directly related to a child's protection, while providing support to a family with their agreement. However, some stakeholders suggested directive orders may discourage parents from entering into voluntary agreements. There was only limited support for directive orders extending to ouster orders.



### Parental responsibility

There was general support from stakeholders for the option to maintain the broad definition of parent throughout the Act, to ensure all persons with a legal interest, including people who are considered parents under the narrow definition, have the right to participate in court proceedings regarding their children.

There was broad support for introducing and defining a new concept of parental responsibility in the Act, to replace the terms 'custody' and 'guardianship'. Some stakeholders noted that this could help reduce any confusion between parenting, custody and guardianship.

There was general support for shared parenting orders. We heard from parents who are involved in the child protection system who supported the concept of shared parenting care orders. They considered this could help ensure a parent remains involved in a child's life and could be considered as a viable form of permanence. Other stakeholders noted that shared parenting orders could help to provide clarity about the decisions made about children.





### Collaborative case planning

There was broad support for including enabling, flexible case planning provisions in the Act and making requirements less prescriptive.

There was general support for delegation of case responsibilities to particular non-government entities or individuals in the future, with appropriate quality and safeguard measures to ensure the safety and wellbeing of a child. Some stakeholders noted that delegation of case planning to Aboriginal and Torres Strait Islander organisations could be helpful in enabling the development of culturally appropriate case plans for Aboriginal and Torres Strait Islander children and young people.



### Meaningful participation of families and decision making

There was strong support for strengthening principles in the Act that recognise a family's rights to meaningfully participate in planning and decision making, as much as possible.

Many stakeholders supported embedding natural justice and procedural requirements into all relevant decision making points in legislation. Some stakeholders noted that providing families with the information they need to meaningfully participate, and to have access to recourse on decisions that affect them, would have resource implications.

We heard clearly from stakeholders that legislation should provide for collaborative Aboriginal and Torres Strait Islander family led decision making. This would be informed by the current trials of these processes.



### Information sharing

Some stakeholders considered that, while existing information sharing provisions already enable relatively broad information sharing, the provisions are not easily interpreted.

Stakeholders supported clarifying existing provisions to make information sharing clear and accessible to those who use it.

There was strong support for broadening information sharing in a similar way to Chapter 16A the *Children and Young Persons (Care and Protection) Act 1998* (NSW). Stakeholders noted that seeking consent prior to sharing information should continue as best practice, and that obligations under the *Information Privacy Act 1999* would still apply.

Feedback recognised that information sharing provisions would need to enable any delegation of case management in the future.

There was very clear support for enabling adults who have been in out-of-home care to access information about personal and family history. Some stakeholders noted that, given the potentially distressing nature of some of this information, support should be made available to care leavers when they access it.





### Permanency

Stakeholders gave their clear support to prioritising and enabling permanency for children in the child protection system. This means enabling stable arrangements that allow for a child or young person's ongoing secure relationships and healthy development.

We heard from children and young people that permanency arrangements are critically important in their emotional wellbeing, as it helps them to feel settled in place at school, and be part of a family. We also heard that children and young people want to be involved in decision making about these arrangements.

Many stakeholders supported the introduction of a permanency hierarchy into the legislation that acknowledge additional considerations for Aboriginal and Torres Strait Islander children. Stakeholders considered that wherever possible, Aboriginal and Torres Strait Islander children should remain connected to their kin, culture and community.

Stakeholders were supportive of more direction in legislation on permanency planning.

Some stakeholders supported the introduction of provisions in legislation that prohibit the making of one or more short term orders unless the court is reasonably satisfied that it is in the best interests of the child to do so.

There was support for introducing a new kind of permanent care order to create a sense of belonging and security for children in contact with the statutory system. This new order would provide a long-term family environment for a child, with minimal ongoing intrusion from the department. Additional requirements and safeguards would be necessary for making permanent care orders for Aboriginal or Torres Strait Islander children, to ensure they are in the care of kin and community.



### Transition to independence

There was strong support from stakeholders for provisions in legislation to support young people in their transition to independence.

Stakeholders told us that case planning for transition should begin from the time a child reaches the age of 15, be specifically tailored to meet the needs of children and young people, and facilitate their housing and accommodation, education and employment, health, disability and other long term care and wellbeing needs. Some stakeholders even suggested that transition planning could commence from the moment a child enters care.

There was strong support to clarify in legislation that the department must ensure that a young person can access assistance for transition from care up until the young person reaches the age of 21. However many stakeholders advocated that this support should be available up until the young person reaches the age of 25.



## Other Queensland Child Protection Commission of Inquiry recommendations

Stakeholders provided feedback on Recommendation 8.9: *the department to develop a model for providing therapeutic secure care as a last resort for children who present a significant risk of serious harm to themselves or others* (recommendation accepted in principle, if and when Queensland Government finances permit). *The model should include, as a minimum, the requirement that the department apply for an order from the Supreme Court to compel a child to be admitted to the service.*

Stakeholders had divergent views on therapeutic secure care. A range of issues to be considered in the development of any model were raised, including the need for adequate safeguards and protection of children and young people's rights, clarifying who had the authority to make an order in relation to secure care, how restrictive practices would be regulated in secure care environments, and the need for interventions to support the child or young person in reunification with their family after leaving secure care.

## Other issues raised

We heard from a number of stakeholders that legislation should be representative of Queensland's diversity. This includes parents with disability, children and young people with disability, people from culturally and linguistically diverse communities and religious diversity.

## Other reviews, inquiries and initiatives

There are a number of other reviews, inquiries and reform initiatives underway that will be considered as the design of Queensland's new child protection legislation progresses. These include:

- The Queensland Family and Child Commission's (QFCC) reviews of the foster care system and blue card system; and the review of the Suspected Child Abuse and Neglect (SCAN) team system
- The development of the Queensland strategy and action plan to address the disproportionate representation of Aboriginal and Torres Strait Islander children the child protection system
- The Department's comprehensive review of the Recognised Entity program
- Queensland's commitment to work with other states through the Council of Australia Governments (COAG), to progress a proposal for a national reportable conduct scheme
- The final report of the Royal Commission into Institutional Responses to Child Sexual Abuse; and other interim reports and discussion papers released by the Royal Commission.



# NEXT STEPS

The feedback from the consultation on the review of the Act is being considered in developing possible reforms to Queensland's child and family legislative framework.

Priority amendments to the child protection legislation will be progressed, and will allow for:

- a contemporary information sharing regime focused on children's safety and wellbeing
- the safe care and connection of Aboriginal and Torres Strait Islander children with their families, communities and cultures
- permanency and stability for children in out-of-home care, now and throughout their lives, including after-care support.

Further legislative reforms will be progressed in response to other issues raised in the consultation process, to achieve a broader transformational change of the child protection legislation.

Information about the progressive changes to legislation will be available on the department's website [www.communities.qld.gov.au](http://www.communities.qld.gov.au)



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