



Child safety legislation reform

Submission to the Department of Communities, Child Safety
and Disability Services on *The next chapter in child
protection legislation for Queensland: Options paper*

January 2017

About the Office of the Public Guardian

The Office of the Public Guardian (OPG) is an independent statutory office which promotes and protects the rights and interests of adults with impaired decision-making capacity, and children and young people in out-of-home care or staying at a visitable site.

The OPG provides an important protective role in Queensland by administering a community visitor program, which provides statewide visiting services to:

- adults with impaired decision-making capacity residing in government funded facilities and some private hostels, and
- children and young people in out-of-home care (foster care, kinship care, residential care) or at a visitable site (residential facilities, detention centres, corrective services facilities, authorised mental health services).

The OPG provides individual advocacy for children and young people through its child visiting program, complemented by its child advocacy program. This program gives children and young people engaged with the child protection system an independent voice, ensuring their views are taken into consideration when decisions are made that affect them, thereby implementing a key element of the United Nations *Convention on the Rights of the Child*.

The community visitors and child advocates provide an oversight mechanism to ensure that the Charter of Rights for a child in care under the *Child Protection Act 1999* are upheld. This includes upholding the rights of children and young people to be provided with a safe and stable living environment, and to be placed in care that best meets their needs and is culturally appropriate.

The OPG also works to protect the rights and interests of adults who have impaired capacity to make their own decisions, recognising that everyone should be treated equally, regardless of their state of mind or health. The OPG has a direct role in implementing obligations and ensuring rights as prescribed by the United Nations *Convention on the Rights of Persons with Disabilities* are upheld.

The OPG's legislative obligations with respect to adults with impaired capacity are to:

- make personal and health decisions if the Public Guardian is their guardian or attorney
- investigate allegations of abuse, neglect or exploitation
- advocate and mediate for adults with impaired capacity, and
- educate the public on the guardianship and attorney systems.

When appointed by the Queensland Civil and Administrative Tribunal as guardian, the Public Guardian routinely makes complex and delicate decisions on health care and accommodation, and guides adults through legal proceedings in the criminal, child protection and family law jurisdictions.

The *Public Guardian Act 2014* and *Guardianship and Administration Act 2000* set out the OPG's legislative functions, obligations and powers. The *Powers of Attorney Act 1998* regulates the authority for adults to appoint substitute decision makers under an Advanced Health Directive or an Enduring Power of Attorney.

Submission to the review

Position of the Public Guardian

The Office of the Public Guardian (OPG) welcomes the opportunity to provide a submission to the Department of Communities, Child Safety and Disability Services (DCCSDS) on *The next chapter in child protection legislation for Queensland: Options paper* (options paper).

The OPG supports the review of the *Child Protection Act 1999* and commends DCCSDS on the progress made to date and the proposed reforms outlined in the options paper. The purpose of this submission is to address the options paper, and to raise additional issues identified by the OPG which may be resolved with legislative reform.

The OPG would be pleased to lend any additional support as the review of the *Child Protection Act 1999* progresses. Should clarification be required regarding any of the issues raised, the OPG would be happy to make representatives available for further discussions.

Recommendations for legislative reform

The OPG reaffirms the Public Guardian's position in our submission to the review of the *Child Protection Act 1999* in February 2016, and considers that the recommendations made in the submission are critical to the positive development of the child protection system in Queensland.

The OPG has further considered the review in the context of the OPG's clients, and has identified additional key issues which may be remedied or improved with legislative reform.

Regulation of restrictive practices, including medication for children and young people in residential care

The OPG is concerned that the use of restrictive practices, in particular the administration of behavioural medication on children and young people in residential care, is not subject to adequate regulation and safeguards under the *Child Protection Act 1999*. The OPG is also concerned that children and young people may be subjected to the use of behaviour modifying medications without an appropriate diagnosis while in care.

The *Guardianship and Administration Act 2000* and the *Disability Services Act 2006* (collectively, the statutory regime) regulate the use of restrictive practices on some adults with impaired decision-making capacity. The statutory regime specifies that restrictive practices may be used by a disability service provider for the purpose of reducing the risk of harm to the adult or others.

'Restrictive practice' means any of the following practices used to respond to the behaviour of an adult with an intellectual or cognitive disability that causes harm to the adult or others:

- containing or secluding the adult
- using chemical, mechanical or physical restraint on the adult, or
- restricting the adult's access to objects.¹

'Harm' to a person means physical harm to the person, a serious risk of physical harm to the person, or damage to property involving a serious risk of physical harm to the person.² The statutory regime safeguards the adult's rights and interests by providing for the assessment, approval, regulation, monitoring and review of the use of restrictive practices by service providers. This ensures that the service provider has regard for the human rights of the adult and uses the least restrictive way of preventing harm.³ The OPG, DCCSDS and QCAT are primarily responsible for the administration of the restrictive practices framework.

The statutory regime provides a process for authorisation of actions that may otherwise constitute assault or other criminal offence against the adult. A service provider is not criminally or civilly liable if the service provider uses restrictive practices in accordance with the statutory regime.⁴

The statutory regime applies only to adults with impaired capacity who:

- are 18 years or over
- have an intellectual or cognitive disability
- exhibit behaviour that either causes harm, or represents a serious risk of harm, to the adult or others, and
- are receiving services provided or funded by DCCSDS.⁵

The restrictive practices regime for adults with impaired decision-making capacity requires the adult to have a positive behaviour support plan, which is designed to reduce and eliminate the use of restrictive practices.

The Public Guardian's role in relation to children and young people is very different to that for adults with impaired decision-making capacity. In the adult sphere, the Public Guardian may be appointed as the adult's guardian; in the child sphere, the child's parent, a carer who has guardianship of a child or the chief executive of DCCSDS is the guardian. It is incumbent on the child's guardian to make informed decisions around restrictive practices for the child, which includes providing informed consent in relation to the prescription of medications for behavioural issues.

The OPG is concerned that children and young people, particularly those in residential care, are being subjected to behaviour modification medication that lacks clear evidence and may be regarded concerning 'off-label usage', and in many instances would be considered chemical restraint under the restrictive practices regime for adults with impaired decision-making capacity. The diagnosis may be untested and the medication may be used to control a child's behaviour rather than treat a

¹ *Guardianship and Administration Act 2000*, s.80U; *Disability Services Act 2006*, ss.144, 145, 146 and 147.

² *Guardianship and Administration Act 2000*, s.80U; *Disability Services Act 2006*, s.144.

³ *Guardianship and Administration Act 2000*, s.80U; *Disability Services Act 2006*, ss.139 and 141-144.

⁴ *Disability Services Act 2006*, ss.189 and 190.

⁵ *Guardianship and Administration Act 2000*, s.80R; *Disability Services Act 2006*, ss.140 and 142. For impaired capacity requirement see *Guardianship and Administration Act 2000*, ss.80V, 80ZD and 80ZH; *Disability Services Act 2006*, s.178.

condition or illness. The use of behavioural medications has serious side effects and implications in terms of a child's development.

It has been observed by the community visitor program that some residential care facilities make decisions to medicate children and young people as a day-to-day decision, and may not consider whether consent of the child's guardian is required. The OPG has acquired anecdotal information that some residential care facilities 'doctor shop' to find doctors that will provide prescriptions for behaviour medication, and in some instances allegations have been made that the medications appear to be administered to children in their care as a 'punishment rather than treatment'. The OPG has also been apprised of allegations that there have been threats to placement and to relinquish the child if the facility is not able to utilise behavioural medications.

From 1 July 2014 to 22 August 2016, there were 1,483 issues raised by community visitors where either medication, Ritalin, conduct disorder, oppositional defiant disorder, bipolar, depression, ADHD, attention deficit hyperactivity disorder, or ADD was recorded in the issue description field of the OPG database.

There is no regulatory regime similar to the restrictive practices regime for adults with impaired decision-making capacity to regulate the use of behavioural medication or other restrictive practices on children and young people, irrespective of whether or not they have impaired decision-making capacity. The *Child Protection Act 1999* does not specifically acknowledge or regulate these practices, therefore there is also no equivalent to a positive behaviour support plan to reduce and eliminate any restrictive practices used.

Recommendation:

The OPG submits that an appropriate diagnosis by a specialist should be required. The *Child Protection Act 1999* should also be amended to introduce a framework to safeguard the use of restrictive practices, in particular significant medications, on all children and young people in care. In addition to a safeguard and consent framework being incorporated into the legislation, the OPG submits that consideration should also be given to incorporating the following additional oversight mechanisms into the *Child Protection Act 1999*.

The new *Mental Health Act 2016*, which will come into force in March 2017, provides that the Public Guardian must be notified if a minor is subjected to the use of mechanical restraint, seclusion or physical restraint at an authorised mental health service.⁶ A similar provision could be included in the *Child Protection Act 1999* whereby the Public Guardian must be notified if a child or young person is subjected to chemical restraint while in out-of-home care. This would ensure some level of consistency with the Public Guardian's role in mental health in relation to children and young people. The notification would also provide an opportunity for the community visitor program to determine whether the frequency of visits to the child should be increased.

The guardian's consent to administer a significant behavioural medication to a child could be made a reviewable decision under the *Child Protection Act 1999*, and could also be referred to the OPG's child advocate—legal officers to facilitate a review of the decision.

⁶ *Mental Health Act 2016*, s.274.

The OPG understands that issues surrounding the administration of medication to children and young people in care for behavioural reasons is also a matter of particular concern for the Youth Affairs Network of Queensland, which has been advocating for change in this area for a number of years.⁷

Reviewable decisions

The Public Guardian is empowered to resolve disputes with the Chief Executive of DCCSDS, and to apply or assist a child, or an adult parent with impaired capacity for a matter for whom the Public Guardian is appointed as guardian, to apply to QCAT for the review of reviewable decisions.⁸ This is an important advocacy function which allows the child, or the adult parent with impaired capacity for a matter, an avenue for meaningful participation in decisions that affect them, and provides external oversight of the DCCSDS decision-making processes. However, there are a number of limitations to the function, as set out below.

Recommendation:

The OPG strongly recommends that the scope of the Public Guardian's function with respect to reviewable decisions is extended and strengthened under the *Child Protection Act 1999*.

'Reviewable decision' is defined under the *Public Guardian Act 2014* to mean:

- a decision by the Chief Executive not to take action under section 87(2) of the *Child Protection Act 1999*
- a decision by the Chief Executive to take, or not to take, a step under section 122 of the *Child Protection Act 1999*, for the purpose of ensuring a child placed in care under section 82 of the Act is cared for in a way that meets the statement of standards under section 122 of the Act, or
- a reviewable child protection decision.⁹

A reviewable child protection decision under the *Child Protection Act 1999* includes:

- refusing a request to review a case plan under section 51VA
- directing a parent in relation to a supervision matter stated in a child protection order (section 78)
- deciding in whose care to place a child under a child protection order granting the chief executive custody or guardianship (section 86(2))
- not informing a child's parents of person in whose care the child is and where the child is living (section 86(4))
- refusing to allow, restricting, or imposing conditions on, contact between a child and the child's parents or a member of the child's family (section 87(2)), and

⁷ Youth Affairs Network of Queensland, 'Queensland Children at Risk: The Over Diagnosis of "ADHD" and the Overuse of Stimulant Medication', August 2002; Youth Affairs Network of Queensland, 'Use of Psychotropic Drugs on Children in State Care', 2012; Youth Affairs Network of Queensland submission to the Independent Review of Youth Detention, October 2016.

⁸ *Public Guardian Act 2014*, ss.13 and 133.

⁹ *Public Guardian Act 2014*, s.128.

- removing a child from the care of the child's carer (section 89).¹⁰

In practice, there are a number of issues relating to the reviewable decision mechanism which undermine its effectiveness to safeguard the rights of the child. A mandate of procedural fairness in the *Child Protection Act 1999* may ensure that some of the following issues are alleviated.

Recommendation:

The OPG submits that the legislation would benefit from greater clarity as to what is a reviewable decision. For example, a statement that contact is not being increased or reduced is not considered to be a reviewable decision, but it is arguable that DCCSDS has made a decision not to increase or reduce contact, which should be reviewable. Likewise, decisions regarding a child's placement, including changes to location while remaining with the same residential service provider and refusals of a child's repeated requests to move placement, should be considered placement decisions for which rights of review are available. The scope of what is a reviewable decision should also be expanded to encompass other matters, including a decision under section 195 of the *Child Protection Act 1999* not to provide a written decision.

Before making a decision, the child's guardian should be required to engage with family members and key stakeholders, to ensure that an informed decision is made. The legislation needs to allow for greater participation of the adult parent with impaired decision-making capacity and/or their guardian, and the child and/or their child advocate, in the decision-making process before a decision is made. The mechanism also needs to allow for the review of the decision before it is executed. In some cases a child is moved without notice and the written decision is not provided until several weeks later. On review, QCAT may be reluctant to reverse the decision because at that stage the child has been in a stable placement for some time.

Written decisions are not provided to the child or young person, their parents, their parent's guardian, their child advocate and/or their guardian in timely manner, if at all. This makes it difficult to determine whether a reviewable decision has been made. In the OPG's experience, placement decisions are key matters for which young people seek to review; however, written decisions are not being routinely provided to the relevant parties. Sometimes written decisions are provided without reasons for the decision. In some cases there are significant delays of up to six months in receiving the reasons for the decision; in other cases the decision will contain comments about the parents, which has the effect of re-traumatising the child rather than providing an avenue to exercise their review rights.

The OPG acknowledges that there will always be emergency cases where a decision must be made and executed as quickly as possible. However, in many cases the decisions are not urgent and could accommodate robust participation and review by the child or young person.

The case below demonstrates the need for the legislation to be strengthened so that DCCSDS makes timely decisions and communicates them appropriately to the parties, which will allow for the

¹⁰ *Child Protection Act 1999*, Schedule 2.

reviewable decision mechanism to follow its due course and ensure procedural fairness for all parties involved.

Case example

Mary is an adult client of the Public Guardian who lives independently. Mary fell pregnant with her first child and a notification was made to Child Safety by a hospital social worker, who thought Child Safety might be able to help Mary when her baby was born. A member from Mary's community group applied to have the Public Guardian appointed for legal matters for Mary, as they were concerned about Child Safety approaching Mary and thought that she may need some assistance to navigate the child protection system. Upon the Public Guardian being appointed for Mary, Child Safety indicated to Mary that they would be requesting that the DCPL make an application for a guardianship order when her child was born, as she could not make decisions for herself.

Mary's daughter, Joanna was removed from Mary at birth and a short term order was made granting custody to Child Safety. Joanna and Mary were having contact four times each week, supervised by a CSSO. The notes made by the CSSO indicate that contact between Joanna and Mary was positive, there had been no incidents, they have a strong bond, and Mary had demonstrated her ability to learn and apply parenting skills. The Public Guardian has requested that contact increase between Mary and Joanna. Child Safety have advised that they would not increase contact, as it is inconsistent with their plan to apply for long term guardianship in the future. Child Safety have further advised that the priority for Joanna is the stability of her placement and forming a bond with her foster carer as they cannot predict if Mary will be able to care for Joanna in the future. The Public Guardian, on behalf of Mary, has requested a reviewable decision letter and reasons for the decision from Child Safety. Child Safety have advised that they have not made a decision because contact remains unchanged.

Recommendation:

In summary, the OPG strongly recommends that the reviewable decision mechanisms in the *Child Protection Act 1999* and the *Public Guardian Act 2014* are strengthened by including provisions to:

- mandate procedural fairness requirements at the beginning of the *Child Protection Act 1999*
- clarify what is a reviewable decision (this includes a decision not to change a child's care arrangements, a decision whether or not to change a child's placement, and a decision to refuse a child's request to move placement)
- expand the scope of what is a reviewable decision to encompass other matters, including a decision under section 195 of the *Child Protection Act 1999* not to provide a written decision
- allow the child's participation in the decision-making process and the opportunity to have a reviewable decision reviewed, before the decision is made or executed (to the greatest extent possible in the circumstances)
- require the child's guardian to engage with family members and key stakeholders to inform their decision, and

- decisions, and reasons for decisions, need to be provided to the child, their parents, their parent's guardian, their child advocate and/or their guardian in a timely and appropriate manner to ensure that any review is proximate to the decision (this should include a legislated timeframe for the provision of the decision).

Redress for breach of principles, standards and Charter of Rights

The *Child Protection Act 1999* contains principles, standards of care and the Charter of Rights for a child in care (Charter of Rights) which all afford children and young people in care with significant human rights and entitlements. However, the OPG is of the view that they do not provide sufficient protection of these rights because there is a lack of enforcement or consequence for breach of these provisions. The OPG considers that there needs to be an oversight mechanism which is required to monitor and report on breaches of these provisions.

The OPG notes that the former *Commission for Children and Young People and Child Guardian Act 2000* contained a robust complaints mechanism,¹¹ and considers that something similar to the complaints mechanism in the *Victims of Crime Assistance Act 2009* (VOCA Act) may be an effective model for any new child protection legislation. The purposes of the VOCA Act are: to declare fundamental principles of justice to underlie the treatment of victims by certain entities dealing with them; to provide a mechanism for implementing the principles and processes for making complaints about conduct inconsistent with the principles; and to provide a scheme to give financial assistance to certain victims of acts of violence.

The VOCA Act prescribes the fundamental principles of justice for victims, including the right to be treated fairly, the right to privacy, the right to assistance, and the right to relevant information.¹² Government entities must prepare and adopt appropriate guidelines and processes for implementing the principles;¹³ in dealing with a victim, a prescribed person must not engage in conduct that is inconsistent with the principles.¹⁴ The VOCA Act also contains enforcement provisions for breaches of these principles.¹⁵ If a victim believes a prescribed person, including a government entity or its officer, member or employee, has engaged in conduct that is inconsistent with the principles, the victim may make a complaint.¹⁶ Resolution of the complaint may be facilitated by the government entity or the victim services coordinator under the VOCA Act. In dealing with the complaint, the government entity must give the victim information about the resolution process, and take all reasonable steps to resolve the complaint as soon as is reasonably practicable.¹⁷

The OPG recommends that an enforcement and oversight mechanism for breaches of the principles, standards of care and Charter of Rights under the *Child Protection Act 1999* is included in the legislative reforms.

¹¹ *Commission for Children and Young People and Child Guardian Act 2000* current as at 1 January 2014, ss.53-62.

¹² *Victims of Crime Assistance Act 2009*, ss.8-16.

¹³ *Victims of Crime Assistance Act 2009*, s.17.

¹⁴ *Victims of Crime Assistance Act 2009*, s.18.

¹⁵ *Victims of Crime Assistance Act 2009*, ss.19-20.

¹⁶ *Victims of Crime Assistance Act 2009*, s.19.

¹⁷ *Victims of Crime Assistance Act 2009*, s.20.

Parents with impaired capacity

It is the OPG's view that there have been instances where a child has been placed into care by DCCSDS in the absence of actual substantiated harm, on the basis that a parent has a disability and it is unknown if they will be able to meet the needs of a developing child in the future. In some cases, firstborn children have been removed at birth from parents for whom the Public Guardian is appointed and long term guardianship is sought of the child. In the view of the OPG, this has occurred in some instances without adequate exploration of the adult's actual ability to parent or identification of the actual risks to the child. Some children are subsequently placed in care arrangements that arguably demonstrate inferior outcomes to those had they remained with their parents. These outcomes include multiple placements, changes in schooling, and grief and loss as a result of being removed from a parent. In some cases, children have special needs which require specialist intervention and positive behaviour support. This funded support is allocated to foster carers, youth workers, respite carers and specialist disability residential care facilities to support them to care for children. However, the parents of the child may have never received any of the same support at home and are not offered the same support during contact with the child. There is also a limited amount of funding for legal representation for parents in the child protection system through Legal Aid Queensland. Accordingly, parents with disability appear to be disadvantaged in the process.

There are no specialist standard funded Family Intervention Services in Queensland, to facilitate reunification between parents with disability and their children. Furthermore, DCCSDS will generally not fund a specialist service to provide support to a family if the application is for long term guardianship, as it is incongruent with the application. Therefore, these families face discrimination as there is no application of the principle that if a child is removed from the child's family, support should be given to the child and the child's family for the purpose of allowing the child to return to the child's family if the return is in the child's best interests.¹⁸

The OPG is aware that disability funding is not available for what is considered to be parenting support to parents with disability, yet in the same matter, child protection funding is also not available for what is considered to be disability support. This has the perverse result that no funding or support is being made available to families falling within this scenario. Furthermore, the OPG is aware of matters in which disability support for a family has been withdrawn, based on an application being made for long term guardianship for a child, despite the application being contested. Therefore, the parent has no services available to allow them to demonstrate their ability to parent with support and oppose the making of the order.

This is problematic given that there is no differentiation in the *Child Protection Act 1999* between parents that DCCSDS considers have harmed their children and are not willing and able to parent, and parents with disability who have not harmed their children and are willing and able to parent with support.

Therefore the OPG submits that the *Child Protection Act 1999* should be amended to specifically contemplate parents with disability. Prior to making a child protection order, the *Child Protection Act*

¹⁸ *Child Protection Act 1999*, s 5B(f).

1999 should mandate that a Magistrate needs to be satisfied that a parent with disability has been provided with appropriate specialist support, to the greatest extent possible, to reunify with a child, prior to making a child protection order.

Furthermore, it is recommended that the *Child Protection Act 1999* be amended to allow children and parents to remain together on a long term basis and receive funded support, either at home or in specialist accommodation for families, in circumstances where no actual harm has been substantiated, or otherwise where it is safe for children to remain at home with appropriate support. In the OPG's experience, child safety decisions in relation to parents with impaired capacity may be made on the basis of risk of harm, rather than on the basis of substantiated harm. Parents with impaired capacity should be allowed the opportunity to address the risk, with appropriate supports and safeguards. This may require an alternative type of long term order, where guardianship and/or custody of children remain with the parents despite long term assistance being provided by DCCSDS, or another agency such as the National Disability Insurance Scheme, or a service provider funded through the National Disability Insurance Scheme. By having such an order, funding could be appropriately allocated to support families to stay together either at home or in a purpose built accommodation for families, providing children with stability.

It is recommended that the *Child Protection Act 1999* should also make reference to the principles outlined in the *Convention on the Rights of Persons with Disabilities* when making decisions in relation to children and parents with disabilities and their ability to participate in family life.

Article 22 of the *Convention on the Rights of Persons with Disabilities* provides as follows:

No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

The *Disability Services Act 2006* defines disability to include a person that suffers from a psychiatric impairment. The *Disability Services Act 2006* also provides that persons are encouraged to have regard to the human rights principle in matters relating to people with a disability and that people with a disability have the same human rights as other members of society and should be empowered to exercise their rights. Further, people with a disability have the right to, amongst other things, respect for their human worth and dignity as individuals; live lives free from abuse, neglect or exploitation; participate actively in decisions affecting their lives; and recognition of their individual autonomy and independence, including the freedom to exercise choice and have control of their lives.¹⁹

¹⁹ *Disability Services Act 2006*, s.18.

Recommendation:

In summary, the OPG strongly recommends that the *Child Protection Act 1999* be amended to contemplate parents with disability by:

- mandating that a Magistrate must be satisfied that a parent with disability has been provided with appropriate specialist support, to the greatest extent possible, to reunify with a child, prior to making a child protection order – this would provide an opportunity for DCCSDS to demonstrate ‘all reasonable efforts to provide support to the child and their family’, as proposed in option 6D of the options paper
- allowing for families to be provided long term support under a new type of child protection order which allows for families to stay together and receive ongoing support, and
- reflecting the principles in the *Convention on the Rights of Persons with Disabilities* and the *Disability Services Act 2006*.

Response to the options paper

The OPG has reviewed the options paper and considers it has great potential to facilitate significant changes in the child protection system. The OPG is generally supportive of the options paper and responses to each of the options is set out below.

Option		The OPG's position
1A	Developing a broader purpose than the ‘protection of children’.	The OPG supports this option and considers that it is consistent with our earlier feedback and concerns regarding the cultural shift from protecting children to supporting families.
1B	Introducing an expanded paramount principle of ‘the safety, wellbeing and best interests of a child now and throughout their lives’.	The OPG is concerned that this option may be difficult from an evidentiary perspective in terms of litigation, and it may also allow DCCSDS to make decisions with poor short-term outcomes if there are long-term benefits, such as removing a child because they cannot predict a disabled client's ability to parent a child in the future. When making decisions in a child's best interests, it should be a matter of practice to give consideration to the long-term effects of the decision.

Option		The OPG's position
1C	Introducing specific matters to be considered in determining what is in a child's best interests now and throughout their lives, including matters for consideration in determining best interests for an Aboriginal and Torres Strait Islander child.	The OPG considers that the best interests of a child are better determined on a case-by-case basis with robust evidence gathering, sound assessments, and informed decision making. However, the OPG recognises there is benefit in providing non-exhaustive legislative guidance as to the matters for consideration in determining the best interests for a child, as in the OPG's experience, there is a significant discrepancy in the discretion of CSSOs in exercising this judgment.
1D	Strengthening the principles in legislation.	The OPG supports this option and the new practice framework.
2A	Strengthening the specific principles in relation to Aboriginal and Torres Strait Islander children.	The OPG supports this option.
2B	Incorporating a new principle that recognises that Aboriginal and Torres Strait Islander parents, family and kin should participate in a child's care and protection, as far as possible, and places a responsibility on the department to facilitate this occurring.	The OPG supports this option.
2C	Introducing additional principles relating to Aboriginal and Torres Strait Islander children to explicitly recognise the full intent and meaning of the Aboriginal and Torres Strait Islander Child Placement Principle.	The OPG supports this option.
2D	Introducing explicit recognition of Aboriginal and Torres Strait Islander children's and families' right to self-determination and cultural authority to the fullest extent possible.	The OPG supports this option.

Option		The OPG's position
2E	Including a new power enabling the chief executive to delegate functions and powers in relation to a child that is the subject of a child protection order to the chief executive of an Aboriginal or Torres Strait Islander agency.	The OPG supports this option.
3A	Make it clear that the provisions in the Act relating to the coordination of services extend to meeting children's wellbeing needs and supporting vulnerable families.	The OPG supports this option, and cautions the use of the term 'vulnerable' as it can be perceived as stigmatising and labelling families and children experiencing vulnerability. Changing terminology to 'parents and families experiencing vulnerability' may be more appropriate. The Act should mandate that families with disability (either parents or children) should be provided with specialist funded ongoing support as an alternative to a child being placed in care.
3B	Incorporate the concept of shared responsibility in the purpose of the legislation.	The OPG is supportive of this option. However, this should not be used by departments or agencies to not take responsibility. The concept of shared responsibility should include an obligation on the government and other agencies to make reasonable efforts to support the family to effectively share responsibility.
3C	Incorporate new principles for the administration of legislation that reflect shared responsibility.	The OPG supports this option.
3D	Include a requirement for relevant government agencies to regularly contribute to the development and implementation of a whole-of-government strategy or action plan.	The OPG supports this option.

Option		The OPG's position
4A	Develop and apply a quality and safeguards framework within the legislation.	The OPG supports this option and notes that it connects with the Hope and Healing Framework for residential care. The OPG considers that this is critical to the development of a robust regulatory framework in the child protection system. The OPG has observed a number of issues with the current system, including that there are practical barriers to children making complaints; there may be repercussions if they do make a complaint; and the government's dual role as guardian and regulator can often conflict (for example, the government as regulator may take action against a service provider, and then as guardian become concerned that a number of children will be out of a placement).
4B	Clarify the regulation of out-of-home care requirements to ensure there is a robust, transparent framework for how decisions are made.	The OPG supports this option.
4C	Broaden the types of services that are regulated to enable flexible responses to emerging and developing service needs, in addition to the current mix of out-of-home care service models, in the future.	The OPG supports this option.
4D	Specify minimum qualifications for people working in residential care.	The OPG supports this option.
5A	Include provisions that make it clear that children have the right to express and have their views heard before a decision that affects them is made, and outline how children and young people can express their views.	The OPG supports this option.

Option		The OPG's position
5B	Include clearer provisions that enable children and young people to be given access to independent legal advice and representation to vary or revoke their child protection order.	The OPG supports this option. As part of this, the OPG considers that the role of the child's lawyer should be distinguished from the OPG's legal officer–child advocates and other legal representative positions.
5C	Introduce a broad rights focus throughout the legislation and ensure reciprocal responsibilities are provided to ensure children and young people are aware of their rights and supported to exercise them.	The OPG supports this option and recommends that it be done in a child-appropriate manner. The OPG notes that the <i>Child Protection Act 1999</i> does articulate a rights focus, which has not been effectively translated into practice under the current frameworks.
5D	Revise and expand the Charter of Rights to apply to all children involved in the system.	The OPG supports this option.
5E	Include a preamble in legislation that recognises the relevant human rights context within which it operates.	The OPG supports this option, and recommends that the preamble specifically reference the UN <i>Convention on the Rights of Persons with Disabilities</i> . The OPG is concerned that the current child protection system discriminates against and disadvantages parents with disability solely on the basis of their disability. The system does not sufficiently encourage or support these parents to raise their children in the family.
6A	Define the concept of child wellbeing.	The OPG is supportive of this option. However, a definition of the concept of child wellbeing may be too prescriptive. The OPG considers that in practice, the concept of child wellbeing may be about demonstrating outcomes that are superior to the alternatives.
6B	Ensure relevant principles and provisions encourage working with families at each point of their involvement in the system.	The OPG supports this option.

Option		The OPG's position
6C	Clarify the existing provisions that enable the department to take the necessary action to meet the needs of a child reasonably believed to be in need of protection.	The OPG is supportive of this option, provided that it is evidence based and supported through the sharing of relevant information between family intervention services and DCCSDS.
6D	Include a requirement that before granting a child protection order, the Childrens Court must be satisfied that the department has taken all reasonable efforts to provide support to the child and their family.	The OPG supports this option, and recommends that it include a requirement to engage specialist services relevant to the family. For example, where a child's parents have an intellectual disability, the department should demonstrate what strategies were utilised to provide appropriate support to the family and empower the parents to care for their child. Similarly, there should be cultural specialists available to provide culturally appropriate support to Aboriginal and Torres Strait Islander families.
7A	Better outline the role and responsibilities of non-government services engaged by the department to support a child and their family during the development, agreement and duration of a care agreement.	The OPG supports this option. In practice, there is not enough information provided about non-government organisations that are involved with DCCSDS.
7B	Clarify the rights and responsibilities of a child's parents during the process of developing and agreeing to a care agreement.	The OPG supports this option. In the OPG's experience, families may feel coerced into an Intervention with Parental Agreement (IPA) to avoid going to court. Further, there is no right to review around contact arrangements under an IPA.
7C	Clearly recognise Aboriginal tradition and Island custom during the development and agreement of a care agreement.	The OPG supports this option.
7D	Enable a family care agreement to be made that supports a family to safely care and protect more than one child.	The OPG supports this option.
7E	Increase the maximum duration of a child protection care agreement.	The OPG supports this option.

Option		The OPG's position
7F	Enable the department to direct a parent to do or refrain from doing something directly related to a child's protection during a care agreement, such as undertake testing, treatments or programs, or to refrain from living at a particular address.	The OPG recommends caution with this option and considers that it may have unintended consequences. For example, if a parent was experiencing domestic violence at a certain address, DCCSDS may direct that the family live at a different address without mechanisms in place to appropriately assist them to deal with domestic violence and how to moderate that. There may also be significant practical and financial implications in implementing certain directive orders, for example, drug testing.
8A	Maintain the broad definition of parent to apply throughout the legislation. The narrow definition of parent could be removed, and the definition of who has party status in court proceedings could be revised to include those persons with a legal interest in the proceedings.	The OPG recommends caution with this option and considers there may be unintended consequences as to what this means in practice. For example, if the definition of parent is too broad, the court will have to field involvement from persons purporting to be 'parents'. This is resource and time intensive, and has the potential to adversely impact on the subject child or young person.
8B	Introduce and define a new key concept of 'parental responsibility' using a similar definition to the <i>Family Law Act 1975</i> (Cth) and remove references to 'custody' and 'guardianship' of a child.	The OPG considers that this option may have unintended consequences due to the differences between the <i>Family Law Act 1975</i> and the <i>Child Protection Act 1999</i> with respect to the legislation's purpose, application and jurisdiction.

Option		The OPG's position
8C	Introduce new 'shared parenting orders' that enable parental responsibility for a child to be jointly shared between the chief executive or another suitable person and a child's parents.	The OPG supports this option, but considers that more information is needed as to how it would work in practice. In the OPG's experience, there are challenges to shared parenting arrangements, including the limited availability of funding to support parents of children under long term orders or parents with disability who need ongoing support to fulfil their parental responsibilities. A parent with disability should also be able to share responsibility for parental decisions in circumstances where the child is residing elsewhere.
8D	Define concept of 'parental responsibility' more broadly.	The OPG considers it may be beneficial to define the concept of 'parental responsibility' in the context of the child protection system, rather than the federal family law system.
9A	Include enabling, flexible case planning provisions.	The OPG supports this option.

Option		The OPG's position
9B	Provide greater flexibility to enable the delegation of case planning responsibilities to particular nongovernment entities or individuals in the future.	The OPG supports this option. However, it will need to specify that DCCSDS has the ultimate responsibility for regulating case planning. The OPG has conducted trial family team meetings where a recognised entity has facilitated the meeting. In most cases it works well; however, in some cases a recognised entity may oppose participation of children because the matter is considered adults' business. In one case, a young person had not been in contact with her father for years because he had been in prison. At a family team meeting, the recognised entity was opposed to the young person talking to her father because it was culturally inappropriate, but the young person wanted the opportunity to commence contact with her father.
10A	Include strengthened principles that recognise a family's right to meaningfully participate in planning and decision making as far as possible.	The OPG supports this option. However, the OPG notes that this principle is already in the <i>Child Protection Act 1999</i> and is not always realised in practice. There will need to be significant corresponding cultural reform in the child protection system to ensure that any change in legislation is translated into practice.
10B	Embed natural justice and procedural fairness requirements into all relevant decision making points in the legislation.	The OPG supports this option. However, the OPG notes that these requirements are already in the <i>Child Protection Act 1999</i> and are not always realised in practice. There will need to be significant corresponding cultural reform in the child protection system to ensure that any change in legislation is translated into practice.

Option		The OPG's position
10C	Provide for collaborative family decision making and Aboriginal and Torres Strait Islander family-led decision making in the legislation.	The OPG supports this option. However, the OPG notes that these requirements are already in the <i>Child Protection Act 1999</i> and are not always realised in practice. There will need to be significant corresponding cultural reform in the child protection system to ensure that any change in legislation is translated into practice.
11A	Simplify and clarify the current information sharing provisions.	The OPG supports this option, and considers that there is benefit in clarifying who may request information; what is their authority to make requisitions; why are they being given the information; and what respect is being afforded to the people whose information is being shared.
11B	Broaden information sharing provisions to enable personal information about a child and their family to be shared between 'service providers' when a child is at risk of becoming a child in need of protection and for specific purposes.	The OPG supports this option. In practice, this is also problematic for parents with impaired decision-making capacity, because it is difficult for service providers and support workers to provide the parents with appropriate support to navigate the child protection system when information cannot be shared.
11C	Ensure information sharing provisions are flexible to enable the delegation of case management responsibilities to non-government organisations in the future.	The OPG is supportive of this option. However, it will need to specify that DCCSDS has the ultimate responsibility for regulating case management.

Option		The OPG's position
11D	Allow broad sharing of personal information without consent in a similar way to Chapter 16A in the New South Wales legislation.	The Royal Commission into Institutional Responses to Child Sexual Abuse has recognised Chapter 16A of the <i>Children and Young Persons (Care and Protection) Act 1998</i> (NSW) as the most promising as a potential model for both intra-jurisdictional and inter-jurisdictional information sharing to protect children. See Royal Commission into Institutional Responses to Child Sexual Abuse, <i>Discussion Paper: Strengthening information sharing arrangements</i> , December 2016, from p 8.
11E	Enable the sharing of information with adults who were children in out-of-home care.	The OPG supports this option, and notes that this is a critical issue for young people who transition out of care into adult guardianship. Without full knowledge or understanding of the young person's care background, it is difficult for a guardian to advocate for the person and make informed decisions on the person's behalf.

Option	The OPG's position
12A	<p>Introducing overarching permanency principles in the legislation.</p> <p>The OPG is supportive of this option. However, any permanency mechanism needs to have a robust opportunity of review, and access to legal advice and support for all parties. Permanency needs to be a decision for the court rather than for parents, and must be evidence based. There is a tension between children and their parents in this space which is evident in the OPG's unique client base; parents with impaired decision-making capacity are often not supported with contact or information sharing, while children who have been in placements for a long time want to belong to the family. The OPG is also aware of situations where children perceive any kind of discussion about changes to their care arrangement, such as contact, as a threat to the stability of their placement. Parties may feel judged for wanting to have a relationship or a limited or meaningful involvement.</p>
12B	<p>Introduce provisions which specifically prohibit the making of one or more short-term orders that extend in total beyond the two-year period from the time the order is made, unless the court is reasonably satisfied that it is in the best interests of the child to do so.</p> <p>The OPG is supportive of this option.</p>
12C	<p>Introduce provisions that require a case plan for a child to include permanency goals and plans for the child, including contingency plans if a child is unable to be reunified with their family in the foreseeable future.</p> <p>While the OPG supports permanency outcomes for children and young people, the OPG is concerned this could become the default position when it becomes too difficult to work towards reunification.</p>

Option		The OPG's position
12D	Introduce a new type of enduring permanent care order that provides a child in out-of-home care with a secure family while maintaining their identity.	While the OPG supports permanency outcomes for children and young people, the OPG is concerned this could become the default position when it becomes too difficult to work towards reunification. The OPG considers that this option may be better revisited in 5-6 years' time after the effects of litigation changes in the child protection system have been assessed. If this option is implemented, there will need to be a robust process of interrogation, review and monitoring, and access to legal advice and assistance for all parties.
12E	Introduce provisions to allow a child to be an applicant for the permanent care order (as proposed in 12D).	While the OPG supports permanency outcomes for children and young people, the OPG is concerned this could become the default position when it becomes too difficult to work towards reunification. The OPG considers that this option may be better revisited in 5-6 years' time after the effects of litigation changes in the child protection system have been assessed. If this option is implemented, there will need to be a robust process of interrogation, review and monitoring, and access to legal advice and assistance for all parties.
13A	Require a case plan for a child to include a transition to independence plan from the time the young person reaches the age of 15 years.	The OPG supports this option.
13B	Make it clear that the department must ensure the young person can access assistance to transition from being a child in care to independence, up until they reach 21 years of age.	The OPG supports this option.

Option		The OPG's position
Rec 4.11	The department to review its data-recording methods so that the categories of harm and the categories of abuse or neglect accord with the legislative provisions of the <i>Child Protection Act 1999</i> .	The OPG considers that DCCSDS needs to review its data-recording methods more broadly.
Rec 13.15(1)	Support parents through child protection proceedings by providing them with information about how to access and apply for legal advice or representation, and ensure parents are provided with reasonable time to seek advice. The government recognises that providing timely information about how to access and apply for legal advice or representation, and enabling access to appropriate legal representation is critical to ensuring that the child protection system produces good and just outcomes for children and their families.	The OPG notes that in practice, parents currently sign consents with the department without obtaining legal advice.
Rec 8.9	The department to develop a model for providing therapeutic secure care as a last resort for children who present a significant risk of serious harm to themselves or others (recommendation accepted in principle; if and when Queensland Government finances permit). The model should include, as a minimum, the requirement that the department apply for an order from the Supreme Court to compel a child to be admitted to the service.	The OPG considers that the need for a therapeutic secure care model is dependent on the development of the residential care model.
Rec 13.23	Allow the Childrens Court discretion to make an order for costs in exceptional circumstances.	The OPG considers an unintended consequence of this mechanism may be the coercion of parents to consent or acquiesce in matters to avoid the possibility of costs being ordered against them for opposing an application for a child protection order.

	Option	The OPG's position
Rec 14.3	<p>The chief executive administering the Act and the Director of Child Protection Litigation have limited legal authority to make public or disclose information that would otherwise be confidential (including, in rare cases, identifying particulars) to correct misinformation, protect legitimate reputational interests or for any other public interest purpose. In particular, it will be considered whether some of the confidentiality obligations should not apply when the child in question is deceased.</p>	<p>In respect of maintaining the confidentiality of children who are deceased, the OPG could also be undertaking advocacy for siblings of such children. A failure to maintain confidentiality could have significant impacts on the remaining family members and might result in re-traumatising any siblings.</p>