

Review of the *Child Protection Act 1999*

QCEC RESPONSE TO CONSULTATION QUESTIONS

The Queensland Catholic Education Commission (QCEC) welcomes the opportunity to participate in the public consultation for the review of the *Child Protection Act 1999* and respond to the Discussion Paper *Supporting families and protecting children in Queensland: a new legislative framework*.

QCEC is the peak body at state level for twenty Catholic school employing authorities with 146,000 students and 17,000 staff and is committed to working collaboratively with the government to achieve its commitment to have schools that provide for the safety, wellbeing and best interests of all children.

EXECUTIVE SUMMARY

QCEC asserts that the Review of the *Child Protection Act 1999* (CPA) cannot be conducted in isolation and ignore its interconnectedness with other Acts which aim to improve the safety, wellbeing and sense of belonging of children and young people.

The QCEC responses and recommendations (see Key Recommendations below) to the Discussion Paper emphasise the following matters of importance:

- A need for consistency and harmonisation between all legislation and practice regulating the safety and wellbeing of children and young people. Specifically, there should be consistency between the reporting obligations imposed on government and non-government teachers (and other school staff) under the CPA with those imposed by other legislation, including the *Education (General Provisions Act) 2006* (EGPA). The primary intent of legislation should be the support of families to care for their children and the creation of more child safe communities.
- There is a need to acknowledge the very particular circumstances of school authorities and professional educators in schools with a view to clarifying the role and responsibilities of school staff, particularly teachers, under the Act.
- When a child may be in need of protection or when relevant information is required by schools to maintain student wellbeing, legislation needs to indicate the means by which information can be shared between schools and between government and non-government agencies in a seamless, uncomplicated and timely way.
- There is a need for a vision and proactive practice for prevention of harm and the long term safety and wellbeing of children and young people rather than emphasising short-term reactive solutions.
- The voice and views of children are integral to a child's right to protection from harm and need to be enshrined in decision-making to achieve what is in the best interests of a child.
- Specific provisions are required to address the unique needs of Aboriginal and Torres Strait children, young people and families based on the identified strengths of the child and family including the context of culture, community and extended family/kinship.
- There is a need for any reforms to be supported by appropriate training to ensure those impacted, including non-government agencies, have a real understanding of what the reforms require.

KEY RECOMMENDATIONS

1. **QCEC asserts that the Review of the CPA cannot be conducted in isolation and ignore its interconnectedness with other Acts which aim to improve the safety, wellbeing and sense of belonging of children and young people. It is recommended that the Review of the CPA be expanded to consider the child protection elements of the EGPA and the *Education (Non-State Schools Accreditation) Act 2001* (ENSSAA) with a view to achieving harmony between the three pieces of legislation.**
2. **QCEC recommends that the implementation of any amendments to the CPA should be managed by consultation with stakeholders characterised by openness to hear concerns, to work through issues raised and seek solutions.**
3. **QCEC recommends that that there should be more effective timelines for implementation of any reforms arising out of this Review of the CPA, supported by appropriate and timely resourcing.**

4. QCEC recommends that any reforms arising out of this Review of the CPA take account of the very particular circumstances of school authorities and professional educators in schools particularly in relation to effective timelines for implementation.
5. QCEC recommends that the CPA be aligned with the EGPA by removing inconsistencies in relation to mandatory reporting requirements with particular reference to the obligation imposed on a staff member under the EGPA as compared with a teacher under the CPA.
6. QCEC recommends that the CPA be aligned with the EGPA so that the process of teachers making mandatory reports occurs by a teacher making a report to their school principal (rather than the chief executive or another government agency) to recognise and reflect the practicalities involved in teachers making mandatory reports of harm and the critical role of school principals in this process.
7. QCEC recommends that the CPA be amended so that school staff should not be required to make a judgement that there is a parent able and willing to care for a child because this is beyond their authority and professional expertise.
8. QCEC recommends that the CPA be amended so that persons working in schools who are not teachers have a clearer understanding of their responsibilities in relation to Section 13A(1) and section 13E of the CPA.
9. QCEC recommends that the purpose of the CPA be amended as follows:

“The purpose of this Act is to:

 - (i) create a vision and practice for the safety and wellbeing of children;
 - (ii) support families to care for their children;
 - (iii) provide for the long-term safety and wellbeing of children through a range of preventative measures aimed at reducing the incidence of harm; and
 - (iv) provide the mandate for government involvement in the lives of children and young people who have been harmed or are likely to be harmed by stating when and how this will occur.”
10. QCEC recommends that the legislation:
 - (i) should provide a means for information sharing between government and non-government agencies which is seamless, uncomplicated and timely in circumstances where there is a child in need of protection;
 - (ii) be enhanced to facilitate sharing within and between government and non-government agencies of relevant information about student wellbeing so that when a child moves from one school to another school, relevant information such as school absenteeism can be made available if requested;
 - (iii) remove the barrier to information sharing between non-state schools and state schools;
 - (iv) codify communication protocols between government agencies such as Queensland Police Service and Department of Communities and non-government agencies such as Catholic school sector to assist a consistent standard of service delivery; and
 - (v) be informed by other state legislation particularly Chapter 16A of the *NSW Children and Young Persons (Care and Protection) Regulation 2000*.
11. QCEC recommends that:
 - (i) the role of government in protecting the safety and wellbeing of children and supporting families to care for their children is expressed simply and with clarity in the CPA so that it is understood by all people especially those less familiar with legislative language and government protocols;
 - (ii) the legislation should clearly state that its intent is to support families to care for their children; and
 - (iii) the suite of child protection legislation should set out the government’s commitment and the shared principles of government and non-government services in protecting and supporting children, young people and their families at all levels of the service continuum – universal services, secondary services and tertiary child protection services.

12. QCEC recommends that:
 - (i) the suite of Queensland's child and family legislation, including the revised CPA, should include specific provisions to address the unique needs of Aboriginal and Torres Strait Islander children, young people and families;
 - (ii) any specific provisions to address the unique needs of Aboriginal and Torres Strait Islander children be broad enough to cater for the diversity of circumstances of Aboriginal and Torres Strait Islander children and families; and
 - (iii) the Review of the CPA ensure that legislative provisions are based on the identified strengths of the child and family including the context of culture, community and extended family/kinship.
13. QCEC recommends that:
 - (i) the revised legislation make provision for age-related involvement of children in decision-making about their lives and active consideration of the child or young person's views; and
 - (ii) the legislation be aligned with the twelve points outlined in the Australian Human Rights Commission - Children's rights. (<https://www.humanrights.gov.au/our-work/childrens-rights/about-childrens-rights>)
14. QCEC recommends that:
 - (i) the best interests of the child principle continue to be the guiding principle underpinning Queensland's child and family legislation;
 - (ii) the best interests of the child principle be better defined in the CPA or related legislation; and
 - (iii) the voice and views of children be enshrined in the legislation in terms of what is in the best interests of a child.
15. QCEC recommends that the CPA and the Child Protection Regulation (CPR) include a common set of practical guidelines:
 - (i) which are consistent with other legislation including the *Family Law Act 1975* in relation to the principle of the best interests of the child;
 - (ii) which are broad enough to act as a clear guide and which avoid setting exclusive criteria; and
 - (iii) which acknowledge the diverse range of children's circumstances when making decisions.
16. QCEC recommends that, when determining the best interests of a particular Aboriginal or Torres Strait Islander child, the following are key additional considerations:
 - (i) community knowledge;
 - (ii) kinship care;
 - (iii) additional support for voluntary kinship arrangements; and
 - (iv) understanding of the complexity of cultural boundaries.
17. QCEC recommends that the legislation:
 - (i) require authorised officers to inform children and young people about child protection processes and demonstrate that they have done so;
 - (ii) require the appointment of a child advocate to support the child in the decision-making process; and
 - (iii) allow the child or young person to have access to support or therapeutic services particularly when the child or young person has expressed the need for support and assistance.
18. QCEC recommends that the legislation:
 - (i) assign a role for extended family and kin in protecting the child or young person from harm and promoting the child or young person's sense of belonging and wellbeing;
 - (ii) ensure resources are available and accessible to the child;
 - (iii) provide direction for equitable processes;
 - (iv) encourage fast-acting outcomes;
 - (v) require sustainable action;
 - (vi) be culturally and religiously inclusive and sensitive; and
 - (vii) allow information to be shared easily amongst organisations when it is in the best interest of the family and child in accordance with QCEC recommendation 24(iii) (below).

19. QCEC recommends that the legislation extends the definition of parental responsibility by including a definition of parental responsibility in the context of Aboriginal and Torres Strait Islander culture and community which:
 - (i) allows for information sharing with the relevant and appropriate people in the community;
 - (ii) reflects the holistic interrelatedness of physical, mental, cultural and spiritual connectedness to family, kin, community, land/waterways, traditions and cultures; and
 - (iii) recognises the place and role of community liaison officers.

20. QCEC recommends that the legislation:
 - (i) adopt, as a minimum, the Australian Family Law definition for parental responsibility being: "all the duties, powers, responsibilities and authority which, by law, parents have in relation to children." (*Family Law Act 1975*, Section 61B) and the qualifications for its application to Aboriginal and Torres Strait Islander culture and community (as contained in Section 61B);
 - (ii) ensure that the definition is flexible enough to encompass all family types and those children who do not recognise that they are part of a family; and
 - (iii) has adequate provisions to allow appropriate practitioners the capacity to act protectively for children in need.

21. QCEC recommends that the legislation create more child safe communities by:
 - (i) setting direction for empowering families and wider community to take responsibility for the safety and wellbeing of children and young people; and
 - (ii) requiring the Family and Child Commission and/or the Department of Communities Child Safety and Disability Services to provide regular community education on best practice for child safety including parenting programs to support effective behaviour management and healthy family functioning.

22. QCEC recommends that the CPA:
 - (i) be broadened to include a clear commitment by the State Government to the safety and wellbeing of children through the provision of early intervention, secondary and tertiary services to children, young people and their families;
 - (ii) acknowledge and maintain the role of natural communities and neighbourhoods when making decisions that impact on children and young people's lives; and
 - (iii) be enhanced regarding disagreement processes so that the processes have appropriate regard to the experience and knowledge of the young person and their family.

23. QCEC recommends that the suite of child and family legislation at state and federal level should:
 - (i) be consistent with other relevant state and federal legislation, including Queensland's domestic and family violence protection laws, to reflect a coherent and comprehensive response to the safety and wellbeing of children and young people;
 - (ii) be aligned to prioritise children and young people's safety, wellbeing and sense of belonging to kin and community; and
 - (iii) clearly state that, where there is a conflict of interest, it is essential that the best interest of the child should prevail.

24. QCEC recommends that, while the concept of child in need of protection sets the right threshold for determining the point at which government should intervene, the legislation needs to offer guidance on what matters need to be considered when determining whether a child is in need of protection to reduce the incidence of inaccurate interpretation and inconsistent application across the child protection sector in Queensland.

25. QCEC recommends that when balancing a child's right to protection from harm with the child's and family's rights to privacy and self-determination:
 - (i) priority must always be given to protecting children due to their vulnerability;
 - (ii) where there is a conflict of interest the best interests of the child, informed by the voice of the child/young person, must prevail; and

- (iii) there should be a legislative requirement that enables information sharing with schools regarding whether or not families have successfully engaged in a service offered by Family Child Connect and the progress of departmental intervention for a child or young person in need of protection particularly when the school or service is identified as a protective factor through the supervision and monitoring of the child or young person and the family.
26. QCEC recommends that the suite of child and family legislation:
- (i) provide for the development of a Reconciliation Action Plan with the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs (DATSIMA) and relevant service providers within a local community as a means of service providers engaging in informed decision making.
27. QCEC recommends that legislation:
- (i) includes an explicit principle which will give rise to a range of flexible options for providing children with relational, physical and legal permanence which has a focus on the child's best interests and rights as the key;
 - (ii) actively engages the child in the decision-making process;
 - (iii) simplifies the legislative processes to achieve permanence; and
 - (iv) ensures long-term management and support of the child or young person to achieve and maintain permanence.
28. QCEC recommends that legislation:
- (i) is framed in such a way that it supports the successful transition from care to living independently via a more flexible and tailored response that does not place inappropriate emphasis on the age requirements for eligibility to government benefits;
 - (ii) ensures that, if required, ongoing support once a child has turned 18 is provided in a holistic, rather than financial context in order to improve the likelihood of a successful transition into independence; and
 - (iii) guarantees a young person access to particular ongoing support services, if required, once they have left care.
29. QCEC recommends that any reduction in bureaucracy or 'red tape' be carefully considered and must never be at the expense of stringent screening, assessment, training and support processes.
30. QCEC recommends that the review:
- (i) should make it clear that while legislation is necessary, the community should not rely on legislation as the primary source for creating safe communities but regard this as a shared community objective;
 - (ii) should make clear recommendations about ways to achieve interconnectedness with other Acts which aim to improve the safety, wellbeing and sense of belonging of children and young people (in accordance with the other specific recommendations of the QCEC regarding mandatory reporting, for example);
 - (iii) make recommendations which include reference to the need for commitment to and investment in other strategies to create safe communities for children and young people. For example: Personal safety and education for children, respectful relationship education, community development, ensuring professional competence of personnel to ensure they are adequately equipped to work in the sector;
 - (iv) consider an explicit requirement in legislation that professionals such as departmental staff, child advocates, Community Visitors, Independent Representatives have the training and skills to effectively elicit the views of children and young people and have the ability to communicate effectively with children and young people having regard to their age, maturity, capacity, cultural background;
 - (v) consider the need for building in processes to ensure regular review of legislation to maintain its relevancy, to ensure that it reflects contemporary society and is evidence based in its approach to protecting and supporting children, young people and their families;
 - (vi) consider the need to move beyond legislation and focus on ensuring evidence based and contemporary practice in decision making around child safety, particularly within the context of children impacted by domestic or family violence);

- (vii) consider the need for appropriate resourcing to non-government agencies, including non-government schools, to ensure they are able to meet the increasing demands, responsibilities and complexities of family support services. This is particularly important in the provision of secondary and tertiary services without compromising quality of services provided to children and young people and their families;
- (viii) affirm that the government must continue to hold joint responsibility for services provided by these funded services;
- (ix) with regard to effectively transforming the over-representation of Aboriginal and Torres Strait Islander families and children in the Queensland Child Protection system (reports and children in care), consider the extent of change required to ensure high-quality child protection services (statutory and non-government) supported by adequate resources including funding and well-trained staff; and
- (x) consider the inclusion of provisions to require the involvement of and consultation with Aboriginal and Torres Strait Islander community elders in child safety decision making.

INTRODUCTION

It is noted that the review of the *Child Protection Act 1999* is the implementation of an important recommendation of the Queensland Child Protection Commission of Inquiry (Carmody Inquiry) and aims to design a contemporary legal framework for the child protection and family support system.

QCEC believes that all school communities which operate with a strong pastoral dimension, should be regarded as integral to the 'child protection and family support system' in Queensland. Keeping children safe and supporting families provides the essential foundation for the core business of schools, learning and teaching.

Children and young people learn best when they feel safe, connected and live in a supportive family and community environment.

If, as the Discussion Paper states, 'It is essential that new laws support effective and efficient services for children and families, now and into the future.' (Page 5, Para 3), the review will need to look very carefully at the way in which schools are involved in the delivery of services. QCEC believes that the review should not be restricted to improving the way those services are supervised and delivered by the Department of Communities Child Safety and Disability Services but should also take serious account of the value of strengthening partnerships with schools as an important opportunity to enhance the child protection and family support system.

For this reason, this submission will make frequent reference to the suite of legislation designed to protect children/young people and support children/young people and their families.

At a minimum, this suite of legislation comprises the *Child Protection Act 1999*, the *Family and Child Commission Act 2014*, the *Public Guardian Act 2014*, the *Education (General Provisions) Act 2006*, the *Education (Accreditation of Non-State Schools) Act 2001* and the *Working with Children (Risk Management and Screening) Act 2000*.

For at least ten years, QCEC has engaged in consultation processes related to the Queensland Parliament's amending legislation to reform aspects of the child protection and family support system. While many useful reforms have emerged, it is the experience of the Catholic school sector in Queensland that these reforms have focused on one Act at a time and not taken account of the flow-on effect to other Acts. Often when reform is achieved in one piece of legislation, it exposes the need for change in another other piece of legislation which frequently creates inconsistencies and causes operational difficulties in schools.

Therefore, QCEC wishes to assert that the Review of the *Child Protection Act 1999* cannot be conducted in isolation and ignore its interconnectedness with other Acts which aim to improve the safety, wellbeing and sense of belonging of children and young people, particularly legislation which governs working with children and young people in schools. The details of this assertion will be expanded in this submission.

At national level, there are implications for the review arising out of the Royal Commission into Institutional Responses to Child Sexual Abuse, some of which are already apparent. QCEC urges the review to be mindful of those implications which relate to schools.

The implementation of the most recent amendments to the *Child Protection Act 1999* in January 2015, which introduced the new mandatory reporting requirement for approved teachers, have further highlighted the complexities of child protection as it impacts on the education sector. Therefore this submission has a key focus on how the child protection legislation in Queensland could be better harmonised to improve outcomes for children, young people and families, and to afford greater consistency in how key agencies such as education authorities respond to child protection concerns.

This submission also contains a number of recommendations for consideration, in terms of enhancing the voices of children and their families and promoting an early intervention and prevention approach that strengthens the Queensland community. The legislation must allow, and indeed promote, partnership between government and non-government agencies in a collaborative and practical manner to achieve these outcomes.

QCEC commends its responses to the twenty-three questions in the Discussion Paper to the Queensland Government and requests consideration of each of the Commission's specific recommendations for reform of the *Child Protection Act 1999*.

The Commission would welcome the opportunity to discuss and provide further comment on this submission.

Review of the *Child Protection Act 1999*

QCEC RESPONSES

1. Do you have any feedback on the implementation of changes made to the *Child Protection Act 1999* introduced in the first stage of the child and family legislative reforms?

In terms of the broader legislative context of the changes to the *Child Protection Act 1999 (CPA)*, QCEC notes the following:

- The introduction of the *Public Guardian Act 2014 (PGA 2014)* is a positive step as matters within its jurisdiction are more streamlined.
- The *Family and Child Commission Act 2014 (FCCA 2014)* is a positive change as it provides for agencies to report directly to the Family and Child Commissioner.
- The amendments to the *Working with Children (Risk Management and Screening) Act 2000 (WWCRMSA)* are a positive change.

While amendments to the *CPA* were generally positive, it is problematic that harmonisation has not been achieved between the amended *CPA* and the *Education (General Provisions) Act 2006 (EGPA)* and the *Education (Non-State Schools Accreditation) Act 2001 (ENSSAA)* and *Education (Non-State Schools Accreditation) Regulation 2001 (ENSSA Regulation)*, particularly in relation to reporting obligations for the non-state education sector.

Recommendation 1:

QCEC asserts that the Review of the CPA cannot be conducted in isolation and ignore its interconnectedness with other Acts which aim to improve the safety, wellbeing and sense of belonging of children and young people. It is recommended that the Review of the CPA be expanded to consider the child protection elements of the *Education (General Provisions) Act 2006 (EGPA)* and the *Education (Non-State Schools Accreditation) Act 2001 (ENSSAA)* and *Regulation 2001* with a view to achieving harmony between the three pieces of legislation.

With regard to the *process* of implementation, the following is noted:

a) Consultation

QCEC was involved from a very early stage of the implementation and appreciated the invitation to participate in the Department of Education Training and Employment (DETE) Child Protection Reform Implementation Committee soon after the State Government accepted the recommendations of the Carmody Inquiry. Participation in this Committee enabled QCEC to highlight the time pressures associated with implementing the reforms through a complex governance structure, with the observation that this impacted on the provision of information at a regional level.

It is the view of the QCEC that the consultation process was, from the outset, impacted by the relatively fixed view of officers of the Department of Communities and Child Safety and Disability Services (DCCSDS) as to how the legislation would be changed. Consequently, QCEC experienced challenges in ensuring that the key issues for the non-state education sector were addressed. By way of example, one key point was the implications of the changes in the *CPA* for the non-state sector's compliance responsibilities under the *Education (Non-State Schools Accreditation) Regulation 2001*. We again stress the importance of any consultation process enabling all key issues to be heard and appropriately addressed.

Recommendation 2:

QCEC recommends that the implementation of any amendments to the CPA should be managed by genuine consultation with stakeholders characterised by openness to hear concerns, to work through issues raised and seek solutions.

b) Training

Given the scale and importance of the reforms being implemented, the minimal resourcing of agencies within the non-state education sector to implement the reforms was disappointing. It essentially amounted to the provision of PowerPoint material and fact sheets from Child Safety Services with the single Train-the-Trainer session to enable education authorities to design and conduct training specific to their needs.

While the original resources provided by DCCSDS were very narrow in scope the fact sheets and guides contained succinct pieces of information which enabled Catholic school authorities to develop more tailored resources.

QCEC liaised with officers from DETE and Independent Schools Queensland (ISQ) and collaborated with DCCSDS officers in developing the Train-the-Trainer program for Catholic school authorities to introduce the changes to their school staff. This program was very successful in supporting professional educators to understand and apply the legislative changes, led to the development of professional development resources and offered guidance in the use of the DCCSDS Child Protection Guide.

It has become clear that implementation of the amended CPA needs to be supported by additional and enhanced resources. For example, recent experience in using the online Child Protection Guide (see <https://www.communities.qld.gov.au/childsafety/partners/our-government-partners/queensland-child-protection-guide>) has shown that it still contains ambiguities and the DCCSDS referral intake service remains inadequately staffed to cope with existing let alone increased demand.

Recommendation 3:

QCEC recommends that there should be more effective timelines for implementation of any reforms arising out of this Review of the CPA, supported by effective and timely resourcing.

c) Policy and Procedure Development

A more significant challenge and workload for Catholic school authorities was a major rework of entire policies and procedures for schools and related training resources including online training within a very tight timeframe. QCEC argued strongly, though ultimately unsuccessfully, for better timelines around implementation given schools were on holidays from 29 November 2014 until 20 January 2015. QCEC believes that future reforms of similar magnitude would deserve more effective timelines for implementation.

The lens during the entire process was very sharply focused on the CPA with little regard to the impact on the teaching profession. QCEC believes that future reforms should take account of the very particular circumstances of school authorities and professional educators in schools.

Recommendation 4:

QCEC recommends that any reforms arising out of this Review of the CPA take account of the very particular circumstances of school authorities and professional educators in schools particularly in relation to effective timelines for implementation.

In terms of operational issues arising from the implementation process, the following is noted:

a) Continuing inconsistency in reporting requirements

The new mandatory reporting requirements in the CPA are limited to significant harm caused by only physical or sexual abuse. While the articulated aim of the introduction of the CPA mandatory reporting requirements was to achieve consistency as to how and which matters key agencies would report to Child Safety Services, there remains an issue with the scope of mandatory reporting applying to significant harm caused by physical and sexual abuse only.

This means that the key agencies, including education authorities, have had to address the reporting of significant harm caused by emotional abuse and neglect through policy, which both adds to the complexity of child protection procedures within these agencies, and creates opportunity for further inconsistency. This issue is particularly relevant when exploring data regarding substantiated notifications of harm where, in fact, neglect and emotional harm are the most frequent type of substantiated harm. [See "Number of children subject to a substantiation, by most serious harm type, Queensland, 2010-11 to 2014-15" webpage (second graph) <https://www.communities.qld.gov.au/childsafety/about-us/our-performance/investigation-and-assessment-phase/substantiations>]

For those in the education sector, the amended CPA does not enable reporting to be easier or more consistent. A number of practical inconsistencies remain in relation to the reporting requirements for education authorities under the EGPA and the CPA, particularly around *who* is required to report concerns.

For example:

Section 366A of the EGPA requires mandatory reporting by a staff member of a school to the Principal if sexual abuse or likely sexual abuse of a student is suspected, irrespective of whether there is a parent able and willing to protect the student. It is mandatory for the Principal to forward the written report to the Police.

The CPA on the other hand states that it is only approved teachers who are mandated to report significant harm or risk of significant harm to a child caused by physical or sexual abuse, and may not have a parent able and willing to protect the child from the harm. These reports must be made to Child Safety Services.

Consequently, education authorities are again left with the challenge of developing policies and procedures that both meet these inconsistent legislative requirements, yet are practical and clear for staff members to implement. It is therefore critical that the related pieces of legislation around the protection of children be 'harmonised'.

Recommendation 5:

QCEC recommends that the CPA be aligned with the EGPA by removing inconsistencies in relation to mandatory reporting requirements with particular reference to the obligation imposed on a staff member under the EGPA as compared with a teacher under the CPA.

b) Specific issues in the education context

Nominating teachers only as the mandated reporter for a school ignores the fact that other staff in a school such as counsellors and some support staff are often equally or better positioned to form a judgement and make a report. At a very practical level, there is increased complexity if reports are directed through teachers, given their constant teaching obligations within the classroom that impact on their ability to lodge a report immediately.

It remains problematic that Section 13E of the CPA is silent on the role of the school Principal who has ultimate local authority for the school, is the nominated prescribed entity for non-state schools under the CPA and holds the broader duty of care responsibilities for students as well as staff. It is the position of QCEC that all such reports need to be made with the full knowledge and assistance of the school principal.

Recommendation 6:

QCEC recommends that the CPA be aligned with the EGPA so that the process of teachers making mandatory reports occurs by a teacher making a report to their school principal (rather than the chief executive or another government agency) to recognise and reflect the practicalities involved in teachers making mandatory reports of harm and the critical role of school principals in this process.

c) Introducing greater levels of complexity in determining whether a concern should be reported

A particular example of increased levels of complexity for mandatory reporters is the concept of 'a parent able and willing'. Throughout the Act this criterion is used in sections which are appropriately relevant for the Chief Executive and officers of the DCCSDS to apply when they are considering whether or not there is a *reportable suspicion* of harm to a child which is the trigger for action. However, the use of the 'parent able and willing' criterion is then extended beyond these officers in the newly created Section 13E to set conditions for 'Mandatory reporting by persons engaged in particular work' which includes teachers. With respect to teachers, this appears to be based upon a misconception about how much a teacher would know. Schools are not required to investigate concerns and this message is constantly reinforced to schools, however, this criterion seems to require a level of assessment by teachers. QCEC is strongly of the view that teachers should not be required to make a judgement about whether there is a parent able and willing. This is beyond their authority and professional expertise and also has the potential to irreparably damage a valued and sensitive relationship between the teacher/school and a student's family.

When making this point in its submission to the Health and Community Services Committee Inquiry into the *Child Protection Reform Amendment Bill 2014* (see Submission 8 on webpage <http://www.parliament.qld.gov.au/work-of-committees/former-committees/HCSC/inquiries/past-inquiries/ChildProtectReformAmb14>) and again after the Act was passed, QCEC's attention was drawn to the point that Section 13E (b) states '*may* not have a parent able and willing to protect the child from harm'. It was explained that the use of the word *may* would excuse a teacher from applying the criterion when seeking to form a *reportable suspicion* if the teacher did not have the necessary knowledge. QCEC is strongly of the view that teachers should not be expected to apply this criterion which should be reserved for DCCSDS officers and others suitably qualified professionals. An additional complexity, particularly when training personnel, is the provision at Section 13A(1) of the CPA which states 'Any person may inform the chief

executive if the person reasonably suspects – (a) a child may be in need of protection; or (b) an unborn child may be in need of protection after he or she is born.’ Personnel in schools find it difficult to draw a distinction between the requirements of section 13A(1) and the mandatory reporting obligations imposed on teachers under the EGPA. The CPA would benefit from express clarification of this distinction. .

Recommendation 7:

QCEC recommends that the CPA be amended so that school staff should not be required to make a judgement that there is a parent able and willing because this is beyond their authority and professional expertise.

Recommendation 8:

QCEC recommends that the CPA be amended so that persons working in schools who are not teachers have a clearer understanding of their responsibilities in relation to Section 13A(1) and section 13E of the CPA

d) Referring to Family and Child Connect

While recognizing that Family and Child Connect is still in an early stage of development as an organization and in terms of developing and implementing processes and protocols, we point to some emergent concerns. In relation to thresholds for making a mandatory report to the Regional Intake Service (RIS) or reporting to the Family and Child Connect Service (FaCC), there has been inconsistent messaging from the RIS. When some RIS receive student protection reports from schools and the RIS advises that the report does not meet the threshold for a notification, these schools are being asked to make the referral to FaCC. This is not the process which was previously advised. If a school believes it meets the threshold for a report to DCCSDS and DCCSDS determines otherwise, it is the understanding of QCEC that it is the responsibility of RIS, not the school, to make the referral.

In addition, the completion of the online referral form to FaCC is very problematic and time consuming. However, it is noted that this form is currently being reviewed.

While the FaCC initiative is positive, the roll-out of FaCC Services is not yet completed and consolidated, and this has given rise to multiple and, at times inconsistent practices across schools which are not always helpful. There also appears to have been some debate between the RIS and the FaCC around threshold issues and who has responsibility for some particular matters.

While there is some progress in this area there is still some work to be done before the system of reporting is settled.

The CPA indicates that some referrals to FaCC services can be made by schools without the consent of the parents. However QCEC is aware of a family which has complained about a referral being made without consent and there appears to be some review into this matter.

While the above matters do require some attention, QCEC notes that the intent of the legislation is slowly being recognised by teachers and other school staff as they experience the interrelationship between FaCC and RIS.

e) Reporting Documentation

More training in decision making based on the Child Protection Guide is required.

Some education authorities have found both the single reporting form to DCCSDS, and the referral form to FaCC, to be long and arduous. There is concern that the information requested in the forms contains a level of information gathering and assessment from the reporter, which can be seen as contrary to the clear messages from Child Safety Services and Police ‘not to investigate’, at the risk of contaminating an investigation process.

In addition, the time taken for DCCSDS to provide feedback as to the outcome of a report can cause anxiety for school staff members, particularly around how they act protectively to support the child or young person.

Schools and school authorities have issues with the use of the *token number* used on the online reporting form to Child Safety for physical/sexual abuse which allows a reporter to come back to the form. The *token number* is only accessible at the very start of using the form, therefore if personnel are not aware of this, they run the risk of losing information or being unable to re-access the form.

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

Once again, QCEC wishes to state its belief that the Review of the CPA cannot be conducted in isolation and ignore its interconnectedness with other Acts which aim to improve the safety, wellbeing and sense of belonging of children and young people. In terms of the purpose of Queensland's child and family legislation, the following is noted:

a) A vision and practice for the safety and wellbeing of children

The current stated Purpose of the Act is 'to provide for the protection of children.' A natural progression of this purpose is an almost exclusive focus on the negative – the identification of harm to children and strategies for dealing with those who cause harm and addressing the effects of harm on children.

This is essentially a reactive approach. There is a need for a more positive stance which can be achieved by a limited broadening of the purpose of the legislation to place a greater focus on the role of government agencies operating under the terms of the legislation, rather than the current focus on the crisis intervention aspect of the government agency.

QCEC believes that the purpose of the Act should have a primary focus on the long-term wellbeing of children through a range of early intervention measures aimed at preventing harm, secondary responses to provide intensive support to at risk families through to robust tertiary system to address the safety and wellbeing of children in the child protection system.

In essence, the Act should create a vision and practice for the safety and wellbeing of children rather than merely setting out the requirements for the operation of various agencies, including DCCSDS, to deal with harmful situations and actual harm to children after the event.

A possible broad re-statement of purpose in the CPA might be:

'The purpose of this Act is to provide for the safety and wellbeing of children including the protection of those children who have been harmed or are likely to be harmed.'

b) Setting the vision and practice through legislative reform

The CPA is part of a suite of legislation (*Family and Child Commission Act 2014, Public Guardian Act 2014, Working with Children (Risk Management and Screening) Act 2000, s.366 Education General Provisions Act 2006, Family Law Act etc.*) designed to protect children and young people and support children and young people as well as their families. Each piece of child and family legislation must complement the other and focus on children's and young person's safety, wellbeing and sense of belonging.

As noted in the response to Question 1, the harmonisation of obligations under child and family legislation is essential to assist school staff to operate more effectively within the reporting processes under the CPA. In addition, harmonising the many legislative considerations for education, and perhaps other sectors, would achieve the complementarity of legislation which will work towards improving the safety, wellbeing and sense of belonging of children and young people before a crisis occurs.

c) Achieving the vision and practice through operational roles and responsibilities

QCEC believes that there is scope for including in existing legislation (e.g. CPA or other legislation such as *Family and Child Commission Act 2014*) outlines of:

- the roles and responsibilities of government and non-government organisations in safeguarding the safety, wellbeing and belonging of children and young people;
- the common principles, processes and pathways for tertiary, secondary, primary or universal services provided to vulnerable children and families to address wellbeing and safety needs of children; and
- common principles, processes and pathways (such as those contained in Victoria's *Children Youth and Families Act 2005*) to guide the development and provision of Government and community services to children and their families. It is hoped that this would enable services to collaborate to intervene in matters that currently fall through the gaps such as children and young people engaging in intrusive sexual behaviours and in situations of chronic absenteeism.

More importantly, the *specific* purpose of *all* Queensland's child and family legislation should be to:

- Provide the mandate for government involvement in the lives of children, young people and families by outlining when this should occur; and the role and responsibilities of government in this regard.

The mandate to intervene in the private affairs of families must be balanced with maintaining the rights (civil liberties) of individuals (adults as well as children and young people). The CPA must continue to be explicit about the role and responsibilities of government and approved government and non-government agencies in protecting children and young people from harm, specifically:

- Clearly stating that the safety and wellbeing of children and young people is a shared responsibility and all government and non-government agencies or services have a role to play.
- Clarifying roles of various government and non-government organisations to ensure the safety and wellbeing in supporting children and families.
- Creating an expectation that collaboration will occur between government and non-government organisations in the delivery of services to ensure the safety and wellbeing of children, young people and in supporting families.
- Moving beyond the narrow focus of immediate safety and include a stronger focus on wellbeing and belonging to a child and young person's community (extended family, kin, school, clubs etc.).
- Including guidance on key concepts such as wellbeing, cumulative harm and significant harm – much like the Family Law Act outlines matters to be considered when considering best interests of the child.
- Clearly maintaining a safety net for children/young people who are harmed or at risk of harm.

A Case Example:

A school reported concerns to Child Safety Services about a mother who had a chronic pattern of leaving her children in the care of adults who have little to no existing relationship with the children or the mother. After three months of care, the persons with whom the children were left with informed the school that they could no longer care for the children. The parents of the children could not be located.

Child Safety Services stated that there was no immediate safety issue for the children and that there was 'a parent able and willing to protect' as the children were with adults who were providing care for them, even though these adults had expressed their inability to continue to care for the children.

The School was referred to Family and Child Connect (FaCC), who in turn stated that it was not their responsibility given the children were clearly in need of protection.

The school, with the support of the student protection team, eventually successfully argued for departmental investigation and assessment of this matter.

This case example illustrates the critical importance of clear understanding around roles and responsibilities between government and non-government agencies, and of the potential impact this can have on children and families, and indeed mandatory reporting agencies.

Recommendation 9:

QCEC recommends that the purpose of the CPA be amended as follows:

"The purpose of this Act is to:

- (v) create a vision and practice for the safety and wellbeing of children**
- (vi) support families to care for their children;**
- (vii) provide for the long-term safety and wellbeing of children through a range of preventative measures aimed at reducing the incidence of harm; and**
- (viii) provide the mandate for government involvement in the lives of children and young people who have been harmed or are likely to be harmed by stating when and how this will occur."**

3. To what extent, if at all, should Queensland’s child and family legislation set out the role of government in supporting families to care for their children?

It is QCEC’s position that Queensland’s child and family legislation should set out the role of government in supporting families to care for their children, noting the following recommendations:

Recommendation 10:

QCEC recommends that the legislation:

- (i) should provide the means for information sharing between government and non-government agencies which is seamless, uncomplicated and timely in circumstances where there is a child in need of protection;**
- (ii) be enhanced to facilitate sharing within and between government and non-government agencies of relevant information about student wellbeing so that when a child moves from one school to another school, relevant information such as school absenteeism can be made available if requested.**
- (iii) remove the barrier to information sharing between non-state schools and state schools;**
- (iv) codify communication protocols between government agencies such as Queensland Police Service and Department of Communities and non-government agencies such as Catholic school sector to assist a consistent standard of service delivery; and**
- (v) be informed by other state legislation particularly Chapter 16A of the *NSW Children and Young Persons (Care and Protection) Regulation 2000***

Recommendation 11:

QCEC recommends that:

- (i) the role of government in protecting the safety and wellbeing of children and supporting families to care for their children is expressed simply and with clarity in the CPA so that it is understood by all people especially those less familiar with legislative language and government protocols.**
- (ii) the legislation should clearly state that it’s intent is to support families to care for their children; and**
- (iii) the suite of child protection legislation should set out the government’s commitment and the shared principles of government and non-government services in protecting and supporting children, young people and their families at all levels of the service continuum – universal services, secondary services and tertiary child protection services.**

4. If the legislation sets out the role of government in supporting families, should specific provisions be included to address the unique needs of Aboriginal and Torres Strait Islander families and children?

Yes, there must be specific provisions in the legislation to address the unique needs of Aboriginal and Torres Strait Islander children. The following points are noted:

- It is important that we respect our Indigenous people and sustain indigenous cultures.
- Given the over-representation of Aboriginal and Torres Strait Islander children and young people in the child protection system, the structural disadvantage, impact of past policies and practices (including the stolen generation) and the need to safeguard and promote the rich Aboriginal and Torres Strait Islander culture, the suite of Queensland’s child and family legislation must include specific provisions to address the unique needs of Aboriginal and Torres Strait Islander children, young people and families.

QCEC recognises the challenges, however cautions against overburdening this particular group of people with too many detailed legislative provisions.

Specific provisions for Aboriginal and Torres Strait Islander families should include:

- Place -based models.
- Clear definitions relevant to all aspects of Aboriginal and Torres Strait Islander people, culture and community:
 - Aboriginal person is one who is....
 - A Torres Strait Islander person is one who.....
 - Kinship is.....
 - Family is
- The provisions in the CPA should have alignment with the *Closing the Gap* Targets.
- Child Protection assessments for Aboriginal and Torres Strait Islander families must identify the strengths of the child and family including the context of culture, community and extended family/kinship.

- Positive progressive language - we must ensure that non-negotiable expectations are met within the Act in relation to the specific needs of Aboriginal and Torres Strait Islander families and children (i.e. *should* replace with *must*)
- There is an intrinsic need for consultation and involvement of appropriate Aboriginal and Torres Strait Islander representatives across different communities which requires further development and resourcing. Legislation should account for the differing communities and differing needs - a 'one size fits all' model has not, and does not, ensure better outcomes for Aboriginal and Torres Strait Islander children and families.
- There must be consideration of the long-term effect of a child's identity in relation to connection to family, community and culture – this is an *essential* principle not a '*should*' principle.
- Involving an appropriate Aboriginal and Torres Strait Islander person who provides cultural knowledge between family and agencies and within individual organisations is viewed as highly important.
- Steps must be implemented to address the issue of Continuity of Care, particularly in relation to foster care, where there is a high turnover of carers for children.

Recommendation 12:

QCEC recommends that:

- (i) The suite of Queensland's child and family legislation, including the revised CPA, should include specific provisions to address the unique needs of Aboriginal and Torres Strait children, young people and families;**
- (ii) any specific provisions to address the unique needs of Aboriginal and Torres Strait Islander children be broad enough to cater for the diversity of circumstances of Aboriginal and Torres Strait Islander children and families; and**
- (iii) The Review of the CPA ensure that legislative provisions are based on the identified strengths of the child and family including the context of culture, community and extended family/kinship.**

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

There must be a focus in the CPA for a child's right to express their views about their life – a greater emphasis on the child's voice is essential. Consequently, there must be provision for age-related involvement of children in decision-making about their lives.

Fundamentally, the legislation should align with the twelve points outlined in the Australian Human Rights Commission - Children's rights. (<https://www.humanrights.gov.au/our-work/childrens-rights/about-childrens-rights>) Child and Family legislation promoting children's rights and well-being should be family and child friendly.

It is important to establish ways that legislation can be shared and understood by the people it aims to protect. Perhaps a suite of resources and promotional material aimed at families and children, reinforcing children's rights would be a practical way for the legislation to emphasise the intention of the Act. A wellbeing agenda needs to be implemented that includes domains of wellbeing in the responsibilities of government, non-government and families.

s.5A of the CPA could include guidance on key legislative principles such as best interest of the child, significant harm, cumulative harm and wellbeing such as that provided in the *Family Law Act* (s. 60CC).

In addition, the Act could include an additional principle about the requirement to inform children and young people about Child Protection processes, particularly when engagement with children and young people has occurred. For example:

If a child or young person is interviewed at a school (under s.17 of CPA 1999) in the course of an investigation, then the following should occur:

- *Prior to the interview commencing authorised officers (Child safety and/or police) should explain the process to the child or young person and their associated rights (e.g. their right to nominate a support person, nominate safe space for the interview etc.)*
- *Following the interview, it should be explained to the child or young person what will happen next, complaints/advocacy pathways, right to participate in decisions if ongoing intervention is planned and how to participate, how to manage discussions with parents and the development of a safety plan for when the child or young person returns home after the interview.*

- *Once parents have been informed of the concerns and an outcome determined, follow up should occur with the child or young person to check on their safety/wellbeing; explain the outcome and provide information about how the child or young person can gain access to support. Again complaints/ advocacy pathways should be clearly explained to the child or young person.*

Recommendation 13:

QCEC recommends that:

- (i) **the revised legislation make provision for age-related involvement of children in decision-making about their lives and consideration of the child or young person's views ;**
- (ii) **the legislation be aligned with the twelve points outlined in the Australian Human Rights Commission - Children's rights. (<https://www.humanrights.gov.au/our-work/childrens-rights/about-childrens-rights>)**

6. Should the best interests of the child continue to be the paramount principle underpinning Queensland's child and family legislation? Why or why not?

The best interests of the child should continue to be the paramount principle underpinning the legislation.

It is important to maintain s.5A of the CPA which clearly states that:

'...where there is a conflict between the child's safety, wellbeing and best interests, and the interests of an adult caring for the child, the conflict must be resolved in favour of the child's safety, wellbeing and best interests'.

This view is consistent with Federal Family Law legislation and is an imperative due to the fact that:

- Children and young people are vulnerable.
- It is necessary to ensure that the rights of children and young people remain a central focus of maintaining children's safety, belonging and wellbeing.
- There is a tendency for children and young people's voices to be easily forgotten (despite the best intentions) or challenging to hear in the context of competing adult voices, highly emotive and adversarial processes and existing societal structures that are inherently adult focused.
- Child and family legislation at both state and federal level needs to be consistent.
- Most legislation is adult focused and the suite of child protection legislation must maintain a child focus.
- The best interest principle is the criterion that is most likely to ensure protection from harm.

The principle of 'best interests of the child' needs to be carefully defined in legislation. The Victorian Government publication *The Best Interests framework for vulnerable children and youth*. (See http://www.dhs.vic.gov.au/data/assets/pdf_file/0005/449213/the-best-interests-framework-for-vulnerable-children-and-youth.pdf) is a useful resource.

Recommendation 14:

QCEC recommends that:

- (i) **the best interests of the child principle continue to be the guiding principle underpinning Queensland's child and family legislation;**
- (ii) **the best interests of the child principle be better defined in the CPA or related legislation; and**
- (iii) **the voice and views of children be enshrined in what is in the best interests of a child.**

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

The legislation should set out the matters to be considered in determining the best interests of a child, noting that:

- Decision making around what may or may not be in the best interests of a child can be challenging, and greater guidance in this area can only be viewed as beneficial.
- What is in the 'best interests of a child' is a question addressed on a frequent basis around the care and protection of children, therefore this is an area of significant importance.
- s5A of the CPA currently cites the best interests of a child as the 'paramount principle', therefore it is highly appropriate to provide further context and guidance around this principle.
- Given that this concept is open to interpretation it would be beneficial to set out matters to be considered when determining the 'best interest' of the child or young person.

- A common set of guidelines will hopefully facilitate consistency amongst services (government and non-government) in relation to this concept.
- These guidelines need to provide broad parameters to enable consideration for the individual needs of the child and young person.
- Having specific matters to consider would be helpful in establishing more consistent frameworks in determining what is in the best interests of a child, however the legislation would need to be broad enough and clearly articulate this as a guide only, rather than being exclusive criteria, in order to acknowledge the diverse range of children's circumstances and not to impose limitations on such decision making.
- The voice and views of children must be enshrined in what is in the best interests of a child.

Section 60cc of the *Family Law Act 1975* currently sets out the matters that must be considered when determining what is in the best interests of a child: http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60cc.html

Alignment with this legislation would be viewed as essential.

Recommendation 15:

QCEC recommends that the Child Protection Act and the Child Protection Regulation (CPR) include a common set of practical guidelines:

- (i) **which are consistent with other legislation including the *Family Law Act 1975* in relation to the principle of the best interests of the child;**
- (ii) **which are broad enough to act as a clear guide which avoid setting exclusive criteria; and**
- (iii) **which acknowledge the diverse range of children's circumstances when making decisions.**

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

The following additional factors must be considered in determining what is in the best interests of an Aboriginal or Torres Strait Islander child:

- Kinship Care - The child must be allowed to develop and maintain a connection with the child's family, land, culture, traditions, language and community; the long-term effect of a decision on the child's identity and connection with their family and community must be taken into account.
- Seeking community knowledge around a specific young person is essential in deciding the best interests of a child.
- Essential understanding of the complexity of kinship linkages and cultural boundaries for a specific young person.
- Acknowledgement that some Aboriginal and Torres Strait Islander children will be required to walk in both the indigenous and Non-Indigenous worlds and carefully discover the best way to support this.
- Additional support for and around voluntary kinship arrangements especially when this impacts the kinship carer's relationship with their community and family.
- Sustained and supported linkages with appropriate Aboriginal and Torres Strait Islander culture, community and family in an ongoing meaningful way for children in care. For example, when young people are placed in residential care establish what are the provisions for these linkages, not just on a one-off basis, but as sustained and supported linkages with appropriate Aboriginal and Torres Strait Islander connections people, community, land, seas and waterways.

Recommendation 16:

QCEC recommends that, when determining the best interests of a particular Aboriginal or Torres Strait Islander child, the following are key additional considerations:

- (i) **community knowledge;**
- (ii) **kinship care;**
- (iii) **additional support for voluntary kinship arrangements; and**
- (iv) **understanding of the complexity of cultural boundaries**

9. How can the legislation best support children to express their views and wishes, and ensure their right to participate in important decision making processes that affect them?

A child should be included in the decision making process as far as possible, as per the *Australian Human Rights Commission - Children's Rights* and the appointment of a child advocate to support the child in the process is essential.

Children and young people are best supported by agencies working together, and should be encouraged to share information on a need-to-know basis with other agencies and individuals (including parents and carers) who may be able to support them.

Where consistent with good practice and the child's/young person's best interests, children and young people should be supported in retaining control over the information they hold and disclose.

There is significant and compelling research in this area that can inform this review of the CPA. e.g.

- *Towards Best Practice in Balancing Children's Rights and Best Interests in High Conflict Families: Lessons Learned in the Speaking for Themselves Pilot Project* (by Dale Hensley, Jean Dunbar, Carolyn Goard, Publisher Irwin Law, June 2011)) Canada.
- *Children's Welfare, rights and the legal system*, Margaret Harrison. *Family Matters*, Issue No.33. *Australian Institute of Family Studies*, 1992

Other factors to consider are the link of family violence to the massive growth in child abuse reports across Australia. Perhaps this should be considered as part of mandatory reporting as it is in other jurisdictions. This issue can affect the degree to which a child may feel safe in actively participating in a process that seeks to elicit their views and wishes. Consideration of the recommendations from the *Not Now, Not Ever* report to the Queensland Premier and developed by a Taskforce chaired by former Governor General, Quentin Bryce could provide insights to the legislative changes that would further support the safety of children who live with domestic and family violence.

While acknowledging that the current suite of legislation does enable children's views to be sought to some extent, this could be further enhanced by the legislation moving beyond 'participation' (often tokenistic) to facilitating an active role and requiring active consideration of the views of children and young people in decision making about children's safety, wellbeing and belonging. For example, including in the legislation a section similar to s6(5) of the CPA which requires special processes to facilitate the inclusion and engagement of young people in decision making about matters that affect their lives.

It is critical to provide the opportunity for children and young people, in an age-appropriate way, to meaningfully express their views and wishes. This must be explicit in the legislation and include a set of very basic principles around how this will be achieved with the child's safety in mind.

At a practical level:

- Including more child friendly and child inclusive processes e.g. direct involvement of young people in court, Queensland Civil and Administrative tribunal (QCAT), family group conferences and other internal review processes and/or a panel process involving the child or young people, their support person, service or organisation directly working with the child or young person, such as the school.
- Requiring authorised officers to inform children and young people about child protection processes, actively seek children and young people's views on how they can be supported during these processes and active engagement with children and young people when addressing safety and wellbeing needs through the Child Protection continuum.
- Ensuring children and young people are informed of decisions impacting on them and their associated rights at all phases of the child protection continuum (from investigation through to exiting care), not just at particular phases or decision making points. For example, many children and young people have little to no input about schools they attend, placements decisions, contact visits, reunification, and their advocate or support person.
- Clearer articulation about the flexibility in the manner in which children and young people may express their views e.g. written communication, videos, drawings, direct meeting with the magistrate or tribunal members .
- Including the requirement to demonstrate particularly to the court or tribunal that the child or young person has been provided with information about their rights and actively been given the choice on whether or not to input into the process (court or tribunal).

- Ensuring that an advocate and/or separate representative for the child be introduced to the child or young person and their role explained in detail. A separate representative should be required to meet with the child and/or their support persons to actively seek the child's views and to understand the child's protective and care needs rather than just rely on file material.
- That Community Visitors or child advocates are allocated to children and young people rather than to a carer, service or facility, and the ability for the child or young person to seek a change of Community Visitor or Advocate if they feel uncomfortable or unable to establish a trusting relationship.
- The ability for children and young people to access support or therapeutic services without parental consent, particularly when they have expressed the need for support or assistance.

Acknowledging that non-government agencies often feel undervalued when key decisions are made around children and young people - more opportunity and value could be given to the non-government sector's perspectives and assessments when determining safety, well-being needs of children and young people particularly when these agencies have frequent and ongoing relationships and/or contact with children, young people and their families.

Recommendation 17:

QCEC recommends that the legislation:

- (i) require authorised officers to inform children and young people about child protection processes and demonstrate that they have done so;**
- (ii) require the appointment of a child advocate to support the child in the decision-making process; and**
- (iii) allow the child or young person to have access to support or therapeutic services particularly when the child or young person has expressed the need for support and assistance.**

10. How can Queensland's child and family legislation enable families to get the support they need, when they need it, to keep their children safely at home?

The legislation must recognise the role extended family and kin can play in protecting children and young people from harm and promoting their sense of belonging and wellbeing. This may enable authorised officers or other services to engage extended family members and kin involvement (where appropriate and necessary without requiring parental consent) to facilitate the protection of children and young people, or to encourage the biological family to engage in support services. The legislation must enable a child or young person's right of access to support, particularly when they lack family support or involvement (for example where children and young people disconnect from, or are in conflict with, their parents, or are living independently or who are homeless).

For example:

Actively involving extended family in the early stages of the child protection process such as the Assessment Orders, other ongoing intervention (Intervention with Parental Agreement, Support Services, Child Protection Orders including Protective Supervision Orders or other directive orders) and particularly in court processes that potentially have a significant impact on the ongoing role or involvement of family in a child or young person's life.

Legislation should:

- Take a non-judgemental stance based on the best interest of the child.
- Ensure resources are available, accessible and approachable.
- Provide direction for equitable processes.
- Encourage fast-acting outcomes.
- Require sustainable action.
- Be culturally and religiously inclusive and sensitive.
- Always allow information to be shared easily amongst organisations when it is in the best interest of the family and child.

It is suggested that the adoption of the Australian Family Law definition for parental responsibility being: "*all the duties, powers, responsibilities and authority which, by law, parents have in relation to children*" would be a good starting point. (*Family Law Act 1975, Section 61B*).

It would be helpful if the legislation guided the development of new communities (e.g. Yarrabilba) to ensure that social infrastructure services such as neighbourhood centres offering social work support for families and child and family relationship counselling services are included in Stage 1 to support the growing population.

Recommendation 18:

QCEC recommends that the legislation:

- (i) assign a role for extended family and kin in protecting the child or young person from harm and promoting the child or young person's sense of belonging and wellbeing;**
- (ii) ensure resources are available, accessible and approachable;**
- (iii) provide direction for equitable processes;**
- (iv) encourage fast-acting outcomes;**
- (v) require sustainable action;**
- (vi) be culturally and religiously inclusive and sensitive; and**
- (vii) allow information to be shared easily amongst organisations when it is in the best interest of the family and child in accordance with QCEC recommendation 24(iii) (below).**

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

The legislation should reflect the holistic interrelatedness of physical, psychological, cultural and spiritual connectedness to family, kin, community, land, waterways, traditions and cultures.

A broader definition and acknowledgement is required within the Act regarding 'parental responsibility' in the context of Aboriginal and Torres Strait Islander culture and community. For example, when there is a court process to decide about the care of a child, a carer who is directly involved with supporting a young person on a day to day basis isn't often the person who is best informed of the court proceeding as they are not considered the recognised 'legal guardian'. While this may be broadly mentioned in legislation it is not always actioned very well in practice.

The legislation must recognise an expanded parental responsibility, allowing for information sharing with the relevant and appropriate people in the community who may have a role or responsibility in caring for a child.

It is very important that local language is used to describe concepts of family, kin and culture recognising processes in clan groups within particular communities.

The legislation should contain provisions which ensure that culturally sympathetic social infrastructure services (neighbourhood centres offering social work support for families, child and family relationship counselling services) are provided to demonstrate recognition of concepts of family, kin, community and culture, and should recognise the role and importance of community liaison officers.

Recommendation 19:

QCEC recommends that the legislation extends the definition of parental responsibility by including a definition of parental responsibility in the context of Aboriginal and Torres Strait Islander culture and community which:

- (i) allows for information sharing with the relevant and appropriate people in the community;**
- (ii) reflects the holistic interrelatedness of physical, mental, cultural and spiritual connectedness to family, kin, community, land/waterways, traditions and cultures; and**
- (iii) recognises the place and role of community liaison officers.**

12. What are your views on the way in which 'parent' should be defined in Queensland's child and family legislation? Is the definition used in the Commonwealth family law applicable to Queensland's child protection and family support service system?

There is scope to broaden the definition of parent in child protection legislation as it would better reflect the diversity in contemporary family structures particularly Aboriginal and Torres Strait Islander and Culturally and Linguistically Diverse families. This would enable extended family members and kin who play an active or central role in caring for a child or young person to be part of significant matters such as court processes. It would also reflect a move from 'ownership' of children and young people to 'responsibility' and 'opportunity' to contribute to safety, well-being and promoting sense of belonging of children and young people to their family, kin and community.

The current definition, acknowledging Aboriginal and Torres Strait Islander peoples, as well as other cultural and religious 'norms', should be retained as a minimum. The definition should be flexible enough to encompass all family

types and those 'children' who don't recognise being part of a family while still allowing the definition within the legislation to act protectively for children in need.

The definition used in Commonwealth family law and case law interpretations of this definition to be used as a guide for Queensland's legislation.

Recommendation 20:

QCEC recommends that the legislation:

- (i) **adopt, as a minimum, the Australian Family Law definition for parental responsibility being: "all the duties, powers, responsibilities and authority which, by law, parents have in relation to children." (*Family Law Act 1975, Section 61B*) and the qualifications for its application to Aboriginal and Torres Strait Islander culture and community contained in Section 61B; and**
- (ii) **ensure that the definition is flexible enough to encompass all family types and those children who do not recognise that they are part of a family; and**
- (iii) **has adequate capacity to allow appropriate practitioners to act protectively for children in need.**

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

QCEC acknowledges that the relevant recommendations of the Queensland Child Protection Commission of Inquiry (Carmody Inquiry) would be a very good reference to answer this question. A key section of an amended CPA should set direction for encouraging families and the wider community to take responsibility for the safety and wellbeing of children and young people wherever possible. Greater consideration for easier processes to allow early adoption (when reunification appears unlikely) would create more child safe communities. The legislation should require regular community education on best practice for child safety including parenting programs to support effective behaviour management and healthy family functioning.

Recommendation 21:

QCEC recommends that the legislation create more child safe communities by:

- (i) **setting direction for empowering families and wider community to take responsibility for the safety and wellbeing of children and young people; and**
- (ii) **requiring the Family and Child Commission and/or the Department of Communities Child Safety and Disability Services to provide regular community education on best practice for child safety including parenting programs to support effective behaviour management and healthy family functioning.**

14. Should Queensland's child and family legislation outline the roles and responsibilities of relevant government and non-government agencies for children's safety and wellbeing? Why or why not?

The legislation should be clear on the role and responsibilities of government agencies as this is a matter over which governments have control and the power to regulate. While it is useful for legislation to broadly state that government and non-government organisations – including schools - and natural communities (extended family, kin, school, extra curricula groups) have a role to play in the lives of children and young people, this should not be narrowly defined, as it creates limitations and may limit responses to safety and wellbeing of children and young people. The legislation should support and clearly set out the role of non-government agencies, including non-government schools, in this process.

The description of the roles and responsibilities of the relevant government agencies needs to signal a clear commitment to services at all levels (universal, secondary and tertiary) to work collaboratively to address safety and well-being needs of the children and young people rather than focus narrowly on what is perceived to be their mandate or responsibility which may result in needs of children and young people not being met.

For example:

- a) Chronic school absenteeism continues to be an issue – a child or young person's academic/social/ emotional developmental is significantly is potentially compromised by this, leading to long term impacts on the child.
- b) Children and young people exhibiting intrusive sexual behaviour towards other children (e.g. oral sex, penetration, coercive sexual activity – touching, request to undress etc.) continues to be an issue particularly if the parents of the child or young person exhibiting the behaviour deny or minimise the behaviour.

There must be a clear commitment by the government to provide tertiary child protection responses.

The legislation should acknowledge and maintain the role of natural communities and neighbourhoods when making decisions for children and young people's lives. This idea could be embedded as a general principle in the Act or when defining matters to be considered under the principle of the best interests of the child.

The legislation should be enhanced regarding disagreement processes to ensure it is more equitable and due regard given to non-government wisdom, experience and knowledge of the child, young person and their family. Additionally, an objective approach should be favoured e.g. panel processes that involve non-government representatives and young person to review the decision.

Recommendation 22:

QCEC recommends that the CPA:

- (i) be broadened to include a clear commitment by the State Government to the safety and wellbeing of children through the provision of early intervention, secondary and tertiary services to children, young people and their families;**
- (ii) acknowledge and maintain the role of natural communities and neighbourhoods when making decisions that impact on children and young people's lives; and**
- (iii) be enhanced regarding disagreement processes so that the processes have appropriate regard to the experience and knowledge of the young person and their family.**

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

As previously stated, QCEC believes that the Review of the CPA cannot be conducted in isolation and ignore its interconnectedness with other Acts at both state and federal level which aim to improve the safety, wellbeing and sense of belonging of children and young people. There is a critical relationship between Queensland's domestic and family violence protection laws and the CPA.

Queensland child and family legislation should complement and refer to the Queensland Domestic and Family Violence Protection Laws to ensure there is no conflict between the two.

Guidance and learnings are available from a consideration of the way in which the Federal *Family Law Act* and the *Queensland Domestic and Family Violence Act* interact.

Recommendation 23:

QCEC recommends that the suite of child and family legislation at state and federal level should:

- (i) be consistent with other relevant state and federal legislation, including Queensland's domestic and family violence protection laws, to reflect a coherent and comprehensive response to the safety and wellbeing of children and young people;**
- (ii) be aligned to prioritise children and young people's safety, wellbeing and sense of belonging to kin and community;**
- (iii) clearly state that, where there is a conflict of interest, it is essential that the best interest of the child should prevail.**

16. Does the concept of 'child in need of protection' set the right threshold for determining the point at which government intrusion into the private affairs of a family are justified? Do you consider this threshold too high or too low? Why?

While conceptually this threshold is appropriate, it is open to interpretation and therefore may not be applied consistently across relevant Queensland agencies. Perhaps, like the principle of best interest of the child or young person, the legislation should offer guidance on what matters need to be considered when determining whether a child is in need of protection.

When making decisions about whether a child is in need of protection rather than accepting the parents' word on actions they intend to take, the legislation needs to demand careful consideration and weight to be given to the experiences of children/young people themselves and that of government and non-government services (e.g. schools, family support services etc.).

For example:

A sibling group of three children were left in the care of a family whose children attended the same school (informal carers) by their mother. The children had little to no pre-existing relationship with this family. Mother then 'disappeared' for 6 months, the informal carers had 4 children of their own and could not continue caring for the children due to lack of room, finances and emotional toll (despite no behavioural issues). The matter was initially reported by the school to the department who stated this was not a child protection issue and suggested referral to Family and Child Connect. This stance was challenged and the school had to carefully articulate why the children were considered to be in need of protection. Finally the matter was investigated by Child Safety Services.

The mother was found and the mother subsequently 'located' accommodation for herself and the children. This arrangement did not eventuate and mum found alternative accommodation in a two bedroom apartment of an elderly woman whom she briefly became acquainted with and who is unknown to the children (as is her usual pattern over many years). Child Safety Services reassured the school that follow up would occur to ensure the living arrangements were safe/adequate however to date no follow up has occurred according to the mother. The school has not been informed by Child Safety Services if ongoing intervention is planned.

In addition to setting a threshold, having a clear framework to assist the determination of whether or not a child is in need of protection would be beneficial. There will always be situations where the most intrusive response is the only response, however, where there are other less intrusive options they should be pursued. If the legislation is more explicit around the options of support services and how they should be accessed in order to minimize unnecessary intrusion, this could strengthen the concept of a child in need of protection.

As currently stated in Section 10 of the Act, the definition of 'Who is a child in need of protection' is still quite broad and for most people in the community, including many mandatory reporters, who are not specifically trained in recognizing child abuse, it still remains open to interpretation. The inclusion in section 10 (b) of the expression 'does not have a parent able and willing to protect the child from harm', assist to clarify this to some degree and was a positive addition in the amendments in January 2015. However, the provision of resources that provide guidance on the interpretation of the provision would assist to ensure its consistent application by government and non-government agencies, including schools.

Noting that careful judgements need to be made about respecting the privacy of families, QCEC would take the view that, where the safety of a child is at stake and may be jeopardised by a demand to respect privacy, the need to protect a child should override the family's right to privacy.

Recommendation 24:

QCEC recommends that, while the concept of child in need of protection sets the right threshold for determining the point at which government should intervene, the legislation needs to offer guidance on what matters need to be considered when determining a child is in need of protection to reduce the incidence of inaccurate interpretation and inconsistent application across the child protection sector in Queensland.

17. What other measures could be considered when balancing a child's right to protection from harm with the child's and family's rights to privacy and self-determination?

There is a body of best practice that has evolved significantly since the CPA was enacted. Incorporation of this new knowledge could provide more fairness and self-determination to the very difficult arena of child protection. A key consideration is that children are vulnerable and the intention of the CPA is to protect children. That needs to remain the focus and any efforts to protect family privacy and self-determination should not compromise the vulnerable child's fundamental right to safety.

The following points are offered to assist at a practical level:

- There is value in including an additional concept in legislation along with some guidance on when support services could or should be provided by government to prevent a child from becoming in need of protection.

- Additionally there is value in enabling non-government services such as Family Child Connect or Integrated Family Services to provide limited feedback to other entities about whether or not families have successfully engaged in a service. This will enable other entities to determine and adjust the level of support and monitoring provided to the child and family.
- Privilege the voice of the child or young person whether behavioural or verbal and where there is a conflict of interest, to ensure that the best interests of the child prevail.
- There must always be a priority of protecting children due to their vulnerability.
- The legislation needs a requirement that the Department of Child Safety provide information to agencies and schools, both government and non-government, about the outcome of departmental intervention particularly when the school or service is identified as a protective factor via supervision and monitoring of the children and young people and their family.

The following resources would be useful references:

- Australian Law Reform Commission – *Decision Making by and for Individuals Under the Age of 18* (See link [Privacy rights](#))
- Australian Association of Social Workers – *Practice Standards*. (See link <https://www.aasw.asn.au/practitioner-resources/practice-standards>)

Recommendation 25:

QCEC recommends that when balancing a child’s right to protection from harm with the child’s and family’s rights to privacy and self-determination:

- (i) priority must always be given to protecting children due to their vulnerability;**
- (ii) where there is a conflict of interest the best interests of the child, informed by the voice of the child/\ or young person, must prevail; and**
- (iii) there should be a legislative requirement that enables information sharing with schools regarding whether or not families have successfully engaged in a service offered by Family Child Connect and the progress of departmental intervention for a child or young person in need of protection particularly when the school or service is identified as a protective factor through the supervision and monitoring of the child or young person and the family.**

18. How can Queensland’s child and family legislation support collaborative community and family-led approaches to child and family support that meet the unique needs of Aboriginal and Torres Strait Islander children, families and communities?

It is suggested that the legislation might be framed with a view to the following:

- Service providers engage in informed decision making by collaborating in a local place-based action through a Reconciliation Action Plan (RAP).
- A reconciliation process needs to occur with local involvement of service providers and local communities together. Development of a RAP with the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs (DATSIMA) (existing Aboriginal and Torres Strait Islander reference group) and relevant service providers within a local community. This document is created to provide the protocols for the place and space for supporting Aboriginal and Torres Strait Islander families and young people within their specific community.
- Flexible family-based service responses to address children’s needs focused on a move from child placement to the principle of family preservation where appropriate. This results in the creation of a third space where both statutory and support services come together with the local community to achieve ‘knowing before doing’ in relation to needs of community and families.
- More services needed generally for family support which include community controlled services for providing early support for families.

Recommendation 26:

QCEC recommends that the suite of child and family legislation:

- (i) provide for the development of a Reconciliation Action Plan with the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs (DATSIMA) and relevant service providers within a local community as a means of service providers engaging in informed decision making.**

19. How can Queensland's child and family legislation promote the importance of permanence and provide a range of options for providing children with relational, physical and legal permanence?

The current principles underpinning the CPA (sections 5A, 5B and 5C) do not explicitly reflect the importance of permanence, particularly around a range of options for providing children with relational, physical and legal permanence, albeit there is some reference to seeking placement stability (subsection 5B(k)). Including an explicit principle in this regard would affirm the significance of this goal, and simplifying the legislative processes to achieve permanence, with due regard to the best interests of a child, would also be positive step.

From a resourcing perspective, better support for those providing care to children under child protection orders in order to better achieve permanence is critical. This is particularly important in circumstances where children who have experienced trauma exhibit challenging behaviours that significantly impact upon placement stability.

Flexibility and a focus on the child's best interest and rights is the key. Guidance on matters to be considered when making critical decisions such as permanency planning would be useful. Unpacking the best interest concept similar to s. 60CC of Family Law Act could be useful.

Permanency planning must equally consider all three dimensions of permanence and full and thorough discussions of each dimension need to occur with the children and young people having regard to their age, developmental level and abilities. Ideally an independent advocate or support person should be offered to the child or young person (having regard to child's age and capacity) to assist them actively and fully input into the discussion.

The needs of the child or young person in the longer term also need to be considered alongside a multitude of matters, including implications on relationships with significant others such as biological parents, siblings (current and future) and extended family and the ability to attend current school or other community services. For instance, the child or young person's ongoing therapeutic and support needs must be taken into consideration before shifting long term responsibility to another person by way of adoption or awarding guardianship to another person.

The complexity of the child or young person's needs can and have in many circumstances contributed to a re-entry into child protection system and/or ongoing significant harm in the long term. Additionally, consideration should be given to ways in which children and young people who have been adopted or placed into long term guardianship of another person can have priority and easy access to future therapeutic services or supports with minimal costs.

Case example (names have been changed):

Jess and Sam are sisters aged 11 and 13 years respectively. Both girls were taken into care due to sexual abuse, emotional abuse and neglect by their parents. The whereabouts of the biological parents are unknown.

The girls were placed with grand-aunt and her partner by the department. Subsequently, the grand aunt was awarded guardianship of two girls and Child Safety Services ceased involvement. Three years later, the grand aunt continued to struggle with Jess's emotional response to her abusive past, which involved physical aggression, high levels of sexual behaviour, emotional dysregulation including self-harming etc.

This behaviour led to the grand aunt sourcing another person to care for Jess (through the school community, a person Jess did not have an existing relationship with) and leaving Brisbane to live in Western Australia with Sam. Jess was not prepared for this transition and to date remains in the care of the informal carer with minimal contact with her grand aunt and sister.

A report was made by the school to Child Safety Services however no intervention was deemed necessary by Child Safety Services, and the grand-aunt's request for assistance with accessing mental health/ therapeutic services was not provided by the department resulting in aunt's decision to arrange alternative care and move away from Jess.

It is important to be thorough about assessing the custodial parent's competence, commitment and maturity and having objective thresholds that must be met in order to ensure permanence. Adequate follow-up procedures need to be put in place by relevant agencies to ensure ongoing compliance with these assessments.

Recommendation 27:

QCEC recommends that legislation:

- (i) include an explicit principle which will give rise to a range of flexible options for providing children with relational, physical and legal permanence which has a focus on the child's best interests and rights as the key;**
- (ii) actively engage the child in the decision-making process;**
- (iii) simplify the legislative processes to achieve permanence; and**
- (iv) ensures long-term management and support of the child or young person to achieve and maintain permanence.**

20. What is needed in Queensland's child and family legislation to ensure that young people receive the help they need to successfully transition from care to living independently?

Rather than prescribed legislation that stipulates the ages up to which the government is required to provide support, a more flexible and tailored response is required.

The current legislative references to transition from care highlight that "As far as practicable, the chief executive must ensure the child or person is provided with help in the transition from being a child in care to independence" (subsection 75(2)). Comparing this provision at a broader level to the expectation that children are nurtured and supported from birth to adulthood by their family (and extended family) in order to successfully gain independence, these current provisions could be seen to have a narrow focus, in that a successful transition to independence is more than the provision of help, or transitional case planning. It must be enshrined in the whole approach to the care and social emotional development of a child.

Therefore, transition from care must be a focus at the outset, not the end, of case planning for children in care and must be clearly identified throughout the case planning and review processes.

It is of key importance that ongoing support once a child has turned 18 is provided in a holistic, rather than financial context (as tends to currently be the case) in order to improve the likelihood of a successful transition into independence. Many young adults return home during key stages of their life (e.g. further study, moving home) but such opportunities are not usually available to children who have been in care.

Also, the provision of ongoing emotional support cannot be understated particularly as young adults go through significant developmental and experiential stages. Young people should therefore have the ability to access particular ongoing support services once they have left care. One example is the capacity for *Next Step After Care services* to provide or facilitate support for young people should they require it post 21 years of age and funding agreements should take account of this.

While the current legislation has a Charter of Rights for children in care which states that young people are entitled to assistance with transition to independence, operationally this is still hit and miss. Schools, particularly non-government schools, are often not actively involved in this process despite often having supportive relationships with young people while they are students at their school.

Appointment of a child advocate to assist with transition would be helpful, and once again the value of supporting kinship arrangements for a young person is noted particularly for Aboriginal and Torres Strait Islander young people.

Recommendation 28:

QCEC recommends that legislation:

- (i) is framed in such a way that it supports the successful transition from care to living independently via a more flexible and tailored response that does not place inappropriate emphasise on the age requirements for eligibility to government benefits;**
- (ii) ensures that, if required, ongoing support once a child has turned 18 is provided in a holistic, rather than financial context in order to improve the likelihood of a successful transition into independence; and**
- (iii) guarantees a young person access to particular ongoing support services, if required, once they have left care.**

21. How can the legislation reduce unnecessary red tape and make it easier for people to become carers, without compromising high standards of care for children living in out-of-home care?

This is an area for careful consideration, as the ultimate goal is to provide for the highest quality care arrangements possible. Any reduction in bureaucracy or 'red tape' can never be at the expense of stringent screening, assessment, training and support processes. There are many examples where care arrangements have been poorly planned and rapidly progressed in an attempt to manage immediate care needs resulting in both the failure of the care arrangement and the child having further negative experiences.

Improving the availability of carer assessors, access and availability of quality pre-service training and more streamlined approval processes (including more effective documentation processes) is one option. It is noted that such improvements would not necessarily be enshrined in legislation but is more a matter for practice standards and resourcing.

Foster Carers currently represent a limited resource and this may continue in the future. A real focus on identifying and involving extended family members early in the process is vital as this could be the way in which creative and enduring care arrangements may emerge. This requires an investment in processes such as Family Group Conference – in their various forms- as well as qualified and skilled practitioners.

While streamlining the approval process of carers is desirable, it is imperative that the focus remain on maintaining high standards of care rather than reducing the burden or making the process cost efficient. The aim should be quality not quantity with a view to having a register of screened and competent carers.

At a practice level, it is necessary to have a clear, safe process for people to become carers which should include safe recruitment and selection practices, criminal history checks, completion of a recognised parenting program, demonstrated competence in parenting skills and healthy family functioning.

Recommendation 29:

QCEC recommends that any reduction in bureaucracy or 'red tape' be carefully considered and must never be at the expense of stringent screening, assessment, training and support processes.

22. How can Queensland's child and family legislation provide for the sharing of information about children and families between government and non- government service providers, to achieve the right balance between families' rights to confidentiality and privacy and the responsibility to protect a child from harm?

Children's best interests needs to be the overriding principle in relation to information sharing and the capacity to do so with the expectation that agencies sharing information would do so professionally and confidentially. Underpinned by this principle, the legislation should provide for information sharing which is seamless, uncomplicated and timely between government and non-government agencies if a child is in need of protection. For example, the barrier to information sharing between non-state schools and state schools should be removed in these circumstances.

The codification of communication protocols between government agencies such as Queensland Police Service and Department of Communities and non-government agencies such as the Catholic school sector would assist a consistent standard of service delivery.

Legislation should be enhanced to facilitate sharing of relevant information about student wellbeing between schools. For example, when a child moves from one school to another school, it would be important to on-forward relevant information if requested to the new school such as school absenteeism.

- It would be essential to determine or define the essential information that needs to be shared, and to acknowledge that sharing and communication must be in both directions – reported and requested.
- If legislation is framed in this way and all parties are aware of the provision it is likely that it will encourage consent without recourse to any lengthy and onerous regulatory processes.
- Chapter 16A of the NSW *Children and Young Persons (Care and Protection) Regulation 2000* allows information to be exchanged between prescribed bodies despite other laws that prohibit or restrict the disclosure of personal information, such as the *Privacy and Personal Information Protection Act 1998*, the *Health Records and Information Privacy Act 2002* and the *Commonwealth Privacy Act 1988*.

Prescribed bodies include:

- a registered non-government school
- a designated agency
- any other organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly to children.

The extension of these provisions in Queensland would assist a consistent standard of service delivery.

- The South Australian Government's "Information Sharing: Guidelines for promoting the safety and wellbeing of children, young people and their families." Is a useful resource. (See link <http://www.ombudsman.sa.gov.au/wp-content/uploads/2008-ISG.pdf>) The related procedure is available at <http://www.decd.sa.gov.au/docs/documents/1/isgprocedure.pdf>)
- An example of a collaborative cross-sector document within South Australia that covers expectations around staff behaviour including information sharing is the "Protective practices for staff working with children and young people." (see link <http://www.decd.sa.gov.au/docs/documents/1/ProtectivePracticesforSta.pdf>)
- A further example of a collaborative cross-sector initiative that includes reference to information sharing is the joint protocol "Protecting the safety and wellbeing of children and young people." (See link <http://www.education.vic.gov.au/Documents/school/principals/spag/safety/protectionofchildren.pdf>)

QCEC strongly recommends the adoption of the measures outlined in Recommendation 10 of this submission to enhance information sharing between government and non-government agencies.

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

Recommendation 30:

QCEC recommends that the review:

- should make it clear that while legislation is necessary, the community should not rely on legislation as the primary source for creating safe communities but regard this as a shared community objective;**
- should make clear recommendations about ways to achieve interconnectedness with other Acts which aim to improve the safety, wellbeing and sense of belonging of children and young people (in accordance with the other specific recommendations of the QCEC regarding mandatory reporting, for example);**
- make recommendations which include reference to the need for commitment to and investment in other strategies to create safe communities for children and young people. For example: Personal safety and education for children, respectful relationship education, community development, ensuring professional competence of personnel to ensure they are adequately equipped to work in the sector;**
- consider an explicit requirement in legislation that professionals such as departmental staff, child advocates, Community Visitors, Independent Representatives have the training and skills to effectively elicit the views of children and young people and have the ability to communicate effectively with children and young people having regard to their age, maturity, capacity, cultural background;**
- consider the need for building in processes to ensure regular review of legislation to maintain its relevancy, to ensure that it reflects contemporary society and is evidence based in its approach to protecting and supporting children, young people and their families;**
- consider the need to move beyond legislation and focus on ensuring evidence based and contemporary practice in decision making around child safety, particularly within the context of children impacted by domestic or family violence);**
- consider the need for appropriate resourcing to non-government agencies, including non-government schools, to ensure they are able to meet the increasing demands, responsibilities and complexities of family support services. This is particularly important in the provision of secondary and tertiary services without compromising quality of services provided to children and young people and their families;**
- affirm that the government must continue to hold joint responsibility for services provided by these funded services;**
- with regard to effectively transforming the over-representation of Aboriginal and Torres Strait Islander families and children in the Queensland Child Protection system (reports and children in care), consider the extent of change required to ensure high-quality child protection services (statutory and non-government) supported by adequate resources including funding and well-trained staff; and**
- consider the inclusion of provisions to require the involvement of and consultation with Aboriginal and Torres Strait Islander community elders in child safety decision making.**