Rethinking rights and regulation: towards a stronger framework for protecting children and supporting families

Consultation report

December 2019
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### BACKGROUND

**The path so far — a timeline**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>July 2013</td>
<td>Commission of Inquiry presented its final report making 121 recommendations, including a recommendation to review the Child Protection Act 1999 (the Act).</td>
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<tr>
<td>December 2013</td>
<td>Queensland Government accepted the recommendations of the Commission of Inquiry, committing to review the Act to ensure a contemporary legislative framework for the new child protection and family support system.</td>
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<tr>
<td>May 2014</td>
<td>First phase of legislative reforms commenced establishing new oversight structures for child protection.</td>
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<td>January 2015</td>
<td>Further legislative reforms commenced consolidating and clarifying reporting requirements.</td>
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<tr>
<td>September 2015</td>
<td>First stage of consultation on the review of the Act commenced with the release of the public discussion paper <em>Supporting families and protecting children in Queensland: a new legislative framework</em>.</td>
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<tr>
<td>March 2016</td>
<td>First stage of consultation on the review of the Act concludes. Around 350 stakeholders attended 16 state-wide community consultation forums. Fifty-one submissions were received in response to the public discussion paper.</td>
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<tr>
<td>July 2016</td>
<td>Second phase of legislative reforms commenced supporting a new court work model.</td>
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<td>July 2016</td>
<td>Queensland Family and Child Commission (QFCC) released its report <em>When a child is missing: Remembering Tiahleigh — A report into Queensland’s children missing from out-of-home-care</em>.</td>
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<td>October 2016</td>
<td>Second stage of consultation on the review of the Act commenced with the release of <em>The next chapter in child protection for Queensland: Options paper</em>.</td>
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<tr>
<td>January 2017</td>
<td>Second stage of consultation on the review of the Act concluded.</td>
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<tr>
<td>February 2017</td>
<td>QFCC released its report <em>Recommendation 28 Supplementary Review: A report on information sharing to enhance the safety of children in regulated home-based services</em>.</td>
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<td>August 2017</td>
<td>Royal Commission into Institutional Responses to Child Sexual Abuse released its Criminal Justice Report.</td>
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September 2017  QFCC released its report *Keeping Queensland’s children more than safe: Review of the foster care system*.

November 2017  *Child Protection Reform Amendment Act 2017*, implementing priority amendments, received assent.

December 2017  Royal Commission into Institutional Responses to Child Sexual Abuse released its Final Report.

October 2018  Final provisions from the *Child Protection Reform Amendment Act 2017* commenced.

July 2019  Consultation on the next stage of reforms to the Act commenced with the release of the discussion paper *Rethinking rights and regulation: towards a stronger framework for protecting children and supporting families*.

September 2019  Consultation on the next stage of reforms to the Act concluded.

### Consultation on the next stage of reforms to the Act

Consultation on the next stage of reforms to the *Child Protection Act 1999* (the Act) commenced in July 2019.

A discussion paper, *Rethinking rights and regulation: towards a stronger framework for protecting children and supporting families*, outlined options for legislative reform. The options were developed based on a wide range of information including:

- issues and ideas raised by stakeholders during the review of the Act that was completed in 2017
- findings and recommendations from reviews and inquiries such as:
  - the Queensland Child Protection Commission of Inquiry
  - the Royal Commission into Institutional Responses to Child Sexual Abuse
  - *Strengthening capacity across Queensland’s child protection system* (by Linda Apelt)
  - *Review of demand and resourcing for child protection in Queensland* (by KPMG)
  - the QFCC Reviews (see page 2)
- the National Framework for Protecting Australia’s Children 2009–2020
- legislative frameworks and child protection reforms in other states and territories
- the *Human Rights Act 2019* and submissions to the Legal Affairs and Community Safety Committee’s inquiry into the Human Rights Bill 2018.
The discussion paper was made available on the Department of Child Safety, Youth and Women’s (the department) website at [www.csyw.qld.gov.au](http://www.csyw.qld.gov.au) and Get Involved at [www.getinvolved.qld.gov.au](http://www.getinvolved.qld.gov.au) between 25 July 2019 and 27 September 2019. Stakeholders were invited to comment on all options in the discussion paper, or only those that interested them.

Stakeholders were asked whether they supported any of the options proposed, if any of the options had any unintended consequences, and if there were any other options they thought should be considered.

Public surveys were available on Get Involved and the Youth eHub for people under the age of 25. People from all regions across Queensland took the opportunity to respond to the surveys. Half of the respondents to the Youth eHub survey were aged 15-17 years, with another 31 per cent aged 18-25 years and 11 per cent aged 13-14 years.

For the Get Involved survey, 7 per cent of respondents identified as Aboriginal or Torres Strait Islander and a further 6 per cent identified as culturally and linguistically diverse. Foster and kinship carers made up 32 per cent of respondents; 12 per cent of respondents were parents; 4 per cent were family members; and 7 per cent were children or young people aged under 18.

Targeted workshops were held in Townsville and Brisbane with attendance by children and young people, parents and families, carers, peak bodies, service providers and legal professionals. Approximately 90 people attended these workshops in total.

Public consultation closed on 27 September 2019.

### Consultation snapshot

- **54** submissions
- **210** youth eHub survey responses
- **181** Get Involved survey responses
- **7** targeted consultation workshops in Townsville and Brisbane

Consultation report
WHAT WE HEARD

This section of the report summarises broad feedback provided by respondents grouped into the three focus areas:

- reinforcing children’s rights in the legislation
- strengthening children’s voices in decisions that affect them
- reshaping the regulation of care.

1 Reinforce human rights in the legislative framework

1A Introducing a preamble recognising the human rights context of the Act

A preamble recognising the broader human rights context of the Act was strongly supported by stakeholders. Particularly, we heard that recognising rights within the preamble would help to set a clear and positive framework for the interpretation of the Act within a human rights context for children and young people’s wellbeing.

“Including a recognition of rights within the preamble of the Act sets a positive and unmistakeable tone.”

— Submission from a non-government organisation

A number of key service provider stakeholders said that insertion of a preamble could better reflect international legal instruments, such as the United Nations Convention on the Rights of the Child.

Two stakeholders told us that this would not be the most effective way to reinforce children’s rights in the legislation, or would be of limited value if the rights in the Act were not made enforceable.

1B Developing a broader purpose for the Act than ‘the protection of children’

Stakeholders generally supported a purpose for the Act broader than the current wording of ‘the protection of children’. We heard that while focussing on the protection of children is a fundamental objective of the Act, a broader purpose could reflect the comprehensive rights of children, recognise the role of government in promoting the wellbeing of children and young people in care and in supporting the families of those children in care to safely care and protect them, and better reflect the existing scope of the provisions in the Act.
Children and young people told us supporting parents and families, providing children with a safe and nurturing environment and promoting children’s wellbeing were the most important things to include.

Three sector stakeholders who did not support this option told us a broader purpose could reduce the focus on protecting children from harm in favour of family preservation, and potentially redirect resources away from the protection of children. One non-government organisation told us expanding the purpose of the Act could present a risk of “net-widening” for additional families to be involved in the statutory child protection system.

Youth eHub question

“Do you think the purpose should include additional things?”

96% SAID YES

One key legal stakeholder noted that rather than being about promoting wellbeing and supporting families, the Act provides a way for the department to step in and take on the responsibility of ensuring the safety, wellbeing and best interests of the child when there is no parent willing and able to protect a child. This stakeholder submitted that the Preamble of the Act would be the more appropriate place to address a general policy commitment of the Queensland Government to recognise the importance of children and young people’s wellbeing.

Some sector stakeholders told us through targeted workshops that retitling the Act could also better reflect the department’s role.

Stakeholders strongly supported introducing specific matters in the Act to be considered when determining what is in a child’s best interests as the paramount consideration when making decisions under the Act. We heard that despite the current provisions in the Act, it is not clear what is considered when determining a child’s best interests. One peak body told us of the perception that in practice, best interests can be used to justify a decision when there is not another rationale. This highlighted a need to clarify how the other general principles in the Act should be considered when thinking about a child’s best interests.

Children and young people who were engaged through the consultation process told us the most important things to consider are the child’s views and wishes, the child’s needs (physical, emotional, intellectual, spiritual and educational), and the need to protect the child from harm.

Some stakeholders also told us how important it is to consider a child’s identity when determining what is in their best interests. We heard, through targeted workshops, the importance of culture, gender and sexuality when considering a young person’s identity.
Some stakeholders told us that while guidance is important, a child’s best interests need to be considered on a case-by-case basis taking into consideration all of the information in an individual case and that any list of specific matters should not be exhaustive. One stakeholder considered that it would be better to set out this detail in policy and practice guidance, rather than in the Act.

“Determining the ‘best interests of the child’ needs to occur on an individualised case-by-case basis.”
— Submission from a statutory body

Get Involved question

“Do you support more information in the legislation about things decision makers must consider when deciding what’s in a child’s best interests?”

- **Carers**
  - Strongly support: 74%
  - Support: 19%
  - Neither support or oppose: 5%
  - Oppose: 2%

- **Licensed care providers**
  - Strongly support: 62%
  - Support: 31%
  - Neither support or oppose: 8%
  - Oppose: 2%

- **Children**
  - Strongly support: 69%
  - Support: 31%

- **Parents and family members**
  - Strongly support: 79%
  - Support: 11%
  - Neither support or oppose: 7%
  - Oppose: 4%
  - No response: 0%
Embedding a rights focus throughout the legislation to ensure children and young people are aware of their rights and how to exercise them

Stakeholders generally supported embedding a stronger rights focus throughout the Act, in addition to the existing provisions. Sector stakeholders told us, through targeted workshops, this must be child-focussed and worded to meaningfully reinforce children’s human rights so they can be clearly upheld.

One service provider told us children and young people’s rights could be reinforced by reframing the principles for administering the Act as rights in a way that is consistent with the intent and spirit of the legislation. Other stakeholders, including one peak body and one non-government organisation, noted that rights and principles are unique and should not be interchangeable.

We heard from stakeholders that upholding children’s rights and telling children about their rights needs to be a shared responsibility for everyone in a child in care’s support network. This could include agencies such as the Office of the Public Guardian and other government agencies, as well as people who are important to the child including family members and carers.

Stakeholders were clear, through targeted workshops, that resources that support the implementation of the legislation should use language appropriate and meaningful for children, young people and people from culturally and linguistically diverse backgrounds. We also heard that although there are existing requirements for children and young people in care to be told about their rights, they often are not aware of their rights.

Submissions suggested a stronger emphasis on ensuring children and young people know and understand their rights and how to exercise them. We heard through targeted workshops that there could be a role for an independent person to support children and young people to know about their rights and ensure their rights are upheld. Stakeholders had mixed views on whether this could be a role for a statutory body, such as the Office of the Public Guardian, or a role for a person in the child’s support network that they are comfortable with.

“If you don’t know what your rights are, you can’t say what you want in your case plan.”

— young people at CREATE Foundation workshop

Children and young people told us the importance of knowing their rights and wanting to be heard when they speak up about their rights being or not being met. It was suggested that a rights based approach should underpin all interactions with children and that they should be supported to be aware and exercise their rights.
It was suggested that there should be a clear child focused and accessible mechanism for children and young people in care to complain if they believe that their rights have been breached, and complaints should be investigated fairly and independently. Stakeholders called for it to be made clear who has the responsibility for ensuring children’s rights are met and for there to be clear accountability when their rights are breached.

1E Revising the Charter of Rights for a child in care

We heard from the majority of sector stakeholders that practical and meaningful implementation of the Charter of Rights for a child in care (the Charter) in the Act was an important way of ensuring children and young people are aware of their rights, and the child protection system is accountable for upholding their rights.

Child-friendly language
Stakeholders generally did not support using child-friendly language in the Act. While submissions from a service provider and a non-government organisation raised the importance of using resources with developmentally appropriate language to make sure children are aware of and understand their rights, other stakeholders told us that using child-friendly language in the Act could reduce the effectiveness of the Charter and dilute its meaning.

Stakeholders suggested, through targeted workshops, a child-friendly version of the charter could be developed alongside the Act to support its implementation coupled with a clear legislative requirement for the department to regularly provide information to children and young people in care in developmentally appropriate language about their rights.

“The Charter needs to be provided in ways which are meaningful to children and young people.”
— Submission from a non-government organisation

Expanding the Charter’s application
Most stakeholders supported expanding the Charter’s application, however there were mixed views about who the Charter should apply to. We heard from some stakeholders that the Charter could be extended to all children who come into contact with the child protection system or who are subject to ongoing involvement with the child protection system, regardless of whether they are still living at home.

One stakeholder did raise that children who are in care have specific vulnerabilities and needs and this means they require additional rights over children with no changes to their custody or guardianship.
Including new rights in the Charter
Stakeholders supported including new rights in the Charter. We heard from most stakeholders that the United Nations Convention on the Rights of the Child should be reflected in the Charter. The right for a child or young person to make a complaint if they think their rights have been breached was important to all stakeholders. We also heard a right to enjoy their culture is significant for children and young people and can include practising their own religion or using their own language. Stakeholders also told us the Charter could include a right to participation, a right to access information, a right for children to live with their families when they can do so safely, a right to continuity of care and permanency and human rights related to disabilities.

Children and young people told us that the right to be treated with respect, the right to be treated fairly and the right to be allowed to be a child are particularly important, as is the right to do activities they enjoy such as sport or art.

“The right to be allowed to be a child means not having to stress out as much.”

“Not having to grow up too fast.”
— young people at CREATE Foundation workshop

Revising the reviewable decisions framework
Stakeholders supported revising the framework in the Act that enables an application to be made to the Queensland Civil and Administrative Tribunal (QCAT) for a review of certain decisions. We heard the importance of having review processes that are culturally safe and accessible for children.

Key service providers told us that revising the reviewable decisions framework should be a collaborative process that further engages all stakeholders. These service providers told us it was important to consider unintended consequences, such as resource and cost pressures, that may impact community agencies.

We heard that in practice, decision letters can be overwhelming and that it is important to provide reasons for decisions and next steps in plain, simple language.

Through targeted workshops, stakeholders told us it is important that children and young people have the opportunity to participate in the making of decisions to reduce the need for review after a decision has been made. Stakeholders also suggested that it is important for an explanation to be provided to children and young people if a decision is not in line with their wishes.
Strengthen the voices of children and young people in decision making

2A Ensuring the relevant principles and provisions encourage and empower children and young people to meaningfully participate in decisions that affect them

Stakeholders broadly supported children and young people participating meaningfully in decisions that affect them, and told us that the Act should better reflect this. We heard that the Act could better reflect that children should be actively supported to participate in decisions that are important to them and not just in relation to decisions that the department or other adults think are significant.

“It is important to know what is significant for a young person, which is often at odds with what adults in their lives consider important.”
— Submission from a non-government organisation

Key stakeholders, including a statutory body, a service provider and a legal stakeholder, highlighted the need not to be overly prescriptive and create a legislative “checklist” when strengthening children’s voices in the legislation. These stakeholders told us that instead it is important to embed meaningful participation in decisions.

We also heard the importance of facilitating children’s participation without making them feel responsible for making a decision. We heard that listening to children and young people’s voices must be culturally appropriate, and that without cultural expertise there is a risk that a young person’s views may be misinterpreted.

Children and young people told us that the best way to know their voices had been heard was to see action being taken.

Separating the participation of children and young people from the participation of other relevant persons

Stakeholders generally supported separating the requirements in the Act for the participation of children and young people in decision-making from the requirements for the participation of other relevant persons. We also heard from some stakeholders that children should be able to decide whether their participation should occur separately from other people, for example if they want to discuss a matter with someone in a private room.

One service provider stakeholder who did not support separating provisions in the legislation that relate to the participation of children and young people told us this could have unintended consequences for inclusive decision making, and could risk diminishing the importance of the participation of family members.
Ensuring processes are child-centric and support children and young people to understand and participate in decision making processes

Stakeholders generally supported child-centric processes in the Act to strengthen and better enable children’s participation in decision making, noting the importance of understanding a child or young person’s capacity to participate and if they understand the decision to be made. Submissions supported there being a strong obligation on decision makers to provide multiple and ongoing safe opportunities for children and young people to participate that also take into consideration the individual preferences of each young person about how they would like to participate.

Get Involved question

“Do you support changes to the legislation to separate how children and young people can participate in decisions from how other relevant persons (e.g. parents, family members, carers) can participate?”

<table>
<thead>
<tr>
<th>Category</th>
<th>Strongly support</th>
<th>Support</th>
<th>Neither support or oppose</th>
<th>Oppose</th>
<th>Strongly oppose</th>
<th>No response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carers</td>
<td>52%</td>
<td>31%</td>
<td>14%</td>
<td>2%</td>
<td>2%</td>
<td></td>
</tr>
<tr>
<td>Licensed care providers</td>
<td>46%</td>
<td>23%</td>
<td>8%</td>
<td>2%</td>
<td>23%</td>
<td></td>
</tr>
<tr>
<td>Children</td>
<td>46%</td>
<td>54%</td>
<td>11%</td>
<td>7%</td>
<td>18%</td>
<td></td>
</tr>
<tr>
<td>Parents and family members</td>
<td>57%</td>
<td>11%</td>
<td>18%</td>
<td>7%</td>
<td>18%</td>
<td></td>
</tr>
</tbody>
</table>
Some stakeholders told us there could be a role for an independent person to listen to the child and hear their voice, to provide guidance to the child about how they participate in decisions and to help the child express their views. We heard from different stakeholders that this could be a statutory role, or could be someone significant to the child that the child chooses.

We heard that some terms used by the department can be confusing for children, young people and families. Stakeholders highlighted the need to use simple words that are age and culturally appropriate.

**Providing additional guidance about how children and young people’s views should be considered in decision making**

Stakeholders strongly supported providing guidance in the Act about how children and young people’s views and wishes will be used. We heard that additional guidance should be provided so that a child’s views and wishes are always sought prior to a decision being made about them, to ensure the young person’s views are weighted appropriately and to ensure views and wishes are proactively heard and understood in a developmentally appropriate way.

One legal stakeholder cautioned against taking an overly prescriptive approach, given the individuality of each child, their needs and experience and the particular decision to be made.

Stakeholders raised that care should be taken not to require a child to have to express a view or wish on a particular matter if they do not want to and not to place responsibility on them for a final decision. Children and young people should have the freedom to change their mind and to have varied views and wishes. Also, decision makers should have the expertise and responsibility to understand a child's views in the context of their individual circumstances.

**Giving information to the child or young person to ensure they understand their circumstances and the decision making process**

Stakeholders strongly supported clarifying in legislation information to be given to children and young people about the decision making process. We heard about the importance of explaining what the outcomes of a decision might be to children and young people to support their participation.

Children and young people told us it was important for them to have their views documented in their own words, so they could acknowledge they had been accurately recorded and heard.

One legal stakeholder and two service providers noted that if the legislation is overly prescriptive, then this could ignore children's individual needs and circumstances and prevent information from being communicated in an individualised way.
Including information in the Act about how children and young people can express their views was strongly supported by the majority of stakeholders, in addition to the current provisions about giving children an opportunity to express their views. Most children and young people who were engaged as part of the consultation process said they would prefer to tell their views and wishes directly to the decision maker, however writing down their views and telling someone else who can tell the person making the decision was also suggested as an option. We also heard that how children and young people like to express their views can change over time, as they get older, for example.

“When I was younger, I would have preferred to write my thoughts down for the person making [the] decision to read, but now I would prefer to tell the person making the decision.”
— Youth eHub respondent

We heard that how a child or young person would like to express their views and wishes is unique for each child and young person, depending on their individual experiences and wellbeing at the time and might not be the same for every decision. It was highlighted that there needs to be a flexible approach in the Act about how opportunities are provided to children to provide their views and wishes with the obligation being on the decision maker to provide an appropriate mechanism to listen to children and young people and be responsive to their needs.
2C Including additional requirements to strengthen procedural fairness in the decision making provisions

Children and young people told us how important it is for them to know how their views will be recorded and used.

Specifically, we heard from children and young people that when they are sharing their views, they need to know who else might be given the information they shared.

Children and young people told us it is important to “close the loop” when they tell us their views. They need to see an outcome from the information they have shared. Stakeholders also told us it is important to provide children and young people with an explanation of reasons for decisions, particularly if the decision does not align with a child or young person’s views.

One statutory body highlighted the need to ensure any additional requirements for procedural fairness are sensitive to the potential for the process to be traumatic for children who are expressing their views.

Stakeholders supported children having the opportunity to respond to proposed decisions. While stakeholders, including a statutory body, told us this option could provide a more structured and formal approach to listening to children and young people, we also heard the importance of consulting with children and young people while formulating a proposed decision. One peak body also told us it is important for a child’s response to a proposed decision to be able to have a real impact on the outcome of the decision when appropriate.
Reshape the regulation of care

3A Clarifying the regulation of approved carers to ensure a robust, safe and transparent framework

Stakeholders generally supported the options for clarifying the regulation of approved carers to ensure a robust and transparent legislative framework.

Three peak bodies and a legal stakeholder particularly told us about the need to recognise the practical differences between foster care and kinship care arrangements in the Act, in addition to the distinctions that are already in the Act. We also heard about the barriers that Aboriginal and Torres Strait Islander people face in becoming foster and kinship carers, including through the Working with Children Check processes. These stakeholders told us these barriers can prevent children from being placed with family and remaining connected to family, culture and community.

Revising and clearly stating in the legislation the evidence-based, child safe criteria upon which carer approval decisions are made

Stakeholders generally supported clarifying the criteria for determining carer eligibility in the Act. Some stakeholders highlighted the importance of not being overly prescriptive in the legislation to ensure responsiveness as future policy issues emerge.

We heard from a peak body that a carer’s ability to provide cultural connection for children must be a key consideration through the application and approval process. This stakeholder highlighted that the current application process asks carers whether they are willing to care for Aboriginal or Torres Strait Islander children, but does not appear to take their capability into account, or provide for supports once approved.

We also heard that the approval criteria for carers could be an opportunity to recognise the inherently different nature of foster and kinship care.

“Extended family caring for children is common and kinship carers should not be subject to the currently practiced high amount of government intrusion where there is consent by the biological parents.”
— Submission from a non-government organisation

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Introducing a code of conduct for foster and kinship carers

Stakeholders generally did not support introducing a code of conduct for foster and kinship carers in the Act as part of the carer approval process. While some stakeholders and respondents to the Get Involved survey supported a code of conduct for foster and kinship carers, other stakeholders raised concerns about potential unintended consequences.

Get Involved question

“Do you support clarifying in the legislation the eligibility criteria to be a foster or kinship carer?”

Carers

- Strongly support: 52%
- Support: 31%
- Neither support or oppose: 10%
- Oppose: 3%
- Strongly oppose: 3%
- No response: 3%

Licensed care providers

- Strongly support: 38%
- Support: 31%
- Neither support or oppose: 15%
- Oppose: 8%
- Strongly oppose: 8%
- No response: 3%

Children

- Strongly support: 46%
- Support: 38%
- Neither support or oppose: 15%
- Oppose: 3%
- Strongly oppose: 3%
- No response: 4%

Parents and family members

- Strongly support: 82%
- Support: 14%
- Neither support or oppose: 4%
- Oppose: 15%
- Strongly oppose: 10%
- No response: 10%
For example, some submissions from a peak body, a statutory body and a service provider highlighted that a code of conduct for foster and kinship carers could act as a deterrent if added to the current regulatory requirements. We heard from one statutory body that a code of conduct could create an unnecessary layer of bureaucracy, and may not contribute to improved care for children, given the statement of standards already exists. A service provider told us introducing a code of conduct would further blur the lines between work and home life for carers.

One of these stakeholders suggested a code of conduct for carers would contribute to power imbalances in the system, as it would specifically identify accountability for carers without also outlining responsibilities for the department.

Noting current obligations for carers in the legislation, these stakeholders generally told us the outcome could be better achieved by clarifying carers’ ongoing compliance requirements in one accessible location. Increased training and support for foster and kinship carers was also raised as a possible way to achieve a similar outcome.

A number of carers who made submissions did not support a code of conduct and suggested rights for carers should be embedded in the Act instead.

“A separate process may be needed to review the different existing components which speak to carers’ responsibilities, such as the eligibility criteria, the statement of standards, the process of approval and renewal, monitoring of compliance, standard of care procedures, the statement of commitment and how the new child safe standards will be integrated.”

— Submission from a peak body

One service provider who supported a code of conduct told us this could strengthen and enhance the Statement of Commitment between carers and the department without being punitive or diminishing the carer function.

**Specifying the information and sources of information that may be considered as part of the decision making process**

Stakeholders generally supported clarifying in the Act the information and sources of information that may be considered as part of the decision making process.

We heard from some stakeholders, through targeted workshops, that information from other people (such as adult children of potential carers) could be useful to inform the initial assessment, and renewal, of a carer’s suitability.

One statutory body questioned the effectiveness of including this in legislation, given there is existing guidance in policies and procedures.
We heard from children and young people that interviewing children currently or previously in a person’s care would be a helpful part of the carer renewal process. Children and young people told us it is important to think collectively about what is said over time to recognise any cumulative matters.

“You could see a trend that doesn’t seem right over time.”
— young person at CREATE Foundation workshop

Providing guidance to decision makers regarding how to assess carer applications

Stakeholders generally supported including additional guidance in the Act for decision makers when assessing carer applications. We heard that this could improve consistency in assessments and give decision makers increased confidence in assessments.

One statutory body told us it was important to ensure any additional guidance does not create a “tick and flick” approach to assessments. This could have the unintended consequence of reducing safety for children.

Introducing clearer requirements for carers to demonstrate compliance when concerns are identified and a framework that enables the department to respond appropriately and in a timely way

Stakeholders told us, through targeted workshops, about the importance of ensuring compliance requirements are communicated clearly to carers, and carers are supported to understand and comply with the ongoing requirements. Some stakeholders suggested this could be achieved by having all of the requirements in one place in the Act, as well as providing additional training and support for carers. We heard from some stakeholders that this outcome may be better supported and more flexibly achieved by policies and procedures rather than through legislation.

Children and young people told us the most effective way to know when carers are doing the right thing is through unannounced visits. Listening to children and young people currently or previously in the person’s care would be a helpful part of ensuring care is being provided to a high standard.

3B Streamlining aspects of the carer assessment process

While some stakeholders supported streamlining aspects of the carer assessment process in the Act, we also heard some of the potential unintended consequences.

Stakeholders told us that approved kinship carers generally should not have a new assessment for each child that is placed with them. Instead, stakeholders suggested the kinship carer’s capacity to care for additional children could be assessed.
Stakeholders who supported streamlining aspects of the carer assessment process for people who have been assessed as suitable adoptive parents told us this could reduce duplication and approval timeframes. However, some stakeholders, including a legal stakeholder and peak bodies, raised concerns through targeted workshops about how being a foster carer and adopting a child are different processes and the foster carer approval process should focus on a person’s suitability for that role so that people do not have unrealistic expectations about the different roles.

We heard from one service provider that when assessing approved adoptive parents to be carers, it would be important to assess their understanding of the regulatory framework for foster carers.

“To satisfy the criteria of a foster or kinship carer would require recognition (by the carer) of the very different role that is being undertaken, and the different intention, principles and purpose of the child safety system. While certain processes, such as criminal history, and blue card approval processes could be streamlined, there are significant concerns if streamlining of processes were any broader.”

— Submission from a statutory body

Two service providers told us that streamlining aspects of the carer assessment process could improve efficiency and effectiveness.

One statutory body noted there could be some operational efficiencies (for example, not undertaking a criminal history check twice within a certain period) if the approval process for carers and suitable adoptive parents was streamlined.

3C Clarifying requirements for regular visitors

While respondents to the Get Involved survey supported greater consistency in the suitability requirements for adult household members or regular visitors to carers’ homes and to regulated home based services such as family day care, some stakeholders told us increasing the requirements could have negative impacts and would not promote normality for the child.

We heard from one peak body that this option could exclude Aboriginal and Torres Strait Islander support networks, or place young people exiting care into homelessness if they are not able to remain in the care environment once they turn 18. Another peak body told us this option would not show trust in foster and kinship carers, or the assessment process that has found them competent to make decisions that will keep children safe and free from harm and risk.
Some stakeholders who supported this option told us consistent suitability requirements for adult household members or regular visitors to carers’ homes and to regulated home based services could provide better clarity about when a person requires a blue card.

One statutory body told us implementing this option would require engagement with Aboriginal and Torres Strait Islander people to ensure the outcome is culturally relevant and appropriate.

“\textit{A range of barriers exist for First Nations Australians seeking to become approved carers. Effort in this space will require engagement of Aboriginal and Torres Strait Islander peoples to ensure that definitions and blue card requirements are culturally relevant and appropriate.}”

— Submission from a statutory body

3D Ensuring the system for approving and monitoring care service providers is robust, providing safe outcomes for children and young people

Stakeholders strongly supported strengthening the system for approving and monitoring care service providers in the Act, provided this was balanced with not becoming unnecessarily burdensome. We heard that the system should be focussed on outcomes for children and young people and should ensure services are accountable for delivering the service they have been approved to deliver.

Revising and clearly stating in legislation the evidence-based, child safe criteria upon which licensing decisions are made

Stakeholders generally supported clarifying the licensee eligibility criteria in the Act. One peak body told us that while greater consistency would be beneficial, this option could risk legislation becoming overly prescriptive and burdensome. Two peak bodies suggested this option could be better achieved through policies and procedures.

Stakeholders also told us, through targeted workshops, that a care service provider’s ability to meet a child’s cultural needs while they are in the placement should be a key consideration before approving a care service provider. We heard from stakeholders that this could be worked into the Act or into the existing Human Services Quality Framework (HSQF).

Specifying the information and sources of information that may be considered when assessing a licence application

We heard from stakeholders that it is important to have consistency in assessments and decision making, and specifying information that may be considered could support this. One peak body told us this would be better placed in policies and procedures rather than in the legislation.
Providing guidance to decision makers regarding how to assess licence applications

Stakeholders supported including additional guidance for decision makers when assessing applications. Stakeholders told us this could improve consistency in decisions about care service providers. One peak body did tell us that this guidance would be best suited to policies and procedures.

Get Involved question

“Do you support clarifying in the legislation the eligibility criteria that an organisation must satisfy to be licensed as a care service provider?”
Introducing clearer requirements for licence holders to demonstrate compliance when concerns are identified and a framework that enables the department to respond appropriately in a timely way

Stakeholders supported introducing clearer compliance requirements for approved service providers in the Act. Stakeholders told us, through targeted workshops, how important it is that care service providers are accountable for delivering the services they are approved to deliver to children. We heard from one service provider about the need to ensure services are adequately resourced to build their capacity to ensure compliance. Particularly, we heard the need to make sure resources are not diverted away from direct care provision to monitor compliance requirements.

Requiring all licensed care service providers to comply with the Child Safe Standards

Stakeholders strongly supported implementing the Child Safe Standards from the Royal Commission for care service providers, including a statutory body and peak stakeholder body.

### Child Safe Standards
- Child safety is embedded in institutional leadership, governance and culture
- Children participate in decisions affecting them and are taken seriously
- Families and communities are informed and involved
- Equity is upheld and diverse needs are taken into account
- People working with children are suitable and supported
- Processes to respond to complaints of child sexual abuse are child focussed
- Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training
- Physical and online environments minimise the opportunity for abuse to occur
- Implementation of the Child Safe Standards is continuously reviewed and improved
- Policies and procedures document how the institution is child safe

Stakeholders told us the Child Safe Standards could form the basis in the Act for the key delivery standards care service providers are required to meet. We particularly heard that if an accreditation model is developed for regulating care, the Child Safe Standards should be a key part of this.
Developing different requirements for different types of services and service delivery models with requirements proportionate to the risk associated with the service

Stakeholders told us about the importance of ensuring each service delivers what they have been approved under the Act and funded to deliver. We heard from stakeholders that the criteria for each type of service should support this. For example, stakeholders told us that services providing Supported Independent Living should have a focus on transitioning to adulthood, while therapeutic residential care services should be asked to clearly define and measure how the service is therapeutic.

One service provider suggested that there could be culturally appropriate service delivery requirements in the Act to respond to the unique needs of Aboriginal and Torres Strait Islander children, young people, families and communities.

3E Adopting an accreditation model for regulating care

Stakeholders gave mixed support for adopting an accreditation model in the Act for regulating care service providers.

While some stakeholders, including several service providers, supported introducing an accreditation model, others highlighted the need for more detailed development and consultation about what an accreditation model could include. Some stakeholders suggested this should include evaluating the effectiveness of New South Wales’ accreditation model. We also heard from one statutory body that transitioning to an accreditation model may not address problems occurring in the current system, and that a staged approach was important to ensure that those involved in the current system can withstand and implement change.

“Yes, it is important that the standard and requirements for care service providers are easily accessible, have clarity of purpose and that the different components of the system are integrated.

We heard from stakeholders, including one peak body, that an accreditation model in the Act should enhance the existing HSQF model while avoiding unnecessary duplication and administrative burden for service providers. We heard the model should ensure the standards and requirements for care service providers are easily accessible, have clarity of purpose and that the different components of the system are integrated.

Stakeholders told us that rather than legislating a new model, the existing HSQF model could be enhanced by incorporating a direct link to outcomes for children and young people. We heard from another peak body that a service’s ability to meet a child’s cultural needs should form part of the standards of an accreditation model. Stakeholders also told us that a risk management model could be incorporated into accreditation.
OTHER FEEDBACK

As well as providing feedback on the options outlined in the discussion paper, stakeholders shared other options and their views about possible non-legislative changes. Some stakeholders told us about the need to ensure our policies and practices support the legislative framework, particularly around how we uphold children and young people’s rights and work with children and young people to hear their views. Some of the specific options stakeholders raised are detailed below.

Aboriginal and Torres Strait Islander Child Placement Principle

Prevention principle
One peak body told us the current wording of the prevention principle in section 5C of the Act excludes an important aspect—the entitlement to access the services and supports that families require to enable children to be raised safely and thrive at home. This stakeholder suggested wording should align more closely with the Children, Youth and Families Act 2005 (Vic) as well as include minimum standards for the availability of quality, accessible and culturally safe services that promote family preservation and reunification prior to and during statutory child protection intervention.

Partnership principle
Similarly, one peak body stakeholder raised that the current wording of the partnership principle in the Act does not effectively capture its policy intent. This stakeholder advised the partnership principle could better ensure the involvement of Aboriginal and Torres Strait Islander people, community representatives and organisations in policy and program development, service design, delivery and individual child-protection case decision making.

Active efforts
Two key stakeholders raised that the application of the child placement principle could be strengthened in the Act. The Act currently requires certain parties to have regard to the child placement principle when making a significant decision about an Aboriginal or Torres Strait Islander child. These stakeholders suggested this be amended to require the department to show that affirmative, active, thorough and timely efforts have been made to apply the child placement principle.

Definition of kin
Some stakeholders raised that the current definition of kin in the Act does not reflect Aboriginal and Torres Strait Islander understandings of kin. One peak body also told us that “significant others” should not be included in the definition of kin, as it can result in distorted kinship care statistics and can create confusion about family relationships. Stakeholders suggested significant others should be separately identified.
Financial support
Stakeholders told us about the need to invest in early intervention and supports for families rather than investing more in statutory intervention. Stakeholders noted that increased investment in appropriate supports for families can help children safely stay at home and reduce the need to fund some types of care services.

Some carers who participated in consultation told us about the need for increased financial support. We heard that the cost of caring for a child can change depending on their needs.
NEXT STEPS

The Queensland Government is currently considering the outcomes of consultation and how this may support a stronger legislative framework for the child protection and family support system.

A key factor under consideration is the capacity of those already involved in the current care system to adapt to, and implement, any change, acknowledging that this may require a staged implementation approach, with training and updates to policy and procedures of utmost importance.

As the outcomes of consultation are considered, information about possible amendments to the Act will be made available on the department’s website www.csyw.qld.gov.au