

Submission to the Review of the Child Protection Act 1999

February 2016



Bringing the light of Christ into communities



About us

Churches of Christ in Queensland has a significant presence in Queensland and Victoria with over 200 services in more than 100 communities, touching tens of thousands of lives each year. We operate a range of missional and community care services to assist families, the elderly and people in need through church communities and our care services groups operated through Churches of Christ Care.



Head Office
41 Brookfield Road
Kenmore Queensland 4069

Phone: 07 3327 1600
Fax: 07 3878 1268
Website: cofc.com.au

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Summary

Churches of Christ in Queensland, through our care services groups operated by Churches of Christ Care, welcomes the opportunity to provide feedback on the review of the *Child Protection Act 1999* (the Act). The Act is a key piece of legislation underpinning our practice as one of Queensland's largest providers of out of home care. Child protection and out of home care is a complex policy and practice environment where the best interests of children are paramount.

The following submission provides a range of recommendations for consideration in the review of the Act, including discussion on the following:

- The purpose of the Act
- Maintaining family connections for Aboriginal and Torres Strait Islander children and young people
- Permanency, including options for relational and legal permanence
- Over-representation of Aboriginal and Torres Strait Islander children in out of home care
- Supporting young people transitioning from out of home care to independence
- The role of foster carers
- The role of the nominee in licensed care services
- Information sharing
- Transitioning to non-government case management
- Secure care options for young people at risk of significant harm

Recommendations

Churches of Christ Care recommends that the review of the *Child Protection Act 1999* (the Act) includes the following:

- Remaining focused on the Act's existing purpose and paramount principle, alongside the principle of children's right to live in stable, nurturing and supportive environments.
- Considering other changes to the legislation that would support policy and practice to actively promote the wellbeing of children and young people.
- Including a principle so decisions impacting children and young people's are informed by an analysis of their history of trauma – including the impact of intergenerational trauma experienced by Aboriginal and Torres Strait Islander children and families.
- Redrafting the Act using plain language principles, so it is more accessible and readily understood by children, young people and families.
- Maintaining the Aboriginal and Torres Strait Islander child placement principle.
- Changing the Act to support practice that encourages opportunities to rebuild and maintain relationships between siblings.
- Considering adoption as a serious permanency option, particularly for children and young people who have been living with the same foster carer for many years.
- Exploring options to provide stronger legal permanency in long-term guardianship

arrangements to limit the possibility of relinquishments.

- Considering any changes to legislation that would be necessary to support community-led prevention and early intervention work with Aboriginal and Torres Strait Islander communities.
- Considering any changes to the Act that supports a whole of government practice approach to working with Aboriginal and Torres Strait Islander communities.
- Providing young people transitioning from out of home care to independence choice in where they live and how they receive support, up until the age of 25.
- Allowing discretionary decision making on non-child related criminal history for the suitability approval process of potential Aboriginal and Torres Strait Islander kin carers, while maintaining the same level of monitoring as all foster carers.
- Maintaining the role of the nominee in licensed care services.
- Reviewing the Act to ensure appropriate information sharing between government and with non-government service providers happens in practice.
- Developing the necessary legislative mechanisms to allow non-government organisations to undertake case management and casework for children in the child protection system.
- Considering the legislative options needed to provide secure care for young people, at extreme risk of harm, in line with recommendation 8.9 of the Queensland Child Protection Commission of Inquiry. Any consideration of adopting secure care should be underpinned by consultation and research, including reviewing approaches across other states and territories.

Introduction

Churches of Christ Care is one of Queensland's largest providers of out of home care, working with around 2,800 children and young people each year. We are committed to providing a safe, supportive and therapeutic environment for children while working towards either bringing a family back together or supporting children and young people to have another permanent out of home care option.

We recruit and support over 800 dedicated and compassionate foster and kinship carers. Working closely with our staff, carers provide a vital safety net to children and young people, often coming from backgrounds of abuse and neglect.

The *Child Protection Act 1999* (the Act) is the underpinning legislation impacting our practice, and we welcome the opportunity to provide feedback on this important reform. Child protection and out of home care is a complex policy and practice environment where the best interests of children are paramount.

The purpose of the Child Protection Act 1999

Churches of Christ Care supports the existing purpose and paramount principle of the *Child Protection Act 1999* (the Act) - to protect children from harm while focusing on their safety,



wellbeing and best interests. In current policy and practice, the Act effectively protects children and young people from harm, but it does not actively promote wellbeing.

The Act drives the culture of the child protection system, impacting on the lives of children, young people, families and the relationships between government and non-government organisations. The rules set out in the Act heavily influence policy and practice, with a complex and prescriptive legislative approach often leading to a complex and prescriptive approach to child protection. This can have the unintended consequence of re-traumatising children and young people, silencing their voice in complex legal and bureaucratic processes and in extreme cases, slowing down decision making and leading to poor outcomes. Maintaining the Act's focus on the best interests of children and young people is necessary to hold child protection policy and practice accountable to action that enhances safety and wellbeing.

We recommend that any changes to the Act remain focused on the act's existing purpose and paramount principle, alongside the principle of children's right to live in stable, nurturing and supportive environments. **We also recommend** considering any other changes to the legislation that would support policy and practice to actively promote the wellbeing of children and young people.

Churches of Christ Care supports any changes to the Act seeking to ensure decisions around the best interests of children and young people carefully considers their developmental, educational, cultural, emotional, health and physical needs. **We recommend** including a principle in the Act so decisions impacting children and young people are also informed by an analysis of their history of trauma. This includes the impact of the intergenerational trauma experienced by Aboriginal and Torres Strait Islander children and families.

We support the government's work to streamline and simplify the Act as this could support simplifying policy and practice. We believe that the Act, and any piece of legislation that impacts people's lives, rights and family relationships, should also be easily accessible and understood by the people subject to it. **Churches of Christ Care recommends** that streamlining the Act, includes redrafting using plain language principles, so it is more accessible and readily understood by children, young people and families. The voice of children is often silenced in this complex legal and practice setting, and simplified, more accessible legislation is an important step towards improving practice.

Maintaining family connections for Aboriginal and Torres Strait Islander children and young people

Churches of Christ Care supports out of home care arrangements for children and young people that keep them connected to family and culture. **We support and recommend** maintaining the Aboriginal and Torres Strait Islander child placement principle. We also support a definition of parental responsibility within the act that supports recognition of broader family and kin as having an important role in parental family responsibility in Aboriginal and Torres Strait Islander cultures.

Practice opportunities

There is an early intervention opportunity to engage with Aboriginal and Torres Strait Islander communities to build strong relationships and develop an understanding of broader family and



kinship structures within community. Using these relationships and knowledge, potential kin carers could be identified within existing family and community structures, who can then be called upon if a child needs to be placed in their care. This work could be done by government or non-government organisations. Churches of Christ Care believe this would be a proactive way of supporting communities and protecting children, and would support any changes to legislation, policy and practice that would encourage this.

Family connections can also be supported by the more frequent placing of siblings together in out of home care. One of the barriers to this is cost, as placing siblings together may require a residential or a more intensive foster care model. Depending on the trauma history of the family, intensive therapeutic support may also be required. However, our practice experience shows that placing siblings together can provide strong, long-term positive outcomes as children and young people reconnect as a family, reshape their collective identity and build a stronger sense of self.

Case example: bringing siblings together

In June 2014, a group of four Aboriginal siblings ranging in age from nine to 15 years were placed together in Churches of Christ Care inaugural sibling house. All of the young people had lived separately from each other for a number of years.

The goal of bringing the sibling group together after years of living apart was to connect them to each other, their family, their community and their culture.

During the 12 month program, there were significant re-enactments of trauma played out within the group of young people. They also experienced a further traumatic event when a youth worker, with whom they had formed a close relationship, died unexpectedly.

The Sanctuary Model, a trauma-informed therapeutic practice model, was implemented from the beginning of the program. As the only organisation in Australia certified in Sanctuary, Churches of Christ Care provided training for government and non-government stakeholders involved with the young people.

By taking a collaborative, consistent, trauma-informed practice approach within the sibling house, the young people demonstrated significant personal and collective growth and change. They became more able to use emotional intelligence, open communication with non-violence, and express personal insight using the concepts of Self, Emotion, Loss and Future.

Using this trauma-informed practice approach to work with the sibling group, the young people were able to rebuild appropriate relationships with each other. They now have regular overnight contact with extended Aboriginal family members and have connected with their community. One of the siblings was voted a school sports captain by his peers and delivered the 'Welcome to Country' speech at the school awards ceremony.

At the end of the program, the siblings successfully transitioned to alternative placements. Two have been placed in family-based care and one receives support to live independently while maintaining contact with his siblings and extended family. The fourth has been able to maintain her residence at the house in the western suburbs of Brisbane.

Permanency

Churches of Christ Care supports the principle of permanence for children to remain a guiding principle of the Act. However, we believe more work can be done in practice to create greater permanence for children and young people at a time that meets the developmental needs of children for attachment. Decision making needs to happen quickly so important developmental milestones are met.

Relational permanence

The sibling house described above is an example of strategies in action to rebuild relationships and provide relational permanence for children and young people who are unable to return home. This experience highlights that moving young people into positive, loving, trusting and nurturing relationships also requires significant therapeutic work. One of the key barriers to beginning this program was the cost of setting up a program model with the right level of therapeutic support to support the children. However, this approach facilitates relational permanence and delivers positive long-term outcomes for children and young people.

Churches of Christ Care recommends changing the Act to support practice that encourages more opportunities to rebuild and maintain relationships between siblings.

Legal permanence – parental responsibility for a child

Existing legislation allows for a range of options to provide permanency for children, from reunification, long term guardianship orders and adoption.

In 2015 in Queensland, 5,652 children and young people were under long-term guardianship orders¹ and 38 children were adopted². The low rate of adoption in Queensland compared to long-term guardianship orders in part reflects the contentiousness of adoption. The Queensland Child Protection Commission of Inquiry noted that:

Anti-adoption sentiment is a social fact that makes any decision between family preservation and adoption difficult to resolve strictly in accordance with the paramount principle (the best interests of the child)³.

This sentiment is related to a long history of forced adoptions across the community and particularly in Aboriginal and Torres Strait Islander communities. While long-term guardianship orders avoid the controversy of adoption, we note that the primary difference between these and adoption is the relinquishing of the parental rights of the birth parents. Relinquishing of

¹ Department of Communities, Child Safety and Disability Services. 2015a. *Long-term child protection orders*. Available at: <https://www.communities.qld.gov.au/childsafety/about-us/our-performance/ongoing-intervention-phase-permanency-planning/long-term-child-protection-orders>

² Department of Communities, Child Safety and Disability Services. 2015b. *Adoptions*. Available at: <https://www.communities.qld.gov.au/childsafety/about-us/our-performance/adoptions>

³ Queensland Child Protection Commission of Inquiry. 2013. *Taking responsibility: A Roadmap for Queensland Child Protection*. p.227



parental rights of birth parents can involve reissuing of a birth certificate with the adoptive parents' details listed, and can include changing a child's last name to that of their adoptive parents. In some cases, such as when children and young people have spent most of their life with a foster carer, this is something they want and would choose. Adoption legally severs all ties to a child's family of origin and cannot be reversed. Even if a child or young person chooses adoption, it can have lasting impacts on a child or young person's identity and sense of belonging. We also note that the rate of long-term guardianship orders is much higher for Indigenous children than non-Indigenous children⁴, reflecting the ongoing issues of the over-representation of Aboriginal and Torres Strait Islander children in care.

Long-term guardianship orders are designed to provide permanency for children and young people, but they can still fail when carers relinquish parental responsibilities and guardianship. When this happens, children and young people can experience incredible pain, impacting their ability to recover from their history of trauma and abuse. Children and young people may also wish to be adopted by their long-term foster carers, but barriers to this continue to exist.

Churches of Christ Care recommends that adoptions are considered as a serious permanency option, particularly for children and young people who have been living with the same foster carer for many years. The New South Wales approach to out-of-home care adoptions⁵ would provide a useful starting point as both the *Child Protection Act 1999* and the *Adoptions Act 2009* are being reviewed. **We also recommend** exploring options to provide stronger legal permanency in long-term guardianship arrangements to limit the possibility of relinquishments.

Over-representation of Aboriginal and Torres Strait Islander children in care

Addressing over-representation of Aboriginal and Torres Strait Islander children in care requires families and communities to lead the discussion. Grassroots prevention and early intervention opportunities will only be effective when communities are at the table and government and non-government organisations understand and address the intergenerational experience of trauma. Any approach to addressing over-representation should seek to build up Aboriginal and Torres Strait Islander families and communities to care for their own children and young people. Culture is a known strength of Aboriginal and Torres Strait Islander people. Maintaining young people's connections to country and culture supports positive outcomes later in life.

An understanding of traditional parenting practices and customs must also be taken into account when working with Aboriginal and Torres Strait Islander communities. For example, if a parent is unable to care for their child and an Aunty or Grandmother cares for them safely, this

⁴ Department of Communities, Child Safety and Disability Services. 2015a.

⁵ For more information on the New South Wales out-of-home care adoption process, visit: <http://www.community.nsw.gov.au/parents,-carers-and-families/fostering,-guardianship-and-adoption/adoption/want-to-adopt#oohc>



does not necessarily require an external intervention and a label of 'kin care' or 'foster care'. In culture this may be a normal arrangement and does not justify a child protection response. What matters most is that a child is safe in their family and culture. Developing close working relationships with Aboriginal and Torres Strait Islander communities will ensure policy and practice is underpinned by appropriate understandings of parenting and culture.

When statutory intervention is required, placement decisions must assess children's best interests in the context of ongoing impacts of colonialisation and the Stolen Generation. This would be supported by strong community relationships, which would allow early identification of potential formal carers in kin and community. Any intervention should also require Aboriginal and Torres Strait Islander children to have an eco or family network map completed as a part of their case plan for the Childrens Court.

Churches of Christ Care recommends government consider any changes to legislation that would be necessary to encourage community-led prevention and early intervention work in Aboriginal and Torres Strait Islander communities across the whole of government.

Engaging well with Aboriginal and Torres Strait Islander communities should not be restricted to just one government department. **We strongly recommend** considering any changes to the Act that supports a whole of government practice approach to working with Aboriginal and Torres Strait Islander communities.

Supporting young people transitioning to independence

Supporting young people to successfully transition to independence requires flexibility and the ability to offer choice around their support and living arrangements. Young people should have the choice to maintain their existing living arrangements and get the support they need up until the age of 25. This would be similar to young people in the broader community who are staying home and getting support from their family as they progress through work and study.

In foster care, this could involve young people having the choice to remain with their foster family and receive care and support, or moving away and coming back again if they need to. In a residential setting, this would involve letting a young person who is doing well and thriving in a residential home chose to remain there until they are ready to move. Currently young people are offered little or no choice around this and are transitioned to independence based on placement resources. This approach does not generate positive outcomes for young people and can place them in vulnerable situations.

Churches of Christ Care recommends that legislation provides choice to young people, transitioning from care, in where they live and how they receive support, up until the age of 25.

Foster carers

Foster carers are a core part of our work to provide children and young people with safe and nurturing environments. Becoming a foster carer is hard work, with a number of rigorous assessments and screening processes needing to be met. While we support a rigorous assessment and screening process, the current process can at times be too onerous and act as a barrier to recruiting and retaining suitable foster carers.



The blue card and criminal history check process can be a particular barrier when bringing on board Aboriginal and Torres Strait Islander kinship carers. For example, complications arise when a person may have a criminal history or lack personal identification documents. While criminal history screening is an essential part of carer assessment, it may also be a significant barrier to achieving the Aboriginal and Torres Strait Islander child placement principle.

Churches of Christ Care recommends changing the Act to allow discretion on non-child related criminal history for potential Aboriginal and Torres Strait Islander kin carers, while maintaining the same level of monitoring as all foster carers.

Role of the nominee in licensed care services

The role of nominee is responsible for ensuring that care services are delivered according to standards and delivered in accordance with the Act. Having a nominee role underpinned by legislation provides strong negotiating power when working with multiple government departments to ensure the safety of children and young people. This is a power that must be called upon in extreme circumstances, when multiple government systems are struggling to provide safety for children and young people.

Churches of Christ Care supports and recommends maintaining the role of the nominee in licensed care services.

Information sharing

Information sharing allows government and non-government services work together to protect children and young people. Despite the current Act allowing for effective information sharing, consistency between government and non-government services, and across government departments, continues to be an issue. In many cases, effective information sharing continues to rely on relationships between individuals rather than widely known and used policies and procedures.

Churches of Christ Care believes that information can and should be shared with non-government providers, in good faith, provided it meets the paramount principle of being in the best interests of the child or young person. This is particularly important as processes that cause children and young people to continually re-tell their stories can actually cause harm by making them relive their trauma over and over again. Information sharing supports a comprehensive understanding of individual children and young people's needs and supports congruency in service delivery. Effective information sharing also allows children and young people to be matched to therapeutic interventions and programs that will support positive outcomes.

Churches of Christ Care recommends reviewing the Act to ensure appropriate information sharing between government and with non-government service providers happens in practice. This could involve obliging all government and non-government service providers with the same confidentiality rules, consistent with privacy legislation.

Transitioning to non-government case management

Churches of Christ Care believes that case management for children and young people in the child protection system is best provided by specialists in the non-government sector. This allows the government to focus on their statutory functions of ensuring children are safe, and preventing current duplication of roles and responsibilities. This is due to occur as a part of the government's response to the Queensland Child Protection Commission of Inquiry⁶. The review of the Act is an important opportunity to begin the legislative work required to transition these functions to the non-government sector.

Churches of Christ Care recommends developing the necessary legislative mechanisms to allow non-government organisations to undertake case management and casework for children in the child protection system.

Secure care – an option for protecting young people at risk of serious harm

A small number of young people in out of home care are at an ongoing, imminent risk of harm due to self-harm, suicide attempts, significant drug use resulting in overdoses and other high risk behaviours. These behaviours are related to experiences of trauma and abuse and are usually interrelated with significant mental health concerns.

The Queensland Suicide Prevention Action Plan 2015-17 notes that children and young people known to the child protection system are 3.9 times more likely to commit suicide than all young people in Queensland⁷. The plan notes that:

Higher rates of suicide among children and young people known to the child protection system is related to their living circumstances which may include a lack of attachment to families and significant others, a history of neglect, abuse or violence and exposure to parental mental illness and problematic substance use⁸.

Since the closure of Barrett Adolescent Centre in 2013, there are currently no long-term, therapeutic residential services for young people at extreme risk of suicide in Queensland. While hospitalisation and community mental health care is an option, this does not offer a long-term therapeutic solution for young people with serious histories of trauma and mental health.

⁶ Queensland Government. 2013. *Queensland Government response to the Queensland Child Protection Commission of Inquiry final report*. Available at: <https://www.communities.qld.gov.au/resources/reform-renewal/qg-response-child-protection-inquiry.pdf> p.9.

⁷ Queensland Mental Health Commission. 2015. *Queensland Suicide Prevention Action Plan 2015-17*. Available at: http://www.qmhc.qld.gov.au/wp-content/uploads/2015/09/Queensland-Suicide-Prevention-Action-Plan-2015-17_WEB.pdf

⁸ Queensland Mental Health Commission. 2015. p20.

Case example: when systems struggle to provide safety

While working with a young woman in a residential placement, it became clear that the mental health and child protection systems were unable to meet her needs.

This young woman was highly distressed and exhibited behaviours that resulted from developmental trauma, mental health and a number of precipitating events. This had caused the young woman to injure herself on a number of occasions, including in her congregate care setting. This meant that her self-harm had been witnessed by other young people and was highly distressing for them.

After one instance of self-harm, the young woman had multiple stitches applied to cuts that she had made. She continued to talk repeatedly about wanting to harm herself and commit suicide. The young woman had a number of serious mental health concerns and as her behaviour and risks escalated we attempted a number of times to have her admitted to a mental health unit.

Hospital admission was refused and we were advised that even if she were admitted, it would be voluntary and the young person could leave at any time.

Churches of Christ Care wanted to keep offering a placement to this young woman, but felt we were not able to keep her safe. We identified the need of a third option that would allow the young woman to be safe and supervised in a secure environment while we worked with her to return her to her placement. At the time of this young person's experience, there was no option like this available.

While we were able to eventually reach a positive solution, the lack of a secure care option that included clinical treatment created an extremely protracted crisis and care planning process. This caused additional stress and harm for the young woman, our staff and the other young people she had been living with.

Secure care is a therapeutic placement option that can be used when a child or young person presents in a state of crisis with multiple complex and extreme high risk behaviours. Churches of Christ Care believes that any secure care model should seek to stabilise a young person's presenting crisis behaviours, while developing and implementing a therapeutic plan to address the triggering issues and the behaviours once they return to the community.

Churches of Christ Care recognises the serious nature and potential dangers of caring for young people in secure facilities, potentially against their will. We also recognise the concerns around secure care raised by young people who've been in care, which are presented in CREATE's submission to the Queensland Child Protection Commission of Inquiry⁹. However,

⁹ CREATE Foundation. 2013. *Submission to the Queensland Child Protection Commission of Inquiry: Response to Discussion Paper*. Available at: http://www.childprotectioninquiry.qld.gov.au/_data/assets/pdf_file/0009/177471/CREATE-Foundation-Response-to-Discussion-Paper.PDF



our experience working with government to try and prevent young people from serious harm and death highlights the need for a secure care option.

Churches of Christ Care believes that entry into or consideration of a secure placement should have no link, correlation or connection to youth justice issues. Secure care should only be considered as a treatment option for a very small and very specific cohort of children and young people exhibiting acute and extreme risk of causing significant harm to themselves. A secure placement should be a short term treatment response for children and young people.

Developing an option of secure care was supported by one of the recommendations of the Queensland Child Protection Commission of Inquiry, and was accepted by the government in principle¹⁰. We agree with the recommendation that any secure care approach developed must require an application to the Supreme Court for a child to be admitted into a service. This aligns with the New South Wales government's approach to secure care, to ensure that the rights and best interests of the young person are considered and held to account by a third party.

Churches of Christ Care recommends that the review of the Act considers the legislative options needed to provide secure care for young people at extreme risk of harm, in line with recommendation 8.9 of the Queensland Child Protection Commission of Inquiry. We also recommend that any consideration of adopting secure care be underpinned by consultation and research, including reviewing approaches across jurisdictions.

¹⁰ Queensland Government. 2013. *Queensland Government response to the Queensland Child Protection Commission of Inquiry final report*. Available at: <https://www.communities.qld.gov.au/resources/reform-renewal/qg-response-child-protection-inquiry.pdf> p.13.