



# LET'S GET READY

*Changes to Queensland's child protection laws  
take effect on 21 May 2023*

*Information for Aboriginal and Torres Strait  
Islander stakeholders and community  
controlled organisations*





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## Background

The second tranche of amendments to the *Child Protection Act 1999* (the Act), resulting from the *Child Protection Reform and Other Legislation Amendment Act 2022*, will commence on 21 May 2023.

They address outstanding recommendations from the *Queensland Child Protection Commission of Inquiry*, the *Royal Commission into Institutional Responses to Child Sexual Abuse*, the Queensland Family and Child Commission *Keeping Queensland's children more than safe: Review of the foster care system report* and significant issues arising from previous consultation and considerations related to obligations under the *Human Rights Act 2019*.

The amendments also aim to help Child Safety fulfill the Queensland Government's commitment to achieving key priorities of *Breaking Cycles 2023–2031*, the second implementation phase of the Our Way strategy. This requires a focus on changes that need to be made to systems and policy settings to eliminate the disproportionate representation of Aboriginal and Torres Strait Islander children in the child protection system by 2037 and to close the gap in life outcomes for Aboriginal and Torres Strait Islander children and families.

The amendments:

- strengthen the consideration that must be given to the Aboriginal and Torres Strait Islander Child Placement Principle when administering the Act
- strengthen Aboriginal and Torres Strait Islander children and families' rights
- strengthen the regulation of care
- reinforce children's rights in the legislative framework and strengthen children's voices in decisions that affect them
- make minor and technical amendments to improve the operation of the Act.

The commencement of tranche two completes the amendments required by the *Child Protection Reform and Other Legislation Amendment Act 2022*.



## Amendments that strengthen Aboriginal and Torres Strait Islander children and families' rights

### Making active efforts

The Act currently requires Child Safety to have regard to the child placement principles when making a significant decision about an Aboriginal or Torres Strait Islander child.

The amendments require Child Safety to not just 'have regard' but to 'make active efforts to apply' the Aboriginal and Torres Strait Islander Child Placement Principle, when making a significant decision.

The term 'active efforts' is defined in the Act as *purposeful, thorough and timely efforts*.

Significant decisions are:

- where or with whom a child subject to a child protection care agreement or order granting custody or guardianship to the chief executive will live
- matters that have a significant impact on the child's life including:
  - how to keep a child safe (immediate safety planning during investigation and assessment and ongoing intervention)
  - whether a child is in need of protection
  - case planning regarding the type of ongoing intervention that will be undertaken and how the child's needs will be met
- whether to refer a matter regarding an application for a child protection order for the child to the Director of Child Protection Litigation
- support service planning prior to the birth of an Aboriginal or Torres Strait Islander child
- a matter the child and/or family consider significant or is significant in the child's particular circumstances.

Active efforts are purposeful, thorough and timely steps taken, when making a significant decision, to uphold:

- a child's right to be brought up within the child's own family and community (the prevention principle)
- Aboriginal or Torres Strait Islander persons' right to participate in significant decisions about Aboriginal or Torres Strait Islander children (the partnership principle)
- if a child is to be placed in care, the child's right to be placed with a member of their family group (the placement principle)
- a child's right and their parents' and family members' right to participate, and be enabled to participate, in an administrative or judicial process for making a significant decision about the child (the participation principle)
- a child's right to be supported to develop and maintain a connection with their family, community, culture, traditions and language, particularly when the child is in the care of a person who is not an Aboriginal or Torres Strait Islander person (the connection principle).

Embedding the requirement to make active efforts to apply the Aboriginal and Torres Strait Islander Child Placement Principle in the Act is specifically intended to:

- help overcome structural issues or unrecognised systemic bias that contributes to Aboriginal and Torres Strait Islander children continuing to be disproportionately represented in the child protection system



- establish the standard of practice that is to be consistently applied
- ensure Aboriginal and Torres Strait Islander children remain connected with their families, communities and culture throughout any child protection intervention that may occur.

The amendments also aim to help Child Safety fulfill the Government's commitment to achieving key priorities of Breaking Cycles 2023–2031, the second implementation phase of the Our Way strategy.

## Consent for independent person

Currently, Child Safety must arrange for an independent person to facilitate an Aboriginal and Torres Strait Islander child's participation and family's participation in significant decisions - unless an exception applies. One of the exceptions is if the child does not consent or the child's family does not consent.

Current policy and procedures require Child Safety to collaborate with an Aboriginal and Torres Strait Islander child and family to make arrangements for an independent person and to only proceed with arrangements if the child and family consent.

The amendments uphold Aboriginal and Torres Strait Islander peoples' right to self-determination by changing a child's decision or the child's family's decision not to consent to an independent person's involvement from being an exemption, to being a pre-requisite for arrangements to be made.

The amendments also clarify the functions a child's independent person and the child's family's independent person (if they each have a separate independent person) must not carry without the child's consent and family's consent.

The functions include:

- facilitating participation
- attending a case planning meeting
- participating in the review and preparation of a revised case plan
- otherwise participating in a family group meeting and attending a court ordered conference related to the child.

Independent persons brochures have been updated to help support implementation:

- Brochure for Aboriginal and Torres Strait Islander families
- Brochure for people asked to be an independent person, and
- Brochure for Aboriginal and Torres Strait Islander children.

Email requests for copies of brochures to [ocp@cyjma.qld.gov.au](mailto:ocp@cyjma.qld.gov.au)

## Expanded partnership principle

The amendments require Child Safety to ensure Aboriginal and Torres Strait Islander persons have a meaningful opportunity to participate in decisions about the development and delivery of services for Aboriginal or Torres Strait Islander children and of services that support their families.

This is in addition to the right to participate when significant decisions about Aboriginal and Torres Strait Islander children are being made.

The formal strategies in place, including engagement with the Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSCIPP), community-controlled organisations, the Queensland First Children and Families Board, and the department's internal First Nations Council, will continue to be used to ensure Aboriginal and Torres Strait Islander peoples have ongoing opportunities to have a voice in decisions about services provided to children and their families under the Act.



In addition, Child Safety will continue to undertake consultation to seek views about specific issues, where this is appropriate and practical. The views of Aboriginal and Torres Strait Islander peoples and organisations expressed in other relevant engagement processes, published reports, research articles, service and program reviews, forums, stakeholder and community meetings, client feedback and complaints and other relevant processes will also be considered in decisions about the development and design of services.

Prior to making a decision about the proposed development or design of a service, that supports Aboriginal and Torres Strait Islander families or provides for the care and protection of Aboriginal and Torres Strait Islander children, consideration will be given to the extent to which it is consistent with, or addresses views or issues raised by Aboriginal and Torres Strait Islander peoples.

## Definition of kin

Currently, the Act defines kin in relation to a child as meaning:

- any of the child's relatives who are persons of significance to the child; and
- anyone else who is a person of significance to the child.

There are no cultural considerations in the current definition.

The amendment changes the definition of kin, in relation to a child, to mean persons who are:

- a member of the child's family group who is a person of significance to the child
- if the child is an Aboriginal child, a person who, under Aboriginal tradition, is regarded as kin of the child
- if the child is a Torres Strait Islander child, a person who under Island custom, is regarded as kin of the child
- another person
  - who is recognised by the child, or the child's family group as a person of significance to the child, and
  - if the child is an Aboriginal or Torres Strait Islander child, with whom the child has a cultural connection.

The amendment:

- ensures that persons who are kin to an Aboriginal and Torres Strait Islander child under Aboriginal tradition or Island custom are recognised as kin
- clarifies that a person is of significance to the child if the child or family consider the person to be of significance, and
- means that for an Aboriginal or Torres Strait Islander child, a person of significance to a child can only be approved as a kinship carer for the child if the person also has a cultural connection to the child.

The changed definition:

- upholds Aboriginal and Torres Strait Islander people's right to self-determination
- helps uphold Aboriginal and Torres Strait Islander children's right to maintain meaningful kinship relationships and maintain and enjoy a connection to their culture of origin
- ensures decisions about who is kin to an Aboriginal and Torres Strait Islander child can only be made with the involvement of the child and their family



- helps ensure decisions about who is kin uphold Aboriginal and Torres Strait Islander peoples' right under the *Human Rights Act 2019* to enjoy, maintain, control, protect and develop their kinship ties.

## Existing care arrangements affected by the new definition of kin

If a child does not have kin who can provide them with the safe care they need, being cared for by a person who is significant to them and has a close emotional bond with them, may be the best option for meeting their relational, physical and legal permanency needs and being supported to successfully transition to adulthood. The benefits resulting from the secure attachment that exists in such care relationships, regardless of whether approval is for foster or kinship care, are recognised and valued.

### *Kinship carers who have a current certificate of approval*

If the care relationship does not meet the new definition of kin, the carer can apply for renewal of approval as a foster carer. The approval can be for a particular child only if this is the carer's wish.

After 21 May 2023, if an approved kinship carer applies for approval as a foster carer before their current kinship approval expires, their kinship care approval will continue until the application for approval as a foster carer is finalised.

Prior to the expiry date, Child Safety will work with foster and kinship care service providers and kinship carers affected by the changed definition to provide information and support during their reapproval as foster carers.

A carer affected by the changed definition can continue to be supported by the same foster and kinship care service or kinship care service.

As it will be the first time the carer has been approved as a foster carer, the foster carer certificate of approval will expire after 1 year.

In recognition that the carer has previously been approved as a kinship carer for the child they are caring for, there will be a streamlined process for the first renewal assessment.

After the initial 1-year approval, the foster carer renewal assessment will consider:

- the assessment information that was gathered as part of the assessment for the current certificate of approval, if the certificate of approval was issued within 1 year of the application for renewal
- changes to the carer's or carer's personal circumstances.

The applicant will be required to complete a *Changes in carer circumstances* - Form 39 if there are any changes to their personal circumstances.

Unless specifically indicated by the carer's circumstances, there will be no requirement to complete an additional Carer health and wellbeing questionnaire.

The renewal assessment report together with the initial assessment report relating to the carer will be submitted to the CSSC Manager for consideration.

Any certificate of approval issued after the application for renewal of approval will expire after 3 years.

## Kinship carers who have applied for renewal of approval as a kinship carer

If an approved kinship carer has applied for renewal of approval as a kinship carer before 21 May 2023, their approval will remain in place until the renewal application is finalised. The renewal application can be processed as though the previous definition of kin was still in place.

If the renewal application is approved after 21 May 2023, the kinship carer's certificate of approval will expire after 3 years. Prior to the expiry date, Child Safety will work with care service providers and kinship carers affected by the changed definition to provide information and support during their reapproval as foster carers. The approval can be for a particular child only if this is their wish.





## Training considerations

What training is appropriate and how and when training is provided or accessed, may vary depending on the circumstances of the relationship between people who apply to be approved as foster carers for a child who has a significant relationship with them (but who is not kin).

Where appropriate, assessment requirements can be varied so that pre-approval training does not need to be completed before an applicant, who has a significant relationship to a child (but is not kin to the child) can be approved (or have approval renewed) as a foster carer for the child.

## Determining cultural connection

An Aboriginal and Torres Strait Islander child and their family are able to provide information:

- about who is kin to the child, or about who they want Child Safety to speak with to obtain information about this
- about the child's kin relationships.

Upholding the child and the child's family's right to identify whether a person has a meaningful cultural connection to the child is consistent with their rights under the participation and partnership elements of the Aboriginal and Torres Strait Islander Child Placement Principle.

It also helps fulfil Child Safety's obligation to ensure children have meaningful and ongoing opportunities to participate in decisions that affect them.

## Existing care arrangements that do not meet the new definition of kin

Existing kinship carer approvals will continue until the approval expiry date.

If the care relationship meets the new definition of kin, the carer can apply for renewal of approval as a kinship carer for the child.

If the care relationship does not meet the new definition of kin (and the care arrangement continues to be best able to meet the child's safety, belonging and wellbeing needs) the carer can apply for renewal of approval as a foster carer.

Prior to the expiry date, Child Safety will work with care service providers and kinship carers affected by the changed definition to provide information and support to assist their reapproval as foster carers, if applicable.

The care being providing to a child and the existing care relationship between children and their approved carers is greatly valued and will continue to be equally valued regardless of whether the carer is reapproved as a kinship or foster carer.

In circumstances where an Aboriginal and Torres Strait Islander child's care arrangement with a person who is of significance to them but who does not have a cultural connection with them, continues to be the best arrangement available, the carers may be approved as a foster carer. The approval can be for the particular child only if this is the carer's wish.

## Training considerations

When and how training can be accessed, and what training is required, may vary depending on the circumstances of the relationship between people who apply to be approved as foster carers for a child who has a significant relationship with them (but who is not kin).

Where appropriate, assessment requirements can be varied so that pre-approval training does not need to be completed before an applicant, who has a significant relationship to a child (but is not kin to the child) can be approved (or have approval renewed) as a foster carer for the child.





## Amendments that strengthen children's rights and voices

### Views about own best interests

An additional principle has been added to the Act that gives children the right to express their views about what is in their best interests when Child Safety is making decisions about their safety, wellbeing and best interests.

### Requirement to ensure children are given the opportunity and supported to participate

The amendments include a new *Principles for the participation of children*. The principles require Child Safety, when making a decision or exercising a power that affects or may affect a child, to make sure:

- the child is given meaningful and ongoing opportunities to participate
- the child is:
  - allowed to decide whether they participate in a decision
  - given information that is reasonably necessary to allow the child to participate
  - advised about what help is available to them
  - allowed to express views that are different to views they have previously expressed.

It also requires Child Safety to:

- understand and consider, or make a genuine attempt to understand and consider, the views expressed by the child
- listen to and engage with, or make a genuine attempt to listen to and engage with, the child
- ensure a record is made of the child's views that, if appropriate, uses the child's words
- ensure communication is carried out with the child in a way that is appropriate for them, having regard to their age, maturity, capacity, culture and circumstances
- ensure, if a child participates, they are allowed to decide how they will participate. This may include:
  - verbally or non-verbally
  - communicating directly with a particular person
  - communicating indirectly through a trusted person
  - communicating indirectly through someone independent such as their legal representative or health practitioner
  - communicating indirectly through a written statement or an audio or video recording
  - communicating indirectly through an expert report
  - participating separately from particular persons
  - giving the child the help they need to participate, if it is required.



## Right to seek review of a decision not to review a case plan

Currently, only a child who has a long-term guardian or permanent guardian (or the long-term or permanent guardian of a child) can ask Child Safety to review their case plan and apply to the Queensland Civil and Administrative Tribunal (QCAT) for a review of the decision if Child Safety refuses the request.

This means the right to seek review does not apply if the chief executive is the child's long term guardian (ie child subject to LTG-CE).

When the amendments commence, if a child subject to LTG-CE requests a review of their case plan and Child Safety decides not to review the plan, Child Safety must give the child a reviewable decision letter.

The child may then make an application to QCAT for the decision to be reviewed.

## Children's participation in decisions about programs and services

The amendments require Child Safety to make sure children have meaningful and ongoing opportunities to participate in decisions about programs and services relating to the Act.

A range of strategies will be used to ensure children's voices are heard and considered in decisions about programs and services, provided or funded by Child Safety.

The strategies will include consultation where appropriate and practical. They will also include listening to the issues raised and views expressed by children and young people in relevant local, state and national engagement processes, considering the findings of relevant research and feedback and complaints made by children and young people in contact with the child protection system.

## Charter of rights for a child in care

The amendments expand the charter to respond to contemporary legal and social issues, including children's cultural rights. The charter does this by providing children in care with additional rights, including the right to:

- be treated fairly and with respect
- develop, maintain and enjoy a connection to the child's culture of origin
- for an Aboriginal child—to develop, maintain and enjoy a connection to Aboriginal tradition
- for a Torres Strait Islander child—to develop, maintain and enjoy a connection to Island custom
- develop, maintain and enjoy the child's identity, including, for example, the child's sexual orientation or gender identity
- choose and practise one or more languages
- choose and practise one or more religions
- keep, and have a safe space to store, personal belongings
- engage in play, and other recreational activities, appropriate for the child
- make a complaint to the chief executive if the child considers that the charter of rights is not being complied with in relation to the child.

The amendments add new requirements for Child Safety to ensure:

Children in care are:

- *regularly* told about the chief executive's obligation to ensure the Charter is complied with



- *regularly* told about the child's right to contact Child Safety if the child has any questions or concerns about the child's protection and care needs.

Children subject to an order granting long-term guardianship to a suitable person or to a permanent care order are:

- *regularly* told about the charter and its effect, and
- *regularly* given written information about the Charter (having regard to the child's age and ability to understand).

Information provided to children about the charter and their rights under the charter is:

- communicated in language that is easy and clear for a child to understand, and
- carried out in a way appropriate for the child.

Children subject to a child protection order granting long-term guardianship of the child to a suitable person will be regularly provided with information about their rights under the charter and Child Safety's obligations by:

- providing the charter to them when the order granting long-term guardianship is made
- providing the charter to them each time Child Safety has contact with the child after the order is made (at least every 12 months, or more regularly if requested by the child or the guardian, or considered necessary by Child Safety)
- making the charter accessible on kicbox and the Department of Children, Youth Justice and Multicultural Affairs website <https://www.cyjma.qld.gov.au/>

Children subject to a permanent care order (PCO) will be regularly provided with information about their rights under the charter and Child Safety's obligations by:

- providing the charter to them when the permanent care order is made
- providing the charter to them if the case plan is being reviewed at the request of the child or guardian or for another reason
- making it accessible on kicbox and the Department of Children, Youth Justice and Multicultural Affairs website <https://www.cyjma.qld.gov.au/>



## Amendments that strengthen the regulation of care

### Information to be provided to carers

Currently, the Act requires Child Safety to give a carer, who is considering caring for a child, information about the child that the carer reasonably needs to make an informed decision about caring for the child.

The amendments provide examples to help clarify information a proposed carer may reasonably need. The examples include information about:

- why the child has come into care
- the child's medical or disability needs
- the proposed length of time of the placement
- other matters the carer reasonably needs to know to ensure the safety of the child, themselves and other members of their household.

The amendments also clarify that:

- comprehensive information is to be given to the carer and
- information must be given to carers in a way that is can be easily understood by the carer.

When a carer is caring for a child, the Act currently requires Child Safety to give the carer information about a child that they reasonably need to help them care for the child.

The amendments provide the following examples of information a carer may reasonably need to be given to enable them to (provide ongoing) care for a child:

- information that updates or corrects information previously given
- a copy of the child's case plan
- information about the child's goals, personality preferences and behaviours
- information about any special behaviour management needs of the child
- information about the child's family, culture and background
- information about any arrangements for contact between the child and the child's family group
- information about the child's specific needs including cultural needs, educational needs and support needs, if applicable.

### Support to be provided to carers

Child Safety has a long-standing commitment to providing carers with access to support and training to help them in their caring role and to be able to provide care consistent with the Statement of standards.

However, there is no specific requirement in the Act to do this.

The amendments require Child Safety to provide approved carers, or ensure that carers have access to, support to assist them care for a child. The amendments require Child Safety to do this to the extent it is practical and appropriate.

The amendments provide the following examples of support carers may need to care for a child:

- information about financial assistance
- information and advice about providing care for children
- respite care and
- access to support persons.



## Carer training

In addition to support, the amendments also require Child Safety to provide carers with, or access to training programs to maintain or develop their ability to care for children.

Access to training is also to be provided to the extent it is practicable and appropriate in the circumstances.

Embedding these requirements in the legislative framework recognises the key role carers play in protecting children and reinforces the need to give carers appropriate support and training to provide care.

## National carers' register

The Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) made recommendations about state and territory child protection agencies:

- developing and maintaining nationally consistent carers' registers.
- making legislative and administrative arrangements to enable states and territories to seek information about carer applicants and members of their household from another register, where relevant.

The amendments establish the legislative framework for Child Safety to maintain a register of information about people who have applied to be carers, are approved carers or former carers or are associated with an application for a licence for a licensed care service and people who perform certain roles for a licensed care service.

It is the first step in Queensland's approach to implementing the Royal Commission's recommendations.

Currently there is no agreement between jurisdictions for carers' registers to be established or accessed.

## Changes to amendments that may be made to a licence

When the amendments commence, Child Safety will be able to amend a licence at any time to remove, or temporarily remove, a licensed premise from the licence if:

- a licensed care service provided at the premises does not comply with the standards of care
- a person responsible for directly managing a licensed care service provided at the premises is not a suitable person or does not hold a blue card
- the methods for the selection, training and management of people engaged at the premises are not suitable
- if the premises is a residential service facility – the premises is not suitable for providing accommodation to children in need of protection.

The amendment enables appropriate action to be taken to address non-compliance at a specific facility included in the licence or within the organisation as a whole. This aligns with existing licensing practice and procedures.

## Changes regarding people engaged to perform a risk assessed role in a licensed care service

Currently, licensees must ensure people engaged to undertake certain roles are suitable persons (who do not pose a risk to the safety of children in care) and hold a blue card. This does not cover everyone it needs to.

The amendment addresses this by requiring anyone within a licensed care service who undertakes a role defined as being **risk-assessed** to be a suitable person who holds a blue card.



A risk-assessed role is a role a person holds at a licensed care service where the normal duties of the role are likely to require, permit or facilitate the person's direct contact with a child that may create an unacceptable level of risk for the child. This also includes roles where the person's normal duties allow them to access a child's personal information which would enable them to make contact with the child and roles where the person's normal duties include physically touching a child or building rapport with a child. Contact with a child may be physical, face-to-face, oral, written or electronic.

The amendment changes the requirement in the Act from only requiring a person engaged by a licensed care service to be a suitable person and to hold a blue card to requiring licensees to ensure that any person carrying out a risk-assessed role in the service is suitable and holds a blue card.

### **Who will need to ensure a person carrying out a risk-assessed role is a suitable person?**

A licensee will be responsible for ensuring that each person performing a risk-assessed role for a licensed care service is a suitable person. The Department of Children, Youth Justice and Multicultural Affairs, Central Screening Unit supports licensees to meet this requirement by undertaking screening and providing advice about whether the person poses a risk to the safety of children.

The amendments also ensure licensees will receive updated information about the blue card status of people performing risk-assessed roles in a licensed care services to ensure services know if a person performing a risk-assessed role cannot continue to do so because they are no longer eligible to hold a blue card.

### **Do the amendments change who needs a blue card?**

Yes. The amendments make minor changes to the *Working with Children (Risk Management and Screening) Act 2000* to require any person performing a risk-assessed role in a licensed care service to hold a blue card.

Currently a person requires a blue card if any of the usual functions of their employment is carried out, or is likely to be carried out, inside a licensed residential facility. A person also requires a blue card if they are employed by a licensed care service and any of the usual functions of the employment includes or is likely to include providing support to an approved carer. A person responsible for directly managing a licensed care service and a person who is engaged by a licensed care service, to provide care to a child, also require a blue card.

When the amendments commence, any person whose employment is carried out, or is likely to be carried out, inside a licensed residential facility, directly managing a licensed care service or performing a risk-assessed role for a licensed care service will require a blue card.

This includes a person directly engaged by a licensed care service to carry out a risk-assessed role or a person contracted from another entity to carry out a risk assessed role in the service.



## Information resources developed to support implementation

Available online: [www.cyjma.qld.gov.au](http://www.cyjma.qld.gov.au)

Brochures will be available in June 2023. Email requests for copies of brochures to [ocp@cyjma.qld.gov.au](mailto:ocp@cyjma.qld.gov.au)

### ***Strengthening children's rights and voices***

Children's rights animated video

Charter of rights for children in care brochure

Information for children in care webpage

### ***Aboriginal and Torres Strait Islander children and families***

Active efforts video

Active efforts brochure for families

Active efforts brochure for children

What is an independent person brochure for families

Being and independent person brochure

Independent person brochure for children

If you require further information **email:** [CPAReformImplementation@cyjma.qld.gov.au](mailto:CPAReformImplementation@cyjma.qld.gov.au)





**Queensland**  
Government