

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

Discussion paper

July 2019





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Department of Child Safety, Youth and Women
Locked Bag 3405, Brisbane QLD 4001
www.csyw.qld.gov.au

MINISTER'S MESSAGE

The Palaszczuk Government is committed to achieving the best possible outcomes for Queensland children, young people and their families. We have made remarkable progress as we implement child protection and family support system reforms, but there is more to do.



The reforms being implemented under Supporting Families Changing Futures — our 10 year reform program to strengthen the child protection and family support system — are showing positive results. We need to continue to build on these results to meet the growing and complex needs of Queensland families, children and young people.

Ensuring the child protection and family support system is underpinned by a strong, contemporary and effective legislative framework is an important part of this agenda.

A comprehensive review of the *Child Protection Act 1999* (the Act), including two stages of public consultation, was undertaken between 2015 and 2017. The review identified a number of priority amendments, which were made via the *Child Protection Reform Amendment Act 2017*. As we implement the second half of our 10-year reform program we are considering further changes to strengthen and modernise our legislative framework.

The options proposed in this paper provide you with an opportunity to give us feedback on possible changes. These options were developed after receiving feedback from the review of the Act, and considering findings and recommendations from reviews and inquiries and legislative reforms in other jurisdictions.

Along with recommendations made by the Queensland Child Protection Commission of Inquiry, the options in this paper build on the key findings and recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. The Royal Commission clearly found that valuing children and young people and their rights is the foundation of all child safe institutions. Taking into account what children and young people want as well as what is in their best interest must be embedded in everything we do.

The recent historic passage of the *Human Rights Act 2019* enshrines the rights of all Queenslanders in legislation and provides a valuable opportunity for us to consider how our child protection laws recognise and protect the rights of children and young people.

It is important to talk to children and young people, parents and families, Aboriginal and Torres Strait Islander communities, service providers, foster and kinship carers, and others about the options set out in this paper. I want to hear your views and I look forward to your participation and feedback.

Caring for children and keeping them safe is a shared responsibility. I am grateful to be part of the work that brings hope and opportunity to Queensland's children, young people and their families.

A handwritten signature in blue ink, appearing to read 'Di Farmer'.

Di Farmer MP

Minister for Child Safety, Youth and Women and
Minister for the Prevention of Domestic and Family Violence

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INTRODUCTION

Supporting Families Changing Futures

The Queensland Government is currently implementing the Supporting Families Changing Futures reform program to build a new child protection and family support system for Queensland. The reforms will improve the quality and outcomes of the child protection and family support system.

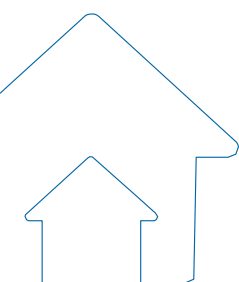
Supporting Families Changing Futures strategic directions

- Sharing responsibility for the safety and wellbeing of children and young people.
- Supporting families earlier.
- Working better with families who are in contact with the child protection system.
- Improving care and post-care for children and young people.
- Meeting the needs and requirements of Aboriginal and Torres Strait Islander children, young people, families and communities.
- Delivering quality services to Queensland children, young people and their families through a capable, motivated workforce and client-focused organisations.
- Building an accountable, transparent and cost-effective system.

The reform program includes implementing the Queensland Government response to the recommendations made by the Queensland Child Protection Commission of Inquiry (Commission of Inquiry) in its report *Taking Responsibility: A Roadmap for Queensland Child Protection* as well as considering recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse (Child Sexual Abuse Royal Commission) and reviews undertaken by the Queensland Family and Child Commission (QFCC).

We are now five years into implementing the 10 year Supporting Families Changing Futures reform program. The Queensland Government released a progress report on 7 September 2018, the *Supporting Families Changing Futures: 2018 Update*. This update also sets the strategic direction for the next five years of the reform program from 2019–20 to 2023–24. As at 31 March 2019, 91 of the 121 recommendations made by the Commission of Inquiry had been completed with the remaining recommendations well underway. We will continue to embed existing reforms as well as working to further strengthen the system.

A particularly important part of the reform program is ensuring the child protection and family support system is underpinned by a strong, contemporary and effective legislative framework. Changes to the legislation support a range of work being undertaken by the Department of Child Safety, Youth and Women (the department), with the support of our non-government partners and foster and kinship carers, to strengthen the system to increase the safety of children and young people.



The Supporting Families Changing Futures reform program will contribute to achieving the Queensland Government's commitment to give all our children a great start, keep Queenslanders healthy and keep communities safe under *Our Future State: Advancing Queensland's Priorities*.

Review of the *Child Protection Act 1999*

The *Child Protection Act 1999* (the Act) underpins the child protection and family support system in Queensland. A comprehensive review of the Act, as recommended by the Commission of Inquiry, was undertaken between 2015 and 2017. This process included two stages of public consultation.

The first stage was guided by the discussion paper *Supporting families and protecting children in Queensland: A new legislative framework*. The discussion paper sought the views of Queenslanders on how legislation could improve opportunities and life outcomes for children, young people and their families in contact with the child protection system.

In response to the feedback received, the second stage saw the release of an options paper — *The next chapter in child protection for Queensland: Options paper* — which set out options for how the Act could be redesigned. The options paper sought feedback on stakeholder support for the options, the potential for unintended consequences, and if there were other options that should be considered.

During the consultation process we heard from children, young people and families with experience of the child protection system, our service providers, government partners, peak bodies, legal bodies, education institutions and advocacy groups about important issues for new legislation.

Consultation highlights

- 179 written submissions were received in response to the two consultation papers.
- Approximately 600 people participated in 25 community forums across Queensland.
- Over 100 Aboriginal and Torres Strait Islander people participated in one-on-one, small group and yarning circle consultations.

The review revealed that the child protection legislation is generally operating effectively but identified a number of priority amendments and opportunities for broader legislative reform.

Legislative changes following the review

In 2017 priority amendments were made via the *Child Protection Reform Amendment Act 2017*. The amendments commenced in a phased approach with the last phase commencing on 29 October 2018.

This last stage of changes included:

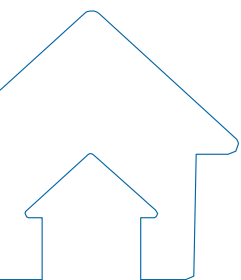
- providing for positive long-term outcomes for children and young people through timely decision making and decisive action towards either reunification with family or alternative long-term care
- promoting the safe care and connection of Aboriginal and Torres Strait Islander children and young people with their families, communities and cultures
- establishing a contemporary information sharing regime for the child protection and family support system focused on children and young people's safety and wellbeing.

Further reviews and inquiries

Since the commencement of the Supporting Families Changing Futures reform program, and the review of the Act, a number of reviews and inquiries have been undertaken including:

- QFCC systems review of the arrangements for responding to children missing from care
- QFCC review of the foster care system
- Child Sexual Abuse Royal Commission.

These reviews and inquiries have resulted in over 200 significant new recommendations for the consideration of the Queensland Government.



The path so far – a timeline

July 2013	Commission of Inquiry presented its final report making 121 recommendations, including a recommendation to review the Act.
December 2013	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.
May 2014	First phase of legislative reforms commenced establishing new oversight structures for child protection.
January 2015	Further legislative reforms commenced consolidating and clarifying reporting requirements.
September 2015	First stage of consultation on the review of the Act commenced with the release of the discussion paper <i>Supporting families and protecting children in Queensland: a new legislative framework</i> .
March 2016	First stage of consultation on the review of the Act concludes. Around 350 stakeholders attended 16 state-wide community consultation forums. 51 submissions were received in response to the public discussion paper.
April 2016	<i>Supporting Families Changing Futures: Advancing Queensland's Child Protection and Family Support Reforms</i> is released.
July 2016	Second phase of legislative reforms commenced supporting a new court work model.
July 2016	QFCC released its report <i>When a child is missing: Remembering Tiahleigh — A report into Queensland's children missing from out-of-home-care</i> .
October 2016	Second stage of consultation on the review of the Act commenced with the release of <i>The next chapter in child protection for Queensland: Options paper</i> .
January 2017	Second stage of consultation on the review of the Act concluded.
February 2017	QFCC released its report <i>Recommendation 28 Supplementary Review: A report on information sharing to enhance the safety of children in regulated home-based services</i> .
August 2017	Child Sexual Abuse Royal Commission released its <i>Criminal Justice Report</i> .
September 2017	QFCC released its report <i>Keeping Queensland's children more than safe: Review of the foster care system</i> .
November 2017	<i>Child Protection Reform Amendment Act 2017</i> , implementing priority amendments, received assent.
December 2017	Child Sexual Abuse Royal Commission released its Final Report.
October 2018	Final provisions from the <i>Child Protection Reform Amendment Act 2017</i> commenced.



Continuing our commitment to protect children and support families — next stage of changes to the Child Protection Act

We are considering further legislative changes to contribute to the Supporting Families Changing Futures reform program to strengthen and modernise the legislative framework.

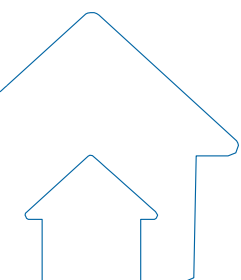
Legislation is important for reflecting community expectations. The child protection legislation provides the framework to deliver services to children, young people and their families. The way we shape the legislation can have a profound impact on the opportunities and life outcomes of parents, families and their children.

The changes proposed in this paper focus on reinforcing children and young people's rights in the legislative framework, strengthening children and young people's voices in decisions that affect them and reshaping the regulation of care.

Options have been developed based on:

- issues and ideas raised by stakeholders during the review of the Act
- findings and recommendations from reviews and inquiries such as:
 - the Commission of Inquiry
 - the Child Sexual Abuse Royal Commission
 - *Strengthening capacity across Queensland's child protection system*
 - *Review of demand and resourcing for child protection in Queensland*
 - the QFCC reviews
- 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 options in this paper consider a number of recommendations from the reviews and inquiries, however not all outstanding recommendations will be addressed in this stage of changes to the Act. Under our 10-year Supporting Families Changing Futures reform program changes are being progressed in carefully sequenced stages to ensure the child protection and family support system is reformed in an incremental and sustainable way. All remaining recommendations (and any new ones) will be considered as part of the reform program and further changes will be made to the Act if needed.



How to get involved

Make a submission

You may wish to comment on all of the options covered in the paper, or only those that are of interest to you. Please indicate when making your submission if you want your feedback to remain confidential. Submissions not marked as confidential may be published in full or quoted in public documents. Submissions close on 6 September 2019 at 5pm.

You can comment on the options by making a written submission:

Email: CPAlegislationreview@csyw.qld.gov.au

Mail: Department of Child Safety, Youth and Women
Legal Policy and Legislation
Locked Bag 3405
Brisbane Qld 4001

Answer an online survey

You can tell us your views about options for changes to the Act by completing the survey on the Queensland Government's Get Involved website at www.getinvolved.qld.gov.au.

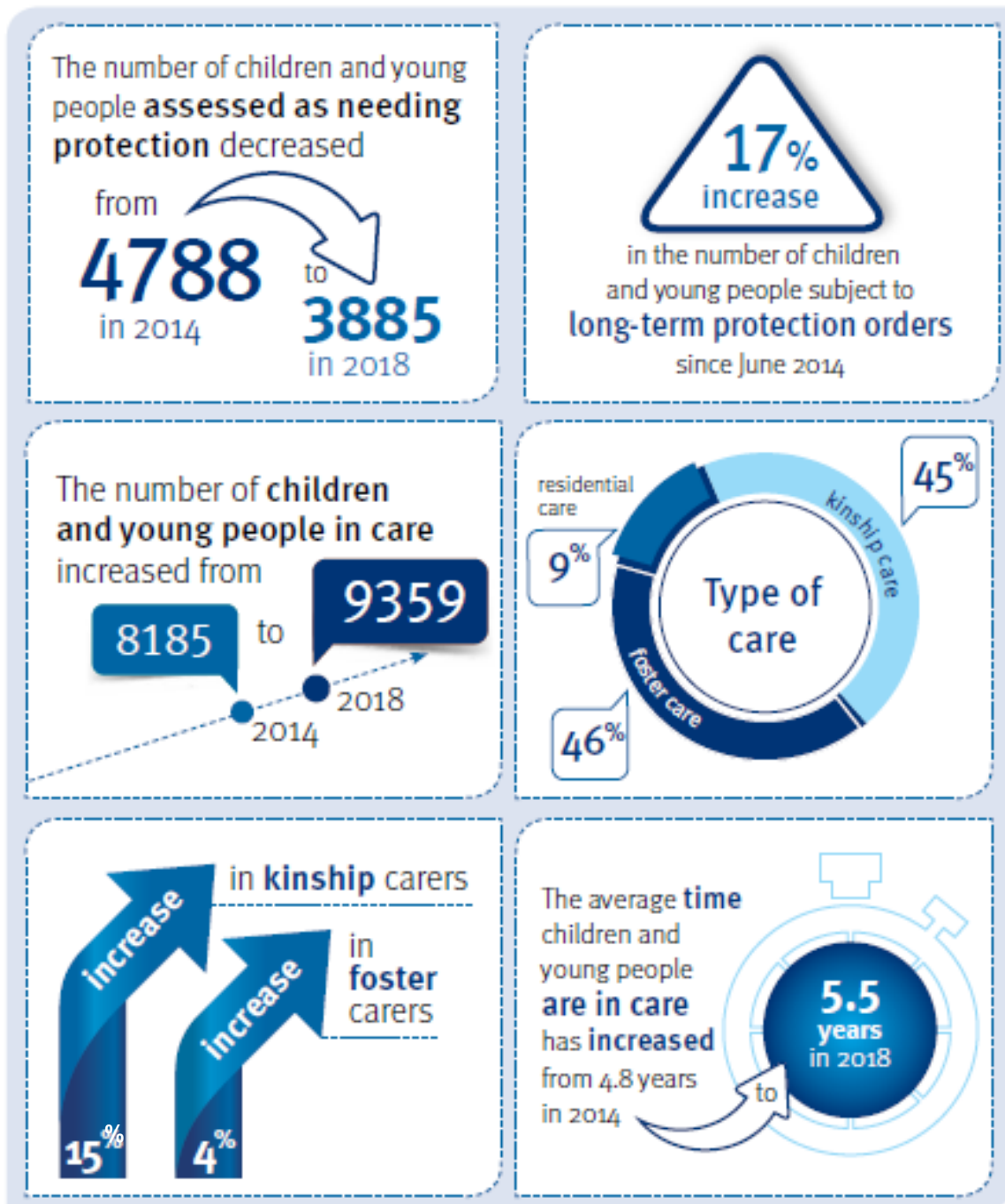
Use the Youth eHub

If you are under 25, you can tell us your views through the Queensland Youth eHub at www.qld.gov.au/ehub.

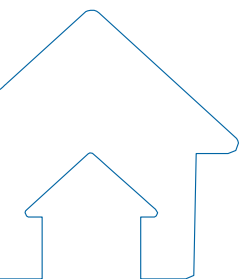


CHILDREN AND YOUNG PEOPLE IN THE CHILD PROTECTION SYSTEM

Fast facts



Source: Corporate performance data as at December 2018, Department of Child Safety, Youth and Women.
June 2014–December 2018





OPTIONS FOR CHANGES TO THE LEGISLATION

Reinforce human rights in the legislative framework

Human rights are the basic rights and freedoms that recognise the inherent value of each person. They are based on principles of dignity, fairness, equality, respect and independence.

Frameworks for human rights recognise that family is a fundamental and essential part of society. The frameworks also recognise that families have rights and responsibilities for the upbringing and development of their children, but that when children and young people cannot be looked after by their own family the government must ensure they are properly cared for and protected.

Children and young people have the same general rights as adults but they also have specific rights that recognise they have special needs. This is recognised in international laws, such as the Convention on the Rights of the Child, in Queensland legislation, and as a fundamental social value.

The recent passage of the *Human Rights Act 2019* (Human Rights Act) enshrines the rights of all Queenslanders in legislation for the first time. The Human Rights Act aims to ensure that public functions are exercised in a way that is compatible with human rights and to embed respect for human rights in the culture of the public sector. The Human Rights Act includes the protection of families and children.

While every child and young person has rights, there are sometimes barriers to them understanding and exercising their rights. Children and young people in need of protection are particularly vulnerable to having their rights breached because they may lack understanding, power, resources and visibility. The importance of recognising and protecting children and young people's rights and ensuring they are aware of their rights has been a consistent theme in various inquiries including the Commission of Inquiry and the Child Sexual Abuse Royal Commission.

The Queensland Government is committed to a legislative framework that fosters a strong rights culture across the child protection and family support system.

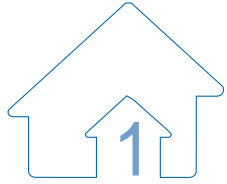
The current legislation

The Act establishes a framework that recognises the rights of children and young people.

The Act's purpose and principles

The purpose of the Act is to provide for the protection of children.

The main principle for administering the Act is that the safety, wellbeing and best interests of a child, both through childhood and for the rest of their life, are paramount. Other general principles for administering the Act provide guidance to ensure the safety, wellbeing and best interests of a child.



General principles

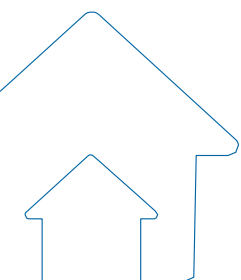
- A child or young person's family has primary responsibility for their upbringing, protection and development.
- The preferred way of ensuring a child or young person's safety and wellbeing is through supporting their family.
- If a child or young person does not have a parent able and willing to protect them, the government is responsible for protecting them.
- In protecting a child or young person, the government should only take action that is warranted in the circumstances.
- If a child or young person does not have a parent able and willing to give them ongoing protection in the foreseeable future, they should have long-term alternative care.
- If a child or young person is removed from their family:
 - support should be given to them and their family to allow them to return to their family if it is in their best interests
 - consideration should be given to placing them, as a first option, in the care of kin
 - the child should be placed with their siblings, to the extent possible.
- A child or young person should only be placed in the care of a parent or other person who has the capacity and is willing to care for them.
- A child or young person should be able to maintain relationships with their parents and kin, if appropriate.
- A child or young person should be able to know, explore and maintain their identity and values, including their cultural, ethnic and religious identity and values.
- A delay in making a decision in relation to a child or young person should be avoided, unless appropriate.

Charter of Rights

One of the key mechanisms for setting out the rights of children and young people in care is the *Charter of Rights for a Child in Care (the Charter of Rights)*.

The department needs to ensure the Charter of Rights is complied with in relation to children and young people in care. Long-term and permanent guardians need to ensure the Charter of Rights is complied with for children or young people placed in their care.

Children and young people must be told about the Charter of Rights and how it applies to them, as well as who can help them if they believe the Charter of Rights is not being complied with.



Charter of Rights

- ☐ Right to be provided with a safe and stable living environment.
- ☐ Right to be placed in care that best meets their needs and is most culturally appropriate.
- ☐ Right to maintain relationships with their family and community.
- ☐ Right to be consulted about and to take part in making decisions affecting their life, particularly decisions about where they are living, contact with their family and their health and schooling.
- ☐ Right to be given information about decisions and plans concerning their future and personal history.
- ☐ Right to privacy, including, for example, in relation to their personal information.
- ☐ Right to regular reviews of care arrangements for children under the long-term guardianship of the department.
- ☐ Right to have access to necessary dental, medical and therapeutic services.
- ☐ Right to have access to education appropriate to their age and development.
- ☐ Right to have access to job training opportunities and help finding employment.
- ☐ Right to receive appropriate help with the transition from being a child in care to independence, including, for example, help about housing, access to income support, and training and education.

Reviewable decisions

The Act provides that certain decisions made by the department can be reviewed by the Queensland Civil and Administrative Tribunal (QCAT). These are called reviewable decisions. A person affected by a reviewable decision who is not happy with the outcome can request that QCAT checks the decision. In some circumstances the Office of the Public Guardian, acting as a child advocate, can also ask QCAT to review a decision.

QCAT can confirm the department's decision or can make a different decision. It can also set aside the decision and ask the department to reconsider it according to instructions provided by QCAT.

This system of QCAT independently reviewing decisions supports transparency, accountability and consistency in decision making. The system also helps protect rights by ensuring affected people can effectively question decisions and have them reviewed by an independent party.

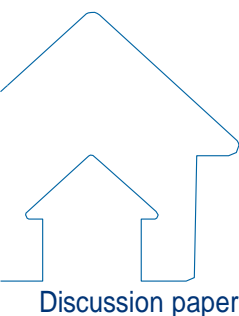
Not all decisions are reviewable. Broadly, reviewable decisions are those that adversely affect a particular person's interests, such as a decision about who will care for a child. But where the law requires a certain decision be made, that decision is generally not reviewable. For example, a decision not to approve someone as a foster carer because they do not hold a Blue Card is not reviewable, even though it adversely affects the person, because all foster carers must hold a Blue Card — if they do not hold a Blue Card there is nothing for QCAT to check.





The decisions that are currently reviewable and who may apply for a review (an aggrieved person) are set out below.

Reviewable decisions	Aggrieved person
deciding in whose care to place a child under a child protection order granting the chief executive custody or guardianship	child or parents
not informing a child's parents whose care they are in and of where they are living	child or parents
refusing to allow, restricting or imposing conditions on contact between a child and their parents or a member of their family	child, parents or family member
removing a child from a carer	child or carer
directing a parent in relation to a supervision matter in a child protection order	parent given the direction
refusing a request to review a case plan	person making the request
refusing to deal with a complaint about a permanent guardian	person making the complaint
refusing an application for, or renewal of, a licence	applicant or licensee
refusing an application for, or renewal of, approval as a foster or kinship carer	applicant or approved carer
refusing an application to amend a licence or carer approval	licensee or approved carer
amending a licence or carer approval	licensee or approved carer
suspending or cancelling a licence or carer approval	licensee or approved carer
cancelling a licence or carer approval	licensee or approved carer

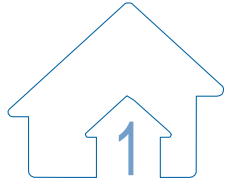


Options to reinforce human rights in the legislative framework

Options for changes to the Act that may support a stronger human rights framework are outlined below. Each option is independent of the others — one, some or all of them could be implemented.

Options	More information
1A Introducing a preamble recognising the human rights context of the Act.	<p>A preamble is a part of an Act that sets out why the law was made and the facts or values that are important for the operation of the law.</p> <p>A preamble in the Child Protection Act could recognise international laws about human rights and community values. This could be modelled on the preamble to the <i>Domestic and Family Violence Protection Act 2012</i>.</p>
1B Developing a broader purpose for the Act than ‘the protection of children’.	<p>A purpose sets out what an Act aims to achieve, and can be used to help work out the meaning of other parts of the legislation.</p> <p>The purpose of the Child Protection Act could be broadened to recognise that the role of the government is not only to take action to protect children but also to promote children and young people’s wellbeing, to support families to safely care for and protect their children, and to focus decisions and services on the needs of children and young people.</p>
1C Introducing specific matters to be considered when determining what is in a child’s best interests.	<p>This could include making it clearer how the general principles for administering the Act relate to determining the best interests of the child or young person, and possibly reframing these principles as a list of matters that decision makers must consider when determining what is in the child or young person’s best interests.</p>
1D Embedding a rights focus throughout the legislation to ensure children and young people are aware of their rights and how to exercise them.	<p>This approach could ensure rights are promoted throughout the legislation. Children and young people’s rights could also be reinforced by reframing the principles for administering the Act as rights.</p>

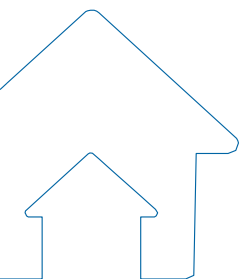




Options	More information
1E Revising the Charter of Rights for children in care.	<p>This could include expanding the Charter of Rights to apply to all children who are subject to ongoing intervention under the Act, and adding new rights such as those set out in the charters of rights in other states and territories, or rights set out in the Convention on the Rights of the Child.</p> <p>This could also include changing the language in the Charter of Rights to make it more child focussed.</p>
1F Revising the reviewable decisions framework.	<p>This could include revising the decisions that are reviewable and improving awareness about when an application for a review can be made.</p>

QUESTIONS:

- 1 Which options do you support or oppose? Why?
2. Do any of the options have potential unintended consequences?
3. Are there any other changes to the legislation you believe need to be considered to reinforce children and young people's rights in the legislative framework?





Strengthen the voices of children and young people in decision making

The right for children and young people to say what they think should happen and to have their opinions taken into account when decisions are being made about their future is a fundamental right. The right to participate is relevant to the exercise of all other rights under the Convention on the Rights of the Child, guiding how other rights are ensured and respected.

Recognising that children and young people have the right to be heard and to have their views taken into account accepts the potential of children and young people to enrich decision making processes. Respecting children and young people's views does not mean that their opinions are automatically endorsed but rather that they, like other affected people, should be able to express their views and have them taken into consideration.

A genuine conversation where adults provide guidance to children and young people while considering their views empowers children and young people to understand decision making processes, including why particular options are chosen and why decisions are made that might not be what they wanted.

The importance of children and young people meaningfully participating in decision making processes for decisions that affect them has been a consistent theme in various inquiries including the Commission of Inquiry and the Child Sexual Abuse Royal Commission. One recommendation from the Royal Commission, which has been accepted by the Queensland Government, is the adoption of 10 Child Safe Standards, including the standard that 'children participate in decisions affecting them and are taken seriously'.

The Queensland Government is committed to creating a legislative framework that is child centred—that empowers children and young people, proactively encourages their participation and values their contributions.

The current legislation

The Act establishes a framework for children and young people to participate in decision making. The department, Director of Child Protection Litigation, Office of Public Guardian, licensed service providers, courts and QCAT all have a role in decision making.

Decisions made by the department

The Act sets out general principles that should be followed when the department is exercising powers and making decisions, including that the views of a child or young person 'should be sought and taken into account before a decision is made'. Other provisions relating to specific decisions — such as whether to give information about a child or young person to a carer — provide that the department 'must have regard to the views and wishes of the child'.





When giving a child or young person an opportunity to express their views, the Act provides that:

- language should be appropriate to their age, maturity and capacity
- communication should be appropriate to their circumstances
- they should be given help to express their views if required
- they should be given an appropriate explanation of any decision affecting them
- they should be given an opportunity, and help if needed, to respond to a decision.

The Charter of Rights establishes that a child or young person has a right to be consulted about, and to take part in making decisions that affect their life.

The Act sets out additional principles for Aboriginal and Torres Strait Islander children including a 'participation principle' that a child has a right to participate, and be enabled to participate, in the process for making a decision that is likely to have a significant impact on their life.

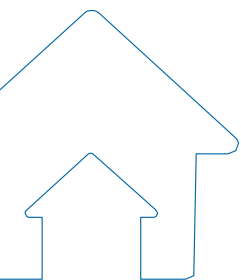
Decisions made by a court or tribunal

The Act allows a child or young person to appear in person in child protection proceedings, or be represented by a lawyer either engaged as their direct representative to act on their instruction or as a separate representative to act in their best interests. The Office of the Public Guardian can also play a role in supporting children and young people in court proceedings by presenting the child or young person's views to the court. The Act also sets out that before making a child protection order the court must be satisfied that, if possible, the court has heard the child or young person's views, either directly from the child or young person or from someone on their behalf.

If QCAT is reviewing a decision about a child, the child has the right to express their views to the tribunal about matters relevant to the review.

Options to strengthen children and young people's voices in decision making

Options for changes to the Act that may give children and young people a stronger voice are outlined on the following page. Each option is independent of the others — one, some or all of them could be implemented.



Options	More information
<p>2A</p> <p>Ensuring the relevant principles and provisions encourage and empower children and young people to meaningfully participate in decisions that affect them.</p>	<p>This could include introducing provisions to:</p> <ul style="list-style-type: none"> ■ separate the participation of children and young people from the participation of other relevant persons ■ ensure processes are child-centric and support children and young people to understand and participate in decision making processes ■ provide additional guidance about how children and young people's views should be considered in decision making. <p>This could also include a list of information the child or young person must be given to ensure they understand their circumstances and the decision making process. The list could be modelled on matters set out in other jurisdictions such as the <i>Children and Young Persons (Care and Protection) Act 1998</i> (NSW) and <i>Children and Community Services Act 2004</i> (WA).</p>
<p>2B</p> <p>Including information about how children and young people can express their views.</p>	<p>This could include provisions giving preference to children and young people personally expressing their views to the decision maker, if they choose to, as well as listing other ways their views can be obtained, such as from other experts who have been involved with the child or young person, and written reports.</p>
<p>2C</p> <p>Including additional requirements to strengthen procedural fairness in the decision making provisions.</p>	<p>This could include providing children and young people with information about how their views will be recorded and used.</p> <p>This could also include giving children and young people the opportunity to respond to proposed decisions, allowing them to raise any concerns for consideration prior to a final decision being made. Additionally, children and young people could be given a full explanation of the reasons for a decision once the final decision is made.</p>

QUESTIONS:

- 1 Which options do you support or oppose? Why?
- 2 Do any of the options have potential unintended consequences?
- 3 Are there any other changes to the legislation you believe need to be considered to give children and young people a stronger voice in decisions that affect them?





Reshape the regulation of care

‘Care’ is the general term used to describe alternative accommodation for children and young people who are subject to ongoing intervention that means they need to live away from home. Care includes:

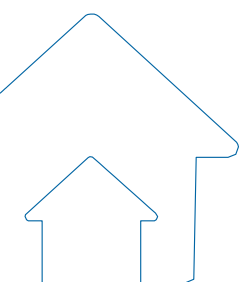
foster care	home-based care with an approved carer
kinship care	home-based care with an approved family member or person with a pre-existing relationship with the child or young person
residential care	care in a residential facility provided by a funded non-government organisation where children and young people are cared for by paid staff
other care	including supported, semi-independent and independent living arrangements

The care environment, whether foster, kinship, residential or other care arrangements, should be a safe place for children and young people, free from abuse and harm. However, children and young people in care are particularly vulnerable to abuse, harm, victimisation, social or economic deprivation, and displacement from family, community and culture.

Despite past reforms in every state and territory, the Child Sexual Abuse Royal Commission identified key areas where existing processes can be strengthened to better ensure the safety of children and young people in care. In particular, that the risks to children and young people in care can be reduced by adopting its proposed Child Safe Standards to ensure a culture of safety where child safe principles are consistently practised and carer and staff behaviour is monitored.

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 focused.
- 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.



To fulfil its responsibilities to children and young people in need of protection by placement in care, the Queensland Government must have a system of regulation to ensure carers and care services adequately look after children and young people and that the services meet certain standards.

A key challenge is designing the best model to protect the most vulnerable children and young people in our community and ensure access to quality, safe services. The Queensland Government is committed to ensuring arrangements for children and young people in care are safe.

The current legislation

The Act provides for a system of licensing care services and approving individual carers to provide care for children and young people to ensure compliance with the Statement of Standards in the Act. The department is responsible for deciding applications for licences and carer approvals, as well as monitoring ongoing compliance with licence and approval requirements.

Statement of Standards

The Act sets out the standards the community can expect of the care provided to children or young people who cannot remain safely at home. The department must take reasonable steps to ensure they are cared for in a way that meets the Statement of Standards.

Statement of Standards

- ☐ Respect for the child or young person's dignity and rights.
- ☐ Meeting the child or young person's physical (food, clothing, shelter), material and medical needs.
- ☐ Providing education, training or employment opportunities.
- ☐ Meeting the child or young person's needs related to culture and ethnicity.
- ☐ Opportunities to participate in positive social and recreational activities.
- ☐ Providing emotional care and positive guidance.
- ☐ Ongoing connection with family and other persons of significance.
- ☐ Appropriate care for a child or young person with a disability.

Licensing care service providers

The Act provides for the licensing of organisations delivering care services. This includes organisations that provide care directly to children and young people (residential care, therapeutic residential care, supported independent living) and those that recruit and support foster and kinship carers.





A licence will only be granted if the organisation meets the eligibility criteria including:

- the organisation is a suitable entity to provide care services
- the organisation's primary function is related to the care of children and young people in need of protection
- the nominee, directors, managers and employees providing care services holding a Blue Card and not posing a risk to children and young people's safety
- policies and procedures for selecting, training and managing employees
- the standard of care provided complying with the Statement of Standards.

Licences are granted for three years, and may be granted subject to conditions. Once an organisation is licensed they may deliver different services (such as providing residential care and supporting foster carers) in different locations under that licence.

The department is responsible for monitoring ongoing compliance with licence requirements and may suspend, cancel or amend a licence in certain circumstances.

Approving foster and kinship carers

The Act regulates the approval of foster and kinship carers, including granting and renewing approvals. Someone will only be approved to be a foster or kinship carer if they meet the eligibility criteria including:

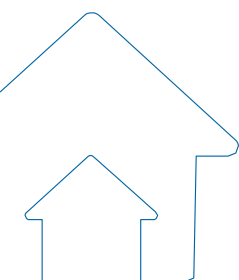
- being able and willing to protect a child or young person from harm, not posing a risk to a child or young person's safety, completing any necessary training and holding a Blue Card
- being able to meet the standards of care in the Statement of Standards
- all adult members of the household holding a Blue Card and not posing a risk to a child or young person's safety.

The person applying to be a carer may need to disclose their criminal history, domestic violence history and traffic history. The department may also consider their employment history, physical or mental health and other relevant matters, such as referee reports, in deciding whether to approve them as a carer.

Foster carer approvals are granted for an initial period of one year with subsequent approvals for two years. Kinship carer approvals, which apply to a specific child or young person, are granted for the time the child or young person is expected to need care, up to one year for the initial approval and up to two years for subsequent approvals. Kinship carers are the child or young person's relatives or someone with whom they have a significant relationship.

A person may be given provisional approval to care for a particular child or young person, pending the outcome of their application to become an approved foster or kinship carer, where an initial assessment has found them to be suitable and it is not possible, or in the child or young person's best interests, to place them with another approved carer or service provider.

The department is responsible for monitoring carers' ongoing compliance with approval requirements and may suspend, cancel or amend an approval in certain circumstances.



Options to reshape the regulation of care

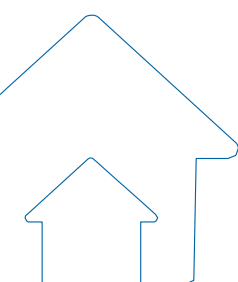
Options for changing the regulation of care are outlined below. Each option is independent of the others — one, some or all of them could be implemented.

Options	More information
3A Clarifying the regulation of approved carers to ensure a robust, safe and transparent framework.	<p>This could include:</p> <ul style="list-style-type: none">■ revising and clearly stating in legislation the evidence-based, child safe criteria upon which carer approval decisions are made■ introducing a code of conduct for foster and kinship carers that applicants must confirm they will comply with■ specifying the information and sources of information that may be considered as part of the decision making process■ providing guidance to decision makers regarding how to assess carer applications■ introducing clearer requirements for carers to demonstrate compliance when concerns are identified, such as risk management plans, and a framework that enables the department to respond appropriately and in a timely way.
3B Streamlining aspects of the carer assessment processes.	<p>This could include recognition between the approved carer and adoptive parent assessment frameworks, such as not requiring a person approved to be an adoptive parent to then also demonstrate they satisfy all of the criteria to be a foster or kinship carer.</p>
3C Clarifying requirements for regular visitors.	<p>This could include ensuring the requirements for 'regular visitors' to foster and kinship carers' homes and to home-based services, such as family day cares, are consistent.</p>





Options	More information
3D Ensuring the system for approving and monitoring care service providers is robust, providing safe outcomes for children and young people.	<p>This could include:</p> <ul style="list-style-type: none">■ revising and clearly stating in legislation the evidence-based, child safe criteria upon which licensing decisions are made■ specifying the information and sources of information that may be considered when assessing a licence application■ providing guidance to decision makers regarding how to assess licence applications■ introducing clearer requirements for licence holders to demonstrate compliance when concerns are identified and a framework that enables the department to respond appropriately and in a timely way■ requiring all licensed care service providers to comply with the Child Safe Standards■ developing different requirements for different types of services and service delivery models with requirements proportionate to the risk associated with the service.
3E Adopting an accreditation model for regulating care.	<p>Accreditation is a system of certifying that a person, organisation or program meets a set of standards to provide a service. Accreditation is not permanent, it requires ongoing compliance and periodic reviews to ensure the quality of the service continues to meet the standards. It promotes continuous improvement and best practice.</p> <p>An accreditation model for authorising care service providers could have threshold criteria that an organisation must initially meet, such as a suitable person managing care services, and standards that set expectations for the quality and safety outcomes of the services provided. Different standards could be applied to different service types.</p> <p>Transitioning to an accreditation model for authorising care service providers could support more innovative and flexible approaches to providing services, while maintaining and enhancing quality and safety standards.</p> <p>New South Wales' accreditation model could be used to inform how an accreditation model in Queensland could operate.</p>



QUESTIONS:

- 1 Which options do you support or oppose? Why?**
- 2. Do any of the options have potential unintended consequences?**
- 3. What do you think are the challenges with the current system for approving carers and licensing care service providers?**
- 4. Are there any other changes to the legislation you believe need to be considered for reshaping the regulation of care?**



APPENDICES

1 Additional information regarding reinforcing human rights in the legislative framework

Findings and recommendations from reviews and inquiries

Outcomes of reviews and inquiries that are relevant to reinforcing human rights in the legislation include:

Commission of Inquiry

Recommendation 14.4: that the specific matters be considered in determining what is in the best interest of a child should be clarified.

This recommendation was accepted by the Queensland Government.

Child Sexual Abuse Royal Commission

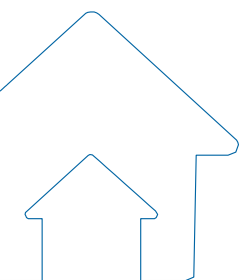
Recommendation 6.4: that all institutions uphold the rights of the child and act with the best interests of the child as a primary consideration (consistent with Article 3 of the Convention on the Rights of the Child). To achieve this institutions should implement the Child Safe Standards.

This recommendation was 'accepted in principle' by the Queensland Government.

Previous feedback from the review of the Act

There was clear support for a broad rights focus throughout the legislation and for including a preamble that recognises international laws such as the Convention on the Rights of the Child. There was also general support for broadening the purpose of the Act to include the role of government in supporting families and promoting the wellbeing of children and young people.

Many stakeholders recognised the benefits of providing more guidance in legislation about how to determine the 'best interests' of a child or young person. The Charter of Rights was seen as an important tool for informing children and young people of their rights but there was some feedback that many children and young people do not know or understand what their rights are or how to exercise them.



Other important information

Legislation in other jurisdictions

The purpose of the legislation in New South Wales, Western Australia, Tasmania, the Australian Capital Territory and the Northern Territory is broader than the protection of children, encompassing concepts such as — promoting children’s wellbeing, ensuring services are centred on the needs of children and encouraging and supporting parents and families.

Legislation in Victoria, Western Australia, Tasmania, Australian Capital Territory and Northern Territory provides additional guidance to decision makers in interpreting and applying the concept of a child’s best interests.

While not necessarily enshrined in legislation, all states and territories have a charter of rights for children in care. The charters in other jurisdictions recognise some additional rights to those recognised in Queensland’s Charter of Rights. Rights recognised elsewhere include the right to be treated fairly and with respect, to engage in play and recreational activities, to enjoy their own culture, profess and practise their own religion and use their own language, and to make a complaint.

Other Queensland legislation

The *Human Rights Act 2019* establishes protections for 23 human rights. The department will be required to act and make decisions in a way that is compatible with these human rights, and to give proper consideration to the relevant rights when making decisions.

The *Domestic and Family Violence Protection Act 2012* has a preamble that recognises domestic and family violence in the context of relevant international obligations, contemporary social values and human rights.

International laws

Australia is obliged, as a party to a range of international laws, to take appropriate measures to ensure children are protected and are able to realise their rights. The Convention on the Rights of the Child is the principal international law setting out the human rights of children, including rights to have their best interests as a primary concern in decisions affecting them, to get and share information and to be protected from all forms of violence.



2 Additional information regarding strengthening children and young people's voices in decision making

Findings and recommendations from reviews and inquiries

Outcomes of reviews and inquiries that are relevant to strengthening the voices of children and young people include:

Commission of Inquiry The Commission of Inquiry noted that more attention needs to be given to the views of children and young people when determining matters that may have a material impact on their lives.

Child Sexual Abuse Royal Commission Recommendation 6.4: that all institutions uphold the rights of the child and act with the best interests of the child as a primary consideration (consistent with Article 3 of the Convention on the Rights of the Child). To achieve this institutions should implement the Child Safe Standards. Recommendation 6.5 outlines the Child Safe Standards including 'Children participate in decisions affecting them and are taken seriously'.

This recommendation was 'accepted in principle' by the Queensland Government.

Previous feedback from the review of the Act

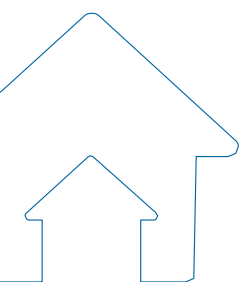
We heard that the legislation could more strongly emphasise the importance of including the voice of the child or young person. There was also a suggestion that the legislation could provide clear guidance about how a child or young person may express their views and participate in decision making, and the support they should be provided to make this possible.

Other important information

Legislation in other jurisdictions Legislation in Victoria, New South Wales, Western Australia, Tasmania, the Northern Territory and New Zealand sets out detailed principles supporting children and young people to express their views and participate in decisions.

Legislation in the Australian Capital Territory requires decision makers to give children and young people a reasonable opportunity to personally express their views, and outlines ways in which the decision maker may find out their views.

Convention on the Rights of the Child Article 12 provides that children have the right to say what they think should happen when adults are making decisions that affect them and to have their opinions taken into account.



3 Additional information regarding reshaping the regulation of care

Findings and recommendations from reviews and inquiries

Outcomes of reviews and inquiries that are relevant to reshaping the regulation of care include:

Commission of Inquiry Recommendation 12.17: that the department should consider stopping licensing care service providers and streamline the carer approval process, including reviewing the legislative basis for determining that potential carers and care service staff do not pose a risk to children.

This recommendation was accepted by the Queensland Government.

**Child Sexual
Abuse Royal
Commission**

Recommendation 6.4: that all institutions uphold the rights of the child and act with the best interests of the child as a primary consideration (consistent with Article 3 of the Convention on the Rights of the Child). To achieve this institutions should implement the Child Safe Standards.

This recommendation was 'accepted in principle' by the Queensland Government.

Recommendation 6.8 and 6.9: that institutions engaged in child-related work be required to meet the Child Safe Standards with institutions that provide child protection services such as out-of-home care, be legislatively required to comply with the standards.

Recommendation 6.9 was 'accepted in principle' by the Queensland Government, with recommendation 6.8 noted 'for further consideration'.

Recommendation 12.4: that mandatory accreditation schemes be revised to incorporate compliance with the Child Safe Standards and extend accreditation requirements to government and non-government care service providers.

This recommendation was 'accepted in principle' by the Queensland Government.

Recommendation 12.5: that an existing statutory body or office that is independent of the relevant child protection agency and care service providers, for example a children's guardian, have responsibility for receiving, assessing and processing applications for licensing of care service providers and conducting audits to ensure ongoing compliance.

This recommendation was 'accepted in principle' by the Queensland Government.



Recommendation 12.6: that assessment of foster and kinship/relative carers and residential care staff include community services checks of the prospective carer and any adult household members of home-based carers. Any risks identified through community services checks should be addressed through documented risk management plans that are reviewed at least annually.

This recommendation was 'accepted in principle' by the Queensland Government.

Recommendation 12.7: that all care service providers conduct annual reviews of authorised carers, including interviews with all children in the placement with the carer.

This recommendation was 'accepted in principle' by the Queensland Government.

Recommendation 12.8: that the model of assessment be appropriately tailored for kinship care designed to better identify the strengths as well as the support and training needs of kinship carers, ensure holistic approaches to supporting placements that are culturally safe and include appropriately resourced support plans.

This recommendation was 'accepted in principle' by the Queensland Government.

QFCC Reviews

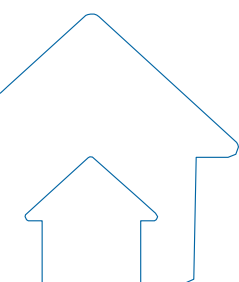
Recommendation 9: that the following suitability checks be made mandatory (currently discretionary) for each person who applies to be a carer: domestic violence check, referee checks, medical clearance.

Recommendation 14: that the adequacy of the legislative criteria for a person to be suitable to be a carer be reviewed, and policies and procedures amended accordingly.

Recommendation 28.4: that a consistent definition of 'regular visitor' for regulated home-based services be included within the *Working with Children (Risk Management and Screening) Act 2000*, and that consideration be given to requiring the disclosure of changes to the blue card status of 'regular visitors' to the notifiable person.

Recommendation 28.7: that 'regular visitors' to all regulated home-based services be required hold a current blue card.

Recommendation 28.8: that policies and procedures be updated to require other regulated services provided from the home be considered as part of the foster or kinship carer approval process.



Previous feedback from the review of the Act

We heard that the regulation of care framework could be strengthened and enhanced. We also heard that some licensing requirements in the legislation are not clear and that this has implications for how administrative decisions are made. Some requirements were seen to place an unnecessary administrative burden on service providers.

There was some feedback that the legislation should focus on achieving of outcomes for children and young people, while balancing compliance and monitoring requirements.

There was support for a more robust administrative decision making process, and clearer criteria and assessment processes. There was also support for measures to improve efficiency in carer approvals where this did not compromise the safety and wellbeing of children and young people. We heard that a hierarchy of carer categories could be introduced to streamline the carer assessment process.

We also heard some concerns about the role of the department in funding, delivering and regulating care services, and saw potential benefits in greater separation of the performance of these functions.

Other important information

Legislation in other jurisdictions

All other jurisdictions except Western Australia and the Northern Territory have a legislative framework for licensing or otherwise approving organisations to deliver care services. New South Wales has an accreditation model for care service providers.

All jurisdictions have criteria that a person must satisfy to become a foster or kinship carer. Some criteria are common to all jurisdictions, such as a working with children check and national criminal history checks. New South Wales, Victoria, Western Australia and South Australia require community services checks which involve a review of information held by government departments relating to allegations of child abuse.

Legislation in New South Wales requires foster and kinship carers to verify that they have read, understood and will comply with a code of conduct.

New South Wales is the only jurisdiction that has placed responsibility for the accreditation of care service providers and approval of carers with a body that is independent from the lead government department.

Other Queensland requirements

Organisations applying for a licence must obtain certification under the Human Services Quality Framework (HSQF). The HSQF certification process includes an assessment of an organisation's ability to provide care services in accordance with the Statement of Standards. Licensed organisations funded by the department must maintain certification under the HSQF as a condition of their service agreement.



APPENDIX 3 continued

**Convention on
the Rights of the
Child**

Article 3 requires all organisations concerned with children work towards what is best for each child.

Article 20 requires that children who cannot be looked after by their family be looked after properly by people who respect their religion, culture and language.

**National Standards
for out-of-home
care**

The *National Standards for Out-of-Home Care*, released as a key initiative under the *National Framework for Protecting Australia's Children 2009–2020*, aim to deliver consistency and drive improvements in the quality of care provided to children and young people.

Queensland's Statement of Standards complies with the National Standards.

