Supporting families and protecting children in Queensland: a new legislative framework

Public consultation for the review of the Child Protection Act 1999
Message from the Minister

Caring for children and keeping them safe is a shared responsibility.

As the Minister for Child Safety, I am committed to achieving the best possible outcomes for Queensland children and families.

The Queensland Government is working to build a new child protection and family support system that delivers efficient, effective and sustainable support to children and young people, families and communities.

Ensuring that the support system is underpinned by a strong and contemporary legislative framework is an important part of this work.

The social and economic issues families face now are very different to those they were facing nearly 20 years ago when the Child Protection Act 1999 was introduced. The services available to families have changed, and families’ expectations of the role of government in their lives have also changed.

Government will always have a role to play in keeping a small number of children and young people safe. Our greater role now is in enabling access to the right services and support at the right time for families and children in need.

In designing a legislative framework that supports families and protects children in Queensland, I want to hear your views about how Queensland’s future child and family support system can better enable families to care for and keep their children safe.

I look forward to your participation in the review of the legislation and look forward to sharing the outcomes with you.

The Honourable Shannon Fentiman MP
Minister for Communities, Women and Youth
Minister for Child Safety
Minister for Multicultural Affairs
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Designing a new legislative framework for supporting families and protecting children in Queensland

Opportunities and challenges

The world we live in is constantly changing. Right now we are seeing changes in the shape of the modern family, how communities connect and interact, the way that we value and care for children, and the role that government plays in the lives of citizens. These changes present opportunities and challenges to the important shared responsibility for promoting children’s wellbeing and keeping them safe from harm.

The Queensland Government is progressing wide-ranging reforms to Queensland’s child protection and family support service system. We are building a system that recognises that families have the primary responsibility for protecting and caring for their children, and that communities have a responsibility to support them in this important role. Through our reforms, we are building strong and cohesive communities, and building the capacity of families to safely care for their children.

As a key part of its reforms, the Queensland Government is considering the role and purpose of legislation in improving opportunities and life outcomes for children and their families. We are reviewing the Child Protection Act 1999, as recommended by the Queensland Child Protection Commission of Inquiry, to design a contemporary legal framework for the child protection and family support system. It is essential that new laws support effective and efficient services for children and families, now and into the future.

The current Act is more than 15 years old. There have been major advances in the field of child protection and family support across Australia over the past decade. The community’s expectations of government, and the way that human services are delivered, have changed dramatically since 1999.

This review provides an opportunity for the government to work with the community to design new, contemporary laws that are based on evidence of latest best practices, and on the lived experiences of children and families. Our goal is to build a new legislative framework that is relevant and effective now and over the next decade, and beyond.
Legislation is important for reflecting and giving effect to community expectations. It sets out government’s priorities and commitments, and provides the legal instruments needed to deliver services in an effective, efficient and fair way. Child and family legislation shapes the kinds of services available to families, and can have a profound impact on the opportunities and life outcomes of families and their children.

This review will consider the role that legislation can play in defining the service system, as well as the other tools available to government and the community to build an effective and efficient system. The Queensland Government recognises that not everything needs to be written into law, and legislation is not the solution to every problem. That is why we are progressing such wide-ranging reforms to the child protection and family support service system, including significant changes to how our staff work with children and families, the programs we deliver, and how we invest in services.

Why we need your help

The Queensland Government is committed to consulting with the community and listening to local concerns before taking action. By working together, we will achieve the best outcomes for Queensland families and children.

While government has key responsibilities in providing quality frontline services and helping to drive productivity, employment growth and social wellbeing, all Queenslanders have a role to play in achieving our community’s goals.

Laws that are made for the protection of children can have a profound, lasting impact on families. We want to hear from Queenslanders who have been affected by current and past child protection laws, to help us form new laws that support, not hinder, families.

This discussion paper marks the start of a conversation with the people of Queensland about what laws we need in place, both now and into the future, to support and empower families and communities to safely care for their children, and continue to build services in the community that support them when they need help.

This discussion paper outlines key foundational issues underpinning legislation, identifies a range of possible approaches and asks for your views about the best way forward. It sets the scene for further consultation with Queenslanders about specific matters that will be explored in more detail as part of the review.
Next steps

Over the next six months, we will consult widely with stakeholders on how our laws can support the role of families, communities, and government in providing for the care and protection of children.

We are especially interested in hearing the views and stories of children and families who have been involved in the child protection and family support system. This way, we can make sure our legislation provides for the best possible service experience for children and families in Queensland.

There will be different ways that you can participate and share your ideas. One way is to provide a written response to some of the questions throughout this discussion paper. These questions are in green boxes for ease of reference.

Over the coming months, there will be many other ways to get involved in this review, and have your say.

Your feedback will be used to develop the most appropriate legislative framework for the future.

It will inform a set of proposals for the way forward, which will be brought back to stakeholders for further consideration in 2016.

For further information about how to get involved with this review, please visit www.communities.qld.gov.au
Background to the review

The child and family reform agenda

The Queensland Government is progressing wide-ranging reforms to the child and family support system. Our vision for these reforms is:

Queensland children and young people are cared for, protected, safe and able to reach their full potential. Queensland families and communities are empowered to become stronger, more capable, more resilient and are supported by a child and family support system that understands and respects the importance of family, community and culture.

The child and family reforms are aimed at:

• supporting families to get the help they need before their problems escalate
• designing and delivering a new family support system
• changing the way that Child and Family Services works with children and families, including children in out-of-home care and children transitioning to independence
• addressing the pressing issues facing Aboriginal and Torres Strait Islander children, families and communities.

Already, we have delivered:

• new Family and Child Connect services, which are being rolled out across Queensland in 2015–2016. Family and Child Connect is a community-based intake system that enables vulnerable families to be referred for relevant support services
• new intensive family support services to work with families with multiple and complex needs, and provide case management to improve family safety and functioning
• the new Strengthening Families Protecting Children framework for child protection practice. This strengths-based, safety-oriented approach to working alongside families is supported by a statewide training program for staff from Child and Family Services and key government and non-government partner agencies
• the new Next Step After Care services, launched in April 2015. These services provide young people (aged 15 to 21 years), who have transitioned from statutory care to independence, with support to help them live independently.
Legislative changes supporting the roadmap

To achieve the child and family reforms, changes have already been made to the Child Protection Act 1999.

This first stage of legislative change was passed in 2014. The changes gradually commenced, with the last changes commencing on 19 January 2015.

The first stage of legislative changes included:

- the new Public Guardian Act 2014, which established the new Office of the Public Guardian, taking on the functions of the former Adult Guardian and the function of the Child Guardian formerly held by the Commission for Children and Young People and Child Guardian
- the new Family and Child Commission Act 2014 which established the Queensland Family and Child Commission, a statutory body reporting to the Premier to provide systemic oversight for the child protection system
- changes to the Child Protection Act 1999 about reporting matters to Child and Family Services, and to establish a new Child Death Case Review Panel
- the renamed Working with Children (Risk Management and Screening) Act 2000 to streamline the Blue Card system.

The Queensland Government is now considering a second stage of legislative changes that will drive improvements in how children and families experience the court system.

These first two stages of legislative change have been progressed ahead of a comprehensive review of the Child Protection Act 1999 to support priority reforms, including the rollout of new Family and Child Connect services.

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?
The broader policy environment

The Queensland Government is committed to working with Queenslanders to chart a better way for our state. The key priorities are:

• creating jobs and a diverse economy
• delivering quality frontline services
• protecting the environment
• building safe, caring and connected communities
• partnering for the future.

Through our child and family reforms, we are helping to deliver on these priorities. We are building strong and cohesive communities, in which children are safe and cared for. We are partnering with the community, non-government organisations and other government agencies to deliver the quality frontline services that families need.

Other reforms in the human services sector are producing innovative ways of working with families and individuals. These include the government’s social investment reforms, and the transition of disability services to a consumer-led model under the National Disability Insurance Scheme.

Research shows that governments need to achieve better value for their investment in human services. Evidence shows that investing early in a person’s life, and at key points of vulnerability across their life-course, gives governments greater return on their social investment, and improves the life opportunities and long term outcomes for citizens. Evidence points to three critical life stages for children to build their capabilities to become successful, self-sufficient and resilient adults:

• Early years — These lay the foundation for children’s future learning and lifetime outcomes, including the ability to form trusting and caring relationships.
• Middle years — Success at school is a key determinant of whether children go on to further education, training and employment.
• Transition into adulthood — Beyond compulsory schooling and the transition to higher education, work and independence.¹

The Queensland Government is committed to targeting its social investment to most effectively reduce vulnerability, prevent disadvantage and empower families and children to fully participate in social and economic opportunities. Our reform of the child protection and family support system will ensure that fewer children will need to be cared for outside of their families, and families will have the resources, skills and support they need to ensure their children are able to achieve their potential.
As we implement our reforms, we will monitor the outcomes of various public inquiries in Queensland, and nationally, which are providing further evidence about what works best to support families and keep children safe. These include:

- Australia’s Royal Commission into Institutional Responses to Child Sexual Abuse, which is expected to make recommendations to improve laws, policies and practices to create a safer future for children
- Queensland’s Special Taskforce on Domestic and Family Violence, which made 140 recommendations in its final report, delivered on 28 February 2015.
Supporting families and protecting children

Queensland’s child and family reforms
The Queensland Government is currently building a whole-of-community approach to the care and protection of children. We are working toward a Queensland where:

- families have the primary responsibility for the care and protection of their children, and are supported in this role by strong and cohesive communities
- services are available to build the capacity of families who need help caring for their children
- child protection services are available when there are no other options to keep a child safe, and only to the minimum extent necessary to keep the child safe.

A whole-of-community approach delivers on the idea of shared responsibility presented by the Queensland Child Protection Commission of Inquiry, in which everyone has a role to play in keeping children safe.

In a whole-of-community approach, families and extended family members, community members, government agencies and non-government service providers share responsibility for forming a system of support for the safety, wellbeing and best interests of Queensland children. This approach is illustrated in Figure 1.

Figure 1: Whole-of-community approach to protecting and caring for children

1. Prioritise activities and initiatives that build strong and cohesive communities
2. Provide a comprehensive suite of services to build the capacity of families who need help safely caring for their children
3. Deliver child protection services where there are no other options to keep a child safe from significant harm
Supporting Aboriginal and Torres Strait Islander families and children

In Queensland, as in all other Australian states and territories, Aboriginal and Torres Strait Islander children and families are disproportionately represented in the statutory child protection system. As illustrated in Figure 2 below, Aboriginal and Torres Strait Islander children make up only eight per cent of Queensland’s child population, and yet make up 41 per cent of children who are subject to intervention under the Child Protection Act 1999.

Figure 2: Disproportionate representation of Aboriginal and Torres Strait Islander children

<table>
<thead>
<tr>
<th>Queensland children</th>
<th>Children subject to intervention under the Child Protection Act 1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aboriginal and Torres Strait Islander 8%</td>
<td>Aboriginal and Torres Strait Islander 41%</td>
</tr>
<tr>
<td>Non-Indigenous 92%</td>
<td>Non-Indigenous 59%</td>
</tr>
</tbody>
</table>

It is clear that our child protection and family support system can better support Aboriginal and Torres Strait Islander families and children.

Through our child and family reforms, we have committed to:

• working across government to address the factors contributing to the over-representation of Aboriginal and Torres Strait Islander children in statutory child protection
• tailoring solutions to meet the needs of specific communities
• implementing solutions led by Aboriginal and Torres Strait Islander peoples and, wherever possible, by the communities themselves
• designing family-led decision-making responses to keep children safe.

Central to our child and family reform program, the Queensland Government is considering the role and purpose of legislation in delivering on these commitments.
Queensland’s *Child Protection Act 1999*

Queensland’s *Child Protection Act 1999* is the current legislation underpinning the child protection and family support system. The Act commenced in March 2000 and replaced the outdated and severely limited *Children’s Services Act 1965*. When it commenced, the *Child Protection Act 1999* reflected improved service delivery methods and changing community values. Subsequently, the Act has been the subject of multiple amendments, which over time, have resulted in it becoming complex and difficult to read and understand.

The purpose of the Act is to ‘provide for the protection of children’. Consistent with Australia’s commitment to the United Nations Convention on the Rights of the Child, the main principle guiding the administration of the Act is that the safety, wellbeing and best interests of a child are paramount.  

The Act also has a number of other general principles for ensuring the safety, wellbeing and best interests of a child, including:

- A child has a right to be protected from harm or risk of harm.
- Children’s participation in decision-making — Children should have an opportunity to participate in decisions affecting them.
- Principles specific to Aboriginal and Torres Strait Islander children — Aboriginal and Torres Strait Islander children should be allowed to develop and maintain connection with family, culture, traditions, language and community, and decisions about the child should take this into account.
- Preference for family preservation and reunification — Consistent with international rights statements in relation to family privacy and self-determination, the Act recognises that a child’s family has the primary responsibility for a child’s care and protection, that the preferred way of ensuring a child’s safety is by supporting his or her family, and protective intervention should be to the minimum extent required. If a child is removed from the care of his or her parents, support should be provided to return the child home safely.
- Permanence — Children need long-term, stable living arrangements, where family preservation and reunification are not possible or not in the child’s best interests. The benefits of permanence for children are well established in research.
The Act provides direction for responding to issues facing children and families who are involved with the statutory system, including:

- how people can raise concerns about children they believe to be in need of protection
- how families can be offered help and support
- the actions that government can take to assess concerns about children in need of protection
- how government will work with parents, families and children when a child has been assessed as needing protection
- the types of orders that the Childrens Court can make to protect children
- how courts and tribunals operate, the rights of parents and children involved in court matters, and the obligations of government in relation to court proceedings
- the standards for delivering services to children and families and the protection of their privacy, including standards expected from foster and kinship carers and other providers of out-of-home care.
A new legislative framework

What is the purpose of the legislation?

It is important that any legislation clearly states its purpose. The purpose of an Act explains why government is exercising powers that may override the rights and liberties of individuals, and why these powers are required to achieve government’s objectives.

The purpose of the Children Protection Act 1999 is to ‘provide for the protection of children’.

This purpose is narrower than that of most other Australian state and territory child protection laws. In addition, some other countries and Australian jurisdictions have laws about child wellbeing more broadly, which complement their tightly focused child protection legislation. For example, Victoria’s Child Wellbeing and Safety Act 2005 sets out principles for child wellbeing and the roles of agencies in promoting and monitoring the wellbeing of children.

The Queensland Government is committed to ensuring that children have the best opportunities at critical stages in their lives, to minimise their risk of experiencing disadvantage across their life-course and enable them to fully participate in social and economic opportunities. Having legislation that focuses on wellbeing can promote a comprehensive approach to children’s welfare, development and safety across government agencies. It can also set benchmarks and identify outcomes for children. It can position government and non-government services as enabling and supportive partners, working alongside families.

Different options for Queensland’s child and family legislation include:

• continuing to focus the legislation solely on the statutory child protection system
• limited broadening of the legislation to reflect the shared responsibility approach for supporting vulnerable families earlier, where their needs and capacities are impacting on their children’s safety and development
• significant broadening of the legislation to include the role of government in offering voluntary support to families and children, at key phases across the life-course, when extra assistance may be needed.
Getting the settings right

Children’s rights and best interests

Child protection and family support laws are founded on a strong human rights framework. Australia has signed up to a number of international rights statements, which are a significant foundation for the principles and settings underpinning our child protection and family support laws.

The main principle underpinning child protection laws in Queensland — that the safety, wellbeing and best interests of the child are paramount — gives effect to a number of international rights statements that Australia is a signatory to.

These state that:

- a child has the right to be protected from harm
- a child’s best interests should guide all decision making
- a child’s family has the primary responsibility for a child’s care and protection
- the preferred way of ensuring a child’s safety is by supporting his or her family
- protective intervention should be to the minimum extent required
- if a child is removed from the care of his or her parents, support should be provided to return the child home safely
- children commensurate with their age and stage of development, should have an opportunity to participate in decisions affecting them.

The government believes children’s rights must always be upheld, and children’s best interests should be paramount in all decisions affecting them.

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

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?

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?

5. How should Queensland’s child and family legislation promote children’s rights and wellbeing?
The Queensland Child Protection Commission of Inquiry raised concerns about the interpretation and subjective application of the child’s best interest principle in the *Child Protection Act 1999* and recommended that the Queensland Government:

- clarify in legislation that the best interests of the child are to guide all administrative and judicial decision making under the Act
- consider setting out the specific matters to be considered in determining the best interests of a child, similar to those in the Australian Capital Territory’s *Children and Young People Act 2008*.

Some other jurisdictions have not defined a child’s best interests in legislation. For example, Victoria has instead opted to provide guidance to legal and administrative decision makers through a unifying model of practice, supported by practice resources to promote a close alignment between policy and practice.

As part of this review, consideration will be given to the benefits of defining, or not defining, the matters to be considered in determining a child’s best interests. For example, not defining the matters allows each circumstance to be considered and determined on its merits, focuses decision makers on the priority of children’s rights over and above those of any other party, and allows for changing community expectations to be taken into account, over time.

The *Child Protection Act 1999* includes a principle about a child’s right to express his or her views on decisions made about him or her, but provides no guidance to decision makers about when and how a child’s views should be obtained and used, or the weight to be accorded to a child’s views of their best interests.

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?

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

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

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?
Parental and family responsibility

In our community, children are generally considered a vulnerable group, who, relative to their age and development, need the care and protection of one or more responsible adults. This responsibility usually sits with either the child’s mother or father or both, but not always. We live in a world where families come in a range of shapes and sizes, and it is important that child protection and family support laws recognise and reflect this diversity.

The Child Protection Act 1999 states that ‘a child’s family has the primary responsibility for the child’s upbringing, protection and development’. However, there is no further explanation about how the child’s family, apart from the child’s parents, has any responsibility for the child’s upbringing, protection and development.

The Child Protection Act 1999 defines ‘parent’ as ‘a child’s mother, father or someone else (other than the chief executive) having or exercising parental responsibility for the child’. However, the Act does not define the term ‘parental responsibility’.7 In Australian family law, parental responsibility is defined as ‘all the duties, powers, responsibilities and authority which, by law, parents have in relation to children’.8 The same definition has been incorporated into child protection laws in some other states, such as New South Wales.

The Act also specifically acknowledges a broader meaning of ‘parent’ in Aboriginal tradition and Torres Strait Islander custom.9 However, some parts of the Act do not recognise broader family and kin as having parental responsibility — for example, when matters go to the Childrens Court.10 People who may have been exercising parental responsibility for a child may not be notified or given an opportunity to participate in decisions that may affect their ongoing relationship and parental role with the child.

In its final report, the Queensland Child Protection Commission of Inquiry recommended that the concept of parental responsibility be defined in the Child Protection Act 1999, particularly in relation to child protection orders.11 The Commission of Inquiry suggested that the concept of parental responsibility could be used to combine the current concepts of custody (daily care of a child) and guardianship (parental powers, rights and responsibilities).12
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?

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

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?

Shared community responsibility
While parents traditionally have the primary responsibility for the care and protection of their children, there is a wider role that we all play in promoting children’s safety, wellbeing and best interests.

The Commission of Inquiry called for Queensland to take more shared responsibility for the safety and wellbeing of children, and outlined how Queensland can deliver on this by:

• families taking greater responsibility for the safety and wellbeing of their children, and not relying on child protection services as a co-parent
• communities acting as a source of strength and support for families who are facing issues that may impact on the safety and wellbeing of their children, such as domestic and family violence
• all government agencies and non-government child and family services taking responsibility for the safety and wellbeing of children, to the extent that it is within their range of functions
• guiding reporting practices so that reports are only made to Child and Family Services where there is a genuine and reasonable suspicion that a child may be in need of protection
• government stepping in only to protect a child where there are no other options available.
Government responsibility

Our laws traditionally treat the family unit as a private part of Australian life, with individual families having rights to privacy, autonomy and self-determination. However, there are times when it may be necessary for government to intrude into the private affairs of families — for example, when it is required to protect a child from an unacceptable risk of significant harm. It is important that legislation clearly defines when this can occur. These laws are developed to achieve a fair balance between the families, rights to privacy and self-determination, and the rights that children have to be protected from harm.

The Child Protection Act 1999 currently enables the government to take particular actions if there is a reasonable suspicion a child is in need of protection.\(^{13}\) In order for the significant powers of the Act to be strictly defined and exercised appropriately, the concept of ‘child in need of protection’ sets the threshold for the use of powers.

The powers in the Act that enable government to intervene in the otherwise private affairs of families are among the most intrusive in Queensland. There is a strong case that these powers should not be available without a clear framework for the actions that must first be taken to protect children prior to resorting to statutory powers for more intrusive intervention. They should also be required to be exercised with due regard for natural justice and administrative fairness.

One of the main aims of the Queensland Government’s child and family reforms is to build the capacity of families to protect and care for their own children.\(^{14}\)

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

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?

15. How should Queensland’s child and family legislation relate to other laws, including Queensland’s domestic and family violence protection laws?
To achieve this aim, it may be beneficial to include in Queensland’s child protection and family support laws some level of detail about why, how, when and to whom support services are offered. Just as the current legislation defines the point at which statutory intervention is lawfully made into families’ lives, an additional concept could define the point at which support services could or should be provided by government in order to prevent a child from becoming in need of protection.

The review of the Child Protection Act 1999 will consider how and where to set thresholds for activities and decisions to ensure that the right support is provided at the right time to prevent harm to children. The review aims to achieve the right balance between protecting children and upholding children’s and families’ rights to privacy and self-determination.

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?

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?

Meeting the needs of Aboriginal and Torres Strait Islander families and children

The Queensland Government is applying a ‘cultural lens’ to the planning and implementation of our child and family reforms, to ensure that the system we build meets the needs of Aboriginal and Torres Strait Islander families.

The disadvantage of Aboriginal and Torres Strait Islander peoples is best addressed by a collaborative approach that incorporates holistic and culturally sensitive responses. It is essential that these responses are community-identified solutions, and that decision making around a child’s best interests is family-led, wherever possible.

The Queensland Government is committed to advancing the self-determination of Aboriginal and Torres Strait Islander peoples through empowering families to take a lead role in making decisions that affect their lives, and provide for the care and protection of their children.
In particular, this review will consider the Aboriginal and Torres Strait Islander child placement principle, and how it might be applied more broadly to preserve Aboriginal and Torres Strait Islander children’s cultural identities, and ensure the safety of children within their own family, community and cultural context.

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?
Supporting the reforms in legislation

The Queensland Government is currently progressing wide-ranging reforms to Queensland’s child protection and family support system, and this requires careful consideration of how legislation can best support our new service system. It also presents a timely opportunity to explore how legislation can support the service system to provide the best possible experiences for Queensland children and families.

Through this year and into 2016, the Queensland Government will be asking Queenslanders for their views and stories about these important services and programs to ensure the review is based on sound evidence and grounded in the experiences of customers. Some of the topics we will be exploring are listed below.

Permanence for children

Permanence for a child is currently a guiding principle of the Child Protection Act 1999. It underpins our model of family preservation and reunification, and the need for long-term, stable living arrangements where preservation and reunification are not in a child’s best interests. It is also the reason for our commitment to providing children with access to ongoing connection to family, culture and community.

Permanence is made up of three dimensions:

1. **Relational permanence** — the experience of having positive, loving, trusting and nurturing relationships with significant others, which may include the child’s parents, siblings or carers

2. **Physical permanence** — stable living arrangements for the child, with connections to their community (including stable and ongoing connections to education and other services)

3. **Legal permanence** — legal arrangements about who has parental responsibility for the child, including adoption.

The benefits of permanence for children are well established in a number of fields of study. Early childhood relationship experiences with caregivers can have profound impacts, for good or for bad. Children who receive consistent, loving, responsive and nurturing caregiving are more likely to develop secure attachments, and enjoy better outcomes throughout their life.

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?
Supporting young people transitioning to independence

When young people in care turn 15 years old, they begin to think about and plan for the transition to live independently in the community. The Queensland Government is committed to ensuring that these young people have access to the best information and services to make their transition a positive one.

The Charter of Rights for Children in Care states that young people are entitled to receive appropriate help with their transition to independence. This includes help with housing, access to income support, training and education. The Queensland Child Protection Commission of Inquiry recommended that the Queensland Government introduce a coordinated program of transition planning and after-care support to young people up to 21 years of age.

Next Step After Care services provide young people aged 15 to 21 years old, who have already transitioned to independence, access to the help they need to live independently. Access to help includes things like managing money and entitlements, finding accommodation, training and jobs, keeping safe and healthy, having positive relationships, and accessing legal advice.

The review of the Child Protection Act 1999 will consider the role that child and family legislation can play in supporting a coordinated program of transition planning and after-care support. Some Australian states and territories prescribe in their legislation particular ages up to which government is required to provide support. Other jurisdictions operate with less detail prescribed in legislation, to allow for more flexible and tailored responses to individual young people’s needs. We will consider the benefits and challenges of these different models.

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?
Supporting and regulating out-of-home care

The Child Protection Act 1999 sets out the standards that the community can reasonably expect of the care provided to children who cannot remain safely at home. This includes:

• respect for the child’s dignity and rights
• maintenance of the child’s physical needs (food, clothing, shelter), emotional needs, medical needs, and needs related to education and training
• maintenance of the child’s needs related to culture and ethnicity
• opportunity to participate in positive social and recreational activities
• ongoing connection with family and other persons of significance
• appropriate care for a child with a disability.

For the Queensland Government to fulfil its responsibilities to children who cannot be cared for by their families, it must have a system of regulation to ensure that carers and care services are adequately caring for children, and meeting the standards of care. The Queensland Government is committed to a system that ensures a high standard of care for children, but is not burdensome for carers, practitioners, and non-government partners.

Information sharing

The sharing of information about children and families among government agencies and non-government service providers is integral to providing families with the right services at the right time. However, the sharing of information for the coordination of services should only occur with due regard for a child’s and family’s right to confidentiality and privacy.

Government and non-government agencies strive to seek the consent of families before sharing their personal information. This shows due respect for the privacy of individuals, and helps to build trusting, productive relationships between service providers and families, which is crucial to achieving positive outcomes for children and families.

However, sometimes it might be necessary to share information to help families get support they need, even when the family’s consent cannot be obtained. For example, where children require a protective response, the imperative to protect the child from harm overrides a right to privacy.
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?

Other considerations
We want to hear what you think are important considerations for designing a legal framework for the child protection and family support system.

23. Is there anything else that the review should consider as a priority issue?
Summary

Consultation questions

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?

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

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?

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?

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

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?

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

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

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?

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?

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

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?

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

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

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?

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?

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?

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?

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?

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?

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?

23. Is there anything else that the review should consider as a priority issue?
Glossary

Chief executive
The chief executive named in the Child Protection Act 1999 is the Director-General of the Department of Communities, Child Safety and Disability Services. The chief executive has certain functions, powers and obligations under the Act.

Child and Family Services
Child and Family Services is part of the Department of Communities, Child Safety and Disability Services, and is responsible for providing, or helping to provide, child protection and family support services. Child and Family Services has special powers and responsibilities under the Child Protection Act 1999.

Child in need of protection
The Child Protection Act 1999 defines ‘child in need of protection’ as a child who has suffered significant harm, is suffering significant harm, or is at unacceptable risk of suffering significant harm; and does not have a parent able and willing to protect the child from the harm.20

Child protection and family support service system
The child protection and family support system comprises three levels:
1. Universal services (also referred to as primary services) — strategies and services that target whole communities and families to minimise risk factors in the general population. These services include early education and care services, maternal and child health services.
2. Secondary services — services that are targeted at vulnerable families or children and young people at risk of maltreatment. These services include counselling services, parenting programs, family violence and substance abuse programs.
3. Child protection services (also called tertiary or statutory services) — services provided under legislation when a child has suffered harm, or is at unacceptable risk of suffering harm. These services include investigation and assessment of abuse and neglect, court processes, case management and out-of-home care.

National Disability Insurance Scheme
The National Disability Insurance Scheme (NDIS) will introduce a national system of disability support focused on the individual needs and choices of people with disability. Funding will be allocated to each eligible individual, not to a service provider. The NDIS will start in Queensland from 1 July 2016, and will be fully implemented by 2019.
Queensland Government's social investment reforms
The Queensland Government’s social investment reforms will change the way government invests in social and human services to deliver better outcomes for Queenslanders. Six priority areas have been identified to achieve this change — more innovative solutions, focus on customer service and results, smarter investment, simpler processes, stronger partnerships and a dynamic workforce.
End notes


2. *Child Protection Act 1999 (Qld)*, s. 4.

3. *Child Protection Act 1999 (Qld)*, s. 5A.


6. *Child Protection Act 1999 (Qld)*, s. 5B (b), emphasis added.

7. *Child Protection Act 1999 (Qld)*, s. 11.

8. *Family Law Act 1975* s. 61B.

9. *Child Protection Act 1999 (Qld)* s. 11 (3) states that ‘a parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child’ and s. 11 (4) states that ‘a parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child.’ This is consistent with the United Nations Declaration on the Rights of Indigenous Peoples.

10. See for example s. 23, s. 37, s. 51AA, s. 51F, s. 52 where a child’s parents are only considered to be the child’s mother or father, a person given parental responsibility under Family Law, a person with custody or guardianship of a child under a law of another state, or a long-term guardian of a child.


14. As reflected in the principles of the *Child Protection Act 1999 (Qld)* (see s. 5B(c)).

15. *Child Protection Act 1999 (Qld)*, s. 74 and Schedule 2.

17. United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, article 10.

18. As reflected in the United Nations Declaration of Human Rights (article 12) and the International Covenant on Civil and Political Rights (article 17), and given effect in Queensland through the Information Privacy Act 2009 (Qld).


20. Child Protection Act 1999 (Qld), s. 10.