

# **Child Protection Act**

## **Legislative Review**

**Submission by**

**Queensland Foster and Kinship Care Inc.**

*This submission is made on behalf of the Management Committee,  
staff and members of Queensland Foster and Kinship Care  
including all approved Foster and Kinship Carers in Queensland.*

# QFKC Contacts

**Bryan Smith**  
**Executive Director**  
[bryan.smith@qfkc.com.au](mailto:bryan.smith@qfkc.com.au)

**Hazel Little**  
**President**  
[hazel.little@qfkc.com.au](mailto:hazel.little@qfkc.com.au)

**Linda Smith**  
**Secretary**  
[linda.smith@qfkc.com.au](mailto:linda.smith@qfkc.com.au)

**Carissa Inglis**  
**Service Support Manager**  
[carissa.inglis@qfkc.com.au](mailto:carissa.inglis@qfkc.com.au)

## Preamble

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The information, comments and recommendations contained in this submission comes from the Management Committee of QFKC, QFKC Foster and Kinship Care staff and volunteer Foster Carer Advocacy and Support Team herein referred to as FAST Representatives, all of whom provide both fostering and practice based experience totalling more than 475 years combined.

Since the year 2000 we have witnessed the proclamation of the Child Protection Act 1999 and since that time we have had the CMC Inquiry 2003 and Carmody Inquiry 2012 as well as several legislative amendments to the Child Protection Act. These amendments have been made in an endeavour to meet the recommendations of both inquiries and other recommendations from other agencies as well as to bring about change to meet the changing needs of Child Protection. The latest of these changes being proclaimed in October 2018.

While change is healthy if it is directed to reinforce and enhance our systems and practice, QFKC is concerned at some suggested change within Regulation of Care, which the association sees as negative, punitive and risk averse. This in turn will have the effect of current carers leaving the system in greater numbers, people enquiring to be Foster Carers not wanting to pursue this vocation due to layers of validation required and as we have seen in the past, a system that becomes even more risk averse where Foster and Kinship Carers feel like targets. Kinship Carers will also struggle to maintain their need to care for family with a system that so significantly scrutinises them to a point where they cannot cope. The result being less family based kinship options, more pressure on the foster care system, greater difficulty in recruiting Foster Carers and more Foster Carers leaving the system.

QFKC believes the Family Based Care system is at a significant point and we strive to provide comment that reflects the system at the current time. If we truly believe in a common culture of partnership and focus on child centered practice, together we can go a long way to improving a system that is requiring continued positive change, not change that can be seen as becoming more reliant on negative actions rather than building strength with our volunteer community.

Child Safe practice does not in any way mean that we bring more accountability for the care of children by adding extra layers of governance. Child Safe practice is about our systems and partnerships working together to enhance our systems and practice on behalf of our children.

Queensland Foster and Kinship Care believes that Queensland's 5300 Foster and Kinship Carer families all play a significant role in helping to shape Family Based Care to help ensure the primary principle of the Child Protection Act 1999 has meaning.

## 1. Reinforce human rights in the legislative framework

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Queensland Foster and Kinship Care agrees that embedding and reinforcing human rights into the legislative framework is positive and will help to drive culture across the sector that more clearly defines the rights of children and young people as it should.

QFKC will comment on some areas of suggested change that we feel have relevance. They are –

### Option 1C:

Any decision to reframe the principles of the CP Act **must not** take away from the Act's main principle that *“the safety, wellbeing and best interests of a child, both through childhood and for the rest of their life, are paramount”*. We have child protection legislation for a reason and all too often we come across circumstances where children have either returned home when they should not have or have not entered the care system when it is very clear they should have. Any change that may “water down” principles takes away from the child's right to be safe, which should be paramount at all times.

The purpose of the Act must remain focused on the protection of children and young people. If Child Safety is involved in a family's life, this is most likely due to a child experiencing harm and a child and young person has a right to be protected from that harm. If the Child Protection Act changes the purpose of the Act to consider helping families, there is a real risk that there will be unintended consequences that are driven by individual frameworks where family preservation overrides the right for a child to be protected from harm.

The Child Protection Act 1999 already acknowledges the need to help families and promote children's wellbeing through many of the principles underpinning the Act including:

5 (b) (c) (e) (f) (h) (i) (k) (l).

The additional principles for Aboriginal or Torres Strait Islander children also promote family and child wellbeing through family led decision making that considers additional principles relating to prevention, partnership, placement, participation and connection.

QFKC are supportive of the Principles of the Act and helping the carer community to understand the application of these in day to day caring. If these principles have meaning in practice, we will see children connected to family, culture and community, we will see Child Safety working with families where possible to keep children safely at home as a preference to removal and we will see positive reunifications occur when children must be taken into the care system. However, the overriding factor must always be the safety and wellbeing of a child or young person.

**Option 1D:**

There is a difference between “Rights” and “Principles” and neither should be enmeshed. The rights of a child should be just that and stated clearly and in a way that helps inform practice. Principles provide a guiding framework in which we can consider the philosophies, values and ethics of the decisions we make.

**Option 1E:**

QFKC supports changing the Charter of Rights to include further rights for children and young people; however it is vital that policies and procedures support any changes to the Charter of Rights. Current red tape around decision making for children in care could restrict what is able to be included in this Charter of Rights. In the current Charter of Rights, a child’s right to have their dental, medical and therapeutic needs met can be compromised due to a parent who maintains guardianship not providing consent for these things or Child Safety themselves not providing consent. Any additional Charter of Rights that are introduced must be supported by policy and procedure as it is not appropriate to recognise it as a basic right for children and young people and then not deliver on it due to red tape.

**Option 1F:**

This is an interesting option and one that has not been spoken about at great length. The reason for this is unclear however QFKC is of the opinion that the current reviewable decisions remain and be strengthened.

QFKC is asking that an additional reviewable decision be included.

**Asking for a decision to be reviewed**

A recent decision in the QCAT Appeals Tribunal found that carers and children do not have reviewable rights around restriction of contact between a child and carer when a placement ends. It is QFKC’s firm view that carers and children should be able to seek reviews of decisions where Child Safety have refused contact.

Recent changes to the Child Protection Act 1999 recognise the importance of relational permanency and Section 5BA of the Child Protection Act names carers as being a person of significance in a child’s life. Relational permanency recognises that a placement ending should not equate to a relationship breakdown, that children can continue to experience ongoing positive relationships with carers and this recognises a child’s right to maintain relationships with anyone that has played a significant role in their life. The paramount principle was extended to recognise that when considering what is in the best interests of children and young people, we must bring our mind to not only what is in their best interest now, but for life. Children who have long term relationships with many people that have played a significant role in their life and that

can help fill the gaps for children and young people through story telling as they reach adolescents and independence is not only important, it is a fundamental right of children. To have a view that a child or young person does not have a right to review a decision by the Department regarding who they have contact with, is depriving a child or young person of a basic right to determine who they want in their life. Furthermore it does not align with the current Charter of Rights which speaks to a child's right to have relationships with family and community. As stated above, this provides a clear example of where legislation does not support what is already contained in the Charter of Rights.

It is not always possible for children to make applications in their own right through QCAT, which is why this reviewable right should be extended to include carers.

QFKC has a view that children and young people should also have a reviewable right relating to contact decisions when a restriction decision is not made.

Currently the Public Guardian has the following powers under the Public Guardian Act

### **128 Meaning of reviewable decision for pt 1**

(1) In this part—

**"reviewable decision"** means any of the following decisions, whether made before or after the commencement of this section—

(a) a decision, under the *Child Protection Act, section 87 (2)*, by the Chief Executive (Child Safety) not to take action under that subsection;

Essentially this means that if Child Safety do not restrict contact between a child and young person and a member of their family when the Public Guardian deems that contact should be restricted – the Public Guardian can bring the decision not to restrict contact to QCAT for review. QFKC is not aware of any matters where the Public Guardian has enacted this section of the Act, however we are aware of many cases where children and young people have voiced strong views around not wanting family contact and where their view has not been heard.

QFKC would like to see the ability for children and young people to have this reviewable decision in their own right and the ability for 'another person' to make this application on their behalf when a child is not able to. For matters where the application is made on the child's behalf, QFKC would see this falling under Section 99 (P) of the Child Protection Act in that this application would only be able to be filed with the President of QCAT's permission with the same considerations recorded under 99 (P) (2) (a) (b) and (c) (3) and (4).

## 2. Strengthen the Voices of Children and Young People in Decision Making

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Queensland Foster and Kinship Care supports the need to strengthen the ability for children and young people to have a voice in their decision-making. QFKC does seek to ensure that there is no change to the legitimate need for Foster and Kinship Carers to have relevant and vital information about a child or young person both at the time of referral and during their time in care as that information becomes available.

This information is not about taking away a child or young person's right to decision making but moreover provides carers with information that directly influences a number of decisions.

They can be –

- The carer families right to be safe based on accurate and up to date information about the proposed referral of a child or young person
- The ability for a carer to provide a safe home environment for the child or young person as well as other family members who also have the right to be and feel safe
- The carers ability to determine and discuss other ongoing needs for the child or young person in the short or longer term
- The care team's responsibility to Section 122, Statement of Standards which applies not only to an approved Foster or Kinship Carer but also other care team members and a carer cannot meet these Standards if they do not have all relevant information
- Past practices that have seen information withheld with significant consequences for the child or young person and just as importantly the carer family

### 3. Reshaping the regulation of care – Foster and Kinship Carers

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#### Clarify Criteria for Foster and Kinship Carers

Legislative requirements regarding approval criteria for Kinship Carers and Foster Carers is currently exactly the same despite circumstances for each being entirely different as follows:

<b>Foster Carers</b>	<b>Kinship Carers</b>
Have probably considered fostering and impact on family for an extended period of time	Often no notice regarding requirement to provide care to a child within a statutory system
Has attended at least 15 hours of training and is understanding of obligations of carers and has at least a basic understanding of the statutory system	Has no training and often has little to no knowledge of obligations and providing care under a statutory system
Generally feels excited and ready to open up their home for their first placement	Is often experiencing grief and loss associated with circumstances which have led to them becoming kin carers

The circumstances that bring both Foster and Kinship Carers to making carer applications are very different and the journey that will follow will also be a very different one and yet the system requires both Foster and Kinship Carers to meet the exact same standards in order to provide care.

The Standards of care are viewed by the system as an expectation of care for children and young people – a Standard that is widely accepted as being beyond what we would expect of a parent in the community. It is a level of care that sits consistency above ‘average parenting’ and it is a daily expectation placed upon carers in the system. Complicating these standards further is the interpretation of them according to the Region, Service Centre and Statutory worker who is working with the carer family at the time.

Foster carers make an informed decision to foster having being provided with information throughout their approval process regarding the Standards of Care – they make a decision as a family as to whether they believe they can consistently meet this level of care. Foster carers are typically entering their carer journey with the Statement of Standards very clearly in the forefront of their mind. During Pre Service training, foster carers are required as part of their workbooks to demonstrate knowledge of the Standards of care by providing examples under each of them as to how they would meet that Standard for a child placed in their care.

Kinship carers’ motivation to care is different, there can be a sense of obligation and therefore a need to conform to whatever is being asked of them in the moment to enable them to provide



care. Kinship carers often do not understand the Statement of Standards or in fact have the ability to meet the Standards to the consistently high level that the system expects them to. It is the view of QFKC that a child placed with family where they are able to meet legislative requirements that relate to protecting children from harm and risk of harm should be the focus when considering kin approval. Not whether kin can meet what is agreed to be an expectation of parenting that sits well above what is expected of the average parents in the community. By setting this expectation on kin, the system is creating an unrealistic and in many cases unsustainable placement environment. QFKC runs the Exit report program and in one exit report a kin carer advised that the worst part about being a carer was ‘the expectation that my home is happy 100% of the time’. This carer interpreted the expectations placed on her as needing to generate an unrealistic home environment.

Kinship carers must still be committed to the Principles of the Child Protection Act and the Charter of Rights which will ensure those Standards of care that refer to a child’s right to their culture, family connections, safe and stable environment, to privacy that ensures confidentiality measures are maintained and to having dental, medical and therapeutic needs are met.

QFKC must stress here, that this is not about stating a child with family does not deserve a high level of care, this is about recognising that children and young people who are raised in kin placements are less likely to experience placement breakdowns, they are naturally connected to family and community through their placement with kin and therefore experience a better sense of identity and belonging.

### **Streamline the carer assessment process**

Where kin have been considered and approved for placement of a particular child and where they are subsequently being considered for placement of additional children, an entire new assessment should not be completed. Rather any subsequent placements should be considered through a ‘capacity assessment’. Suitability has already been determined and what is now being considered is whether the approved kin carer has capacity to take on additional children. This capacity assessment is not about determining suitability, it is about assessing whether the carer has the ability to meet the needs of additional children in the home and whether the additional child/ren being considered for the placement will be an appropriate ‘match’ in the household.

Adoptive parents undergo a very different process to that of a foster carer and it is important that if they are wishing to provide foster care, that they go through the process of training and assessment as other foster carers would. Navigating the world of fostering is extremely complex and not one that generally adoptive parents have been exposed to during their adoptive journey.

### **Confirm the requirements for regular visitors**

Requesting regular visitors of carer homes to hold blue cards is not placing trust in foster and kinship care family's that they already apply protective factors when considering who can and who cannot be in their home. In approving Foster and Kinship Carers, one must be satisfied that the carer applicant meets legislative requirements to be a carer, which include

1. Is able to protect a child from harm and risk of harm
2. Does not pose a risk to a child's safety
3. Ability to provide a safe and stable living environment that is safe from harm and risk of harm
4. Able to provide a nurturing environment that contributes to a child's self-regard.

Whilst people living in the home should have a blue card, it is not necessary to expect that anyone else coming and going from a carers home should have one. This is about trusting in the Foster and Kinship Carers who have been approved to make day to day decisions about their daily households and trust in the assessment process finding them competent to make decisions that will keep children safe and free from harm and risk of harm. The system must remember that at the very core of family based placements, we are seeking children to experience normality. It is simply not normal for average families to be seeking to have background checks on everyone coming into their home, it is about trusting that families will allow into their home who they deem are safe and appropriate people as the majority of society does.

### **Provide guidance on the assessment process**

The current training and assessment process is under review and is being undertaken by a highly experienced and professional team from "Encompass". QFKC is not of the opinion that there needs to be any inclusion of guidance with regard to carer assessment applications in legislation. Rather QFKC sees this sitting in policies and procedures that clearly outline the requirements that guide assessors and delegated officers. The legislation provides the framework and while some modification to the framework to identify difference between Foster, Kinship and Provisional Care already exists there is room to expand on that framework to identify more clearly the role of Kinship Carers.

If legislation becomes overly prescriptive then there is very little room for change. Modification to policy and procedure may not be able to occur as needed if it is underpinned by legislation, which would be in no one's best interests.

## **Introduce a carer's code of conduct**

The Statement of Commitment outlines roles, responsibilities and rights of carers and roles and responsibilities of Child Safety. This is a document that QFKC refer to a lot when needing to bring to Child Safety's attention their commitment to carers to involve them in decision making, providing ongoing relevant information about placements, consider the whole of family when making a decision and much more. To suggest that out of this entire document, the only part Child Safety would like to consider in legislation is the responsibilities of carers is to suggest that the rest of this document is in fact not important and that the responsibilities of Child Safety to carers is not relevant.

Carers are volunteers – already as volunteers, the system asks the following of them:

- A rightfully intrusive assessment process where their whole of life is exposed to be read by a panel of people they don't know
- That all this information they disclose in a very personal assessment process could then be used as part of court proceedings any time in the future should their assessment be relevant to the matter due to 'disclosure laws'
- That they open their homes up to Child Safety, Foster and Kinship Care Services and the OPG on a monthly basis so that their care of children can be monitored in line with the Statement of Standards – a legislated expectation of parenting.
- That if they don't meet this legislated expectation of parenting, a formal process of review will take place
- That they provide 24/7 care for children without any ability to make important custodian and guardianship decisions, the result of which can have detrimental impacts on their whole of family i.e. missing out on family holidays because approval cannot be gained for foster children to travel with them

Queensland is currently experiencing a crisis in placement capacity, there is simply not enough placements available to care for the children and young people entering care. Placing further expectations on volunteers who are already overwhelmed with expectations of the Queensland Child Protection system, will only result in carers leaving the system and new applicants not progressing.

It is extremely disappointing that this option has even been put forward as it further evidences the power imbalance in the system. The Statement of Commitment has two parties responsibilities named and yet only one is being put forward to be legislated.

QFKC has current and historical evidence that indicates they have and continue to feel they are not partners and colleagues but clients within a system where communication, relationships and information provision are poor. Time frames are not met, requested authorities not signed or not

approved and Standard of Care processes that continue to be punitive and blame driven. Placing another layer on an already fragile system will have significant negative consequences with the end result that there will be even less placement availability than there currently is.

Below is some feedback from active carers about this option –

- *My wife and I are foster carers and have been for more than ten years. I am also a FAST (Foster Care Advocacy and Support Team) Representative appointed by Queensland Foster and Kinship Care. For every child or young person coming into our home, we are part of their care team. We are the only volunteers in this team consisting of department staff, NGOs and health professionals. We volunteer 24 hours a day, 7 days a week. We are an important, vital and often underappreciated part of the care team. Our role and our responsibilities as foster or kinship carers are already guided by policies, procedures, the Statement of Standards, community expectations etc. etc. etc.*
- *While I am very supportive of changes that further strengthen the protection of children and young people, legislating the commitment that we now freely give is not a progressive step. If the Act was to be changed, then along with our responsibilities, it must include our rights and expectations as well. This would then need to be extended to every single member of the care team.*
- *Instead of taking the legislation approach, I suggest improving the “team” culture and watch the benefits that this one simple change will achieve.*
- *Big No.*
- *Already a statement of standards, and a ‘disciplinary’ system through Standard of Care, Harm Reports and regular reviews.*
- *Legislation of volunteer carers code of conduct without legislative reforms for all PAID employment (Child Safety staff, NGO's), will create imbalance of power moving further away from a team approach.*
- *Will create less retention of experienced carers and less recruitment of new carers = a more institutional care system as the number of children coming into care is increasing every year.*
- *Will legislative code of conduct of carers equate to paid employment for services/time including annual leave and super?*
- *As a carer, a legislated code of conduct would be fine BUT what about other stakeholders?*
- *Will CSOs and Team Leaders have a legislated code of conduct to adhere to?*
- *When they have been proven to have lied in Harm Reports of SOCs will it be swept under the carpet and ignored???*
- *When they have failed to appropriately communicate risks to carers and their families, what will their consequence be?*
- *Too much expectation is placed on carers, when other stakeholders are NOT held to the same high standards.*

- *I believe there are sufficient checks and balances already in place for carers. This is a volunteer role, if an extra code of conduct was to be introduced then reimbursement needs to be matched to expectations. Also why would there be a code of conduct for carers and not Child Safety staff in legislation as well? Who are the professionals?*

QFKC would also like to highlight and emphasize the impact of legislating a Code of Conduct on the recruitment of carers. Professionals working in positions such as Teachers, Health professionals, Police Officers and Human Services field could have substantial implications for their professional careers if they have been found to have ‘breached a Code of Conduct’ under the Child Protection Act. As stated earlier in this position paper, Regions, CSSCs and individual statutory workers are likely to interpret a Code of Conduct differently – the consequences on carer families where a worker interprets a situation as a carer breaching a Code of Conduct could have very wide implications for them. For those professionals named, they simply may not be prepared to take the risk of this occurring and therefore make a decision not to be a carer or if already carers, they may be forced into resigning as carers.

### **Clarify the ongoing obligations of carers**

The Statement of Standards is not just a standard of care that is expected to be met by carers, it is a Standard of care for children that the system must meet. It is extremely concerning once more that it is being suggested that only carers be held accountable in legislation in respect to meeting Standards of Care when it is impossible for carers to meet the Standards of care in isolation to the care team.

Many of the Standards of care require a care team approach to meet i.e.

*(d) the child’s needs relating to his or her culture and ethnic grouping will be met.*

QFKC’s carer surveys consistently provide data that children who identify as Aboriginal and Torres Strait Islanders do not have Cultural Support Plans in the majority of cases and children from a CALD background are being placed with carers without any guidance and training to assist them to provide culturally sensitive care. It is the role of the whole care team to meet a child’s cultural needs.

*(f) the child will receive education, training or employment opportunities relevant to the child’s age and ability.*

Carers are often not included in ESP plan meetings, they are often not able to enrol children into school even when policy allows or provide permissions for many school related activities. Carers rely on Child Safety to communicate with them in this area and it is certainly not unusual to hear of a child missing out on a school camp or excursion due to permissions not being provided.

*(h) the child will receive dental, medical and therapeutic services necessary to meet their needs.*

Carers are not able to consent to anything that sits out of day to day care. They cannot consent to major dental work, anything relating to medical that does not fall into day to day care and any therapeutic services. Carers become extremely frustrated when they are caring for a child where permissions are not provided in a timely manner or at all resulting in the standards of care not being met for children they are providing care to.

*(j) the child will be encouraged to maintain family and other significant personal relationships.*

Child Safety have the statutory responsibility to facilitate appropriate contact, however due to Child Safety workload pressures, carers are often given the message that this standard of care means they have no option but to transport and in some cases (particularly for kin) facilitate contact. The responsibility of contact sits with Child Safety, the encouragement of family contact sits very separately to this.

*(k) if the child has a disability – the child will receive care and help appropriate to the child’s special needs.*

Carers are often being excluded from any NDIS process. Child Safety are not completing the relevant paperwork and children are missing out entirely and disagreements are occurring between NDIS and Child Safety in cases about who’s responsibilities are what – in the meantime children are missing out on their needs being met. Carers simply cannot meet this Statement of Standard without appropriate engagement from Child Safety.

As evidenced above, the Statement of Standards require commitment from the whole care team. It is QFKC’s view that current procedures surrounding Standard of Care reviews needs to change to reflect the whole care team approach where anyone in a care team can call a ‘Care Consult’ when a Statement of Standard is not being met for a child. This holds everyone in the care team responsible and accountable to meet the standards of care for children.

Whilst QFKC is aware that the Public Guardian can bring a review matter to QCAT where they assess if Child Safety is not and will not meet a particular standard of care for a child i.e. dental, we are not aware of any matters where this has occurred.

Thank you for the opportunity to provide feedback on the proposed reforms.



Bryan Smith  
Executive Director

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