

Submission to the Commission of Inquiry into Queensland's Child Safety System with a focus on the Child Protection Litigation model

"I knew everyone was going to court. But I didn't know why or what that meant." (Young person, 2024)

"They treat you like kids, but they want you to act like an adult." (Young person, 2024)

November 2025

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About CREATE Foundation

CREATE Foundation is the national consumer peak body for children and young people with an out-of-home care experience. We represent the voices of over 45,000 children and young people currently in care, and those who have transitioned from care, up to the age of 25. Our vision is that all children and young people with a care experience reach their full potential. Our mission is to create a better life for children and young people in care.

To do this we:

- **CONNECT** children and young people to each other, CREATE and their community to
- **EMPOWER** children and young people to build self-confidence, self-esteem, and skills that enable them to have a voice and be heard to
- **CHANGE** the systems impacting children and young people, in consultation with them, through advocacy to improve policies, practices and services and increase community awareness.

We achieve our mission by facilitating a variety of programs for children and young people with a statutory care experience and advocating for system changes to improve their experiences and outcomes.

Introduction

CREATE Foundation welcomes the opportunity to provide feedback in relation Queensland's child protection litigation (CPL) model. We acknowledge that the Queensland Government has invested substantially in the Office of the Child and Family Official Solicitor and the Office of the Director of Child Protection Litigation in response to an observed need for specialisation in effective, transparent and accountable child protection law which supports social and legal needs families may have when they are in contact with the child protection system.

In line with CREATE's mission, this submission focuses on the voices and perspectives of children and young people in Queensland with a lived-experience in out-of-home care and an awareness of CPL involvement. The information contained in this report is based on young peoples' perspectives shared with us through our core programs and consultations, and includes the voices of young care leavers who are also parents and have experienced intergenerational contact with the child protection system. Initial explorations indicate that the following improvements are needed for the CPL model:

1. Increased need for transparency and accountability in relation to litigation activities for families involved with the child protection system, with a focus on evidence required.
2. Increased structures and supports for children and families, where possible, to be involved and mechanisms for earlier participation.
3. Evaluating the impacts of time taken for matters to be resolved.

There is also consideration for how the CPL model could be more family-centric, accessible, culturally safe and responsive to the needs of families, and how it could improve outcomes for children and young people.

Incorporating children and young people's perspectives

Young people have consistently reported challenges with understanding the CPL model, indicating that the processes involved in applying for or making child protection orders were either not discussed with them at all or not explained in ways that were accessible for them. As a result, young people have advised they felt confused and "alienated" from central judgements determining the course of their lives. Furthermore, young people have indicated that without clear communication about the intervention of child safety staff and legal issues involved in their specific situation, there was a tendency to internalise responsibility and blame themselves for entering out-of-home care. Some of the experiences young people have shared with us include:

"Things happened very quickly and I had no control." (Young person, 2024)

"All that happens is I disclose something and then I am getting removed and I think "is it because I'm bad or did something wrong?". Because no one tells you why." (Young person, 2024)

"Sometimes I think they [CSOs] have my best interest at heart, other times not due to them not communicating with me." (Young person, 2024)

Establishing robust communication channels which are transparent and foster trust, that allow children and young people to express their thoughts and feelings, is paramount. This could include the use of child-friendly language in all legal proceedings and documentation, ensuring that children understand the processes they are involved in, to avoid situations where young people feel uninformed. With a more transparent process, young people will be able to be informed in relation to matters which affect them and will be able to contribute their views and wishes in ways which are appropriate for them. For example:

"My CSO made it [moving placements] good sometimes when they had a proper discussion about what was happening..." (Young person, 2024)

CREATE recommends:


- Developing resources and materials for young people at varied developmental levels to assist front-line staff in explaining, translating and assisting young people to understand the CPL model and their options for involvement, depending on their family's situation.
- Reviewing current mechanisms for involvement of young people in the litigation process to determine if there are opportunities for young people to express their views and wishes which are child-centred, trauma-informed and culturally focused with consideration applied to individual needs and strengths.

Cultural safety and self-determination

It is crucial to embed cultural competence in all aspects of child protection litigation. An inclusive approach involves acknowledging and valuing cultural perspectives, traditional practices and community knowledge in decision-making processes. Fundamental to this is building and maintaining trust with participants of the system and avoiding re-traumatisation. Young people have told us that the lack of stability and consistency in workers makes it difficult to trust that front-line staff have their best interests at heart:

"One of the problems is that there's a really high turnover. You'll have someone [CSO] and then they'll give you someone else who has not been trained either." (Young person, 2024)

"I did trust some CSO's, but not till later on. They were consistent and safe people. They took time to reassure me and spent time with me." (Young person, 2024)



In order to effectively engage in self-determining ways, it is critical that families are appropriately informed of options and decisions and are given the chance to actively participate in conversations regarding their best interests. Young people and families report that this is not currently occurring, and that they are informed of decisions rather than consulted. Reported experiences of an authoritative rather than collaborative approach have further contributed to a breakdown of trust of the system:

“Child Safety give false hope. They tell you that to do lots of programs and then there is miscommunication about whether they follow through [with reunification].” (Young person, 2024)

“I had no idea. All I knew was that child safety was involved and I needed to get away. I didn't know what their plans were. They were never very transparent, which made things more scary.” (Young person, 2024)

“Some cases they act too irrationally, in other cases they don't act irrationally enough. I know they won't take a child away if they don't have to, but I feel like they prefer to take children from different backgrounds, like Aboriginal kids or parents who were kids in care always get their kids taken.” (Young person, 2024)

CREATE recommends:

- Implementing a systemic review mechanism to ensure ongoing evaluation and adaptation of the CPL model, enabling continuous improvement in cultural safety and responsiveness based on feedback from Aboriginal and Torres Strait Islander and CALD communities.
- Ensuring that child protection litigation processes actively incorporate the principle of self-determination by involving Aboriginal and Torres Strait Islander families in all decision-making stages. This can be facilitated through the creation of culturally-specific liaison roles that can bridge communication and engagement gaps.
- Providing tailored support and resources to children and families navigating the child protection system to ensure that their cultural identity is preserved and respected. This includes creating culturally appropriate materials and ensuring the availability of interpreters if needed, to make the litigation process more inclusive and approachable.

Accessibility and diverse needs

Due to the complexities of litigation, accessibility is likely to be an ongoing challenge for children and young people with additional needs. Young people report that although later on in their care experience their health and disability support needs were evaluated, this did not occur at their first interaction with the child protection system, impacting their ability to understand and engage with the processes involved in making emergent and long-term orders. We have heard:

“None of those needs were addressed when I was in care. They should have done a bunch of assessments when I came into care to know if you have disabilities, mental health or cultural needs. None of that happened at the beginning.” (Young person, 2024)

“I didn't understand anything they said. [When] They defined LTG and other orders, I just nodded along but didn't really understand it. The way information was delivered was not ideal.” (Young person, 2024)

In the absence of individual comprehensive assessments that identify and address the unique requirements of individuals, whether they pertain to disabilities, cultural background, or language proficiency, the model is unlikely to be able to be adaptable for understanding across diverse needs.

CREATE recommends:

- Conducting thorough and timely assessments for all individuals entering the child protection system to identify specific needs related to disabilities, mental health, and cultural backgrounds.
- Developing adaptive and flexible support mechanisms that can be tailored according to the evolving needs of individuals and families throughout their interaction with the child protection system.
- Ensuring that all information and resources are available in multiple languages and accessible formats to accommodate varying levels of literacy and language proficiency.
- Implementing ongoing training programs for front-line staff to equip them with skills and knowledge on inclusivity, cultural competence, and best practice for supporting individuals with diverse needs.

Legal considerations and early dispute mechanisms

Ensuring that families have early access to legal representation is fundamental to protecting their rights and enabling their effective participation in the litigation process. Several young people have advised us that they were not informed they had a right to participate in the court process, while others advised that they were actively discouraged or “prevented” from attending court sessions by their child safety officers. They indicated that being able to participate would have not only made the process easier to understand but made them feel that they were able to have a say about important matters in their lives. Without their presence, young people felt that they were not truly at the centre of decisions being made. We have heard:

“Court process is so bad. I wanted to attend court to share my views, and opinions about the situation, but my CSO so wouldn't let me. I called the public guardian to get them to help me and they did help me write a letter to the judge who then let me come to the courthouse. Child Safety didn't tell me anything about court. It was my dad who would tell me about the info about what the date was and what was happening.” (Child, 2024)

“One of the biggest questions I had was why is this happening? And that doesn't get explained.” (Young person, 2024)

Care-leavers who are now parents themselves with children in out-of-home care have also described struggling to receive information about litigation concerning their children. Testimonies indicate a lack of communication from the Department about specific court processes and, most concerningly to the young parents, the specific concerns which have led to the legal proceedings in the first place. Young parents reported feeling excluded and misled by child safety staff. They have called for transparency and advised that having specific processes and safety concerns named would allow them to address these potential issues, ultimately hoping to avoid the need for further court involvement.

“I've had to learn the system myself. The language is always like “there's a process”, but I've had to learn the act, the changes. I've learned all of the different acts and everything of the court situations to make sure I'm well informed for my children.” (Young person, 2024)

“I really leaned on my lawyer. Especially when the two year order expired. Initially they wanted to do an 18 year order. I thought really hard and then I told them I did everything right and I would go to a meeting with everyone to discuss. When they told me about the 18 year order, it was a surprise. I feel like they played a lot of games with me and they ended up saying ‘I never said that’ when I questioned them” [in reference to the 18 year order]. (Young person, 2024)

“[I had] not much understanding in the child protection system, no understanding of what was going on. I dealt with everything... it was really closed doors in relation to my children's situation.” (Young person, 2024)



“My lawyer has been finding it difficult to get information out of the department.” (Young person, 2024)

Maximising opportunities for early collaborative decision making within the CPL model and utilising alternative dispute mechanisms are vital for preventing unnecessary court proceedings and ensuring the wellbeing of children and families. The testimonies provided highlight the gaps and challenges in current practices, underscoring the need for a more proactive and effective approach to collaboration and dispute resolution for children and their parents:

“All they’ve told me is [that there are] court processes. I know what’s best for me – but I wasn’t able to demonstrate that. I only got to speak for two minutes until the Judge said ‘stop there’s no point continuing’ because my Dad had agreed with the order. But he didn’t know what he was agreeing to.” (Child, 2024)

CREATE recommends:

- Establishing a mandatory protocol that guarantees immediate legal representation for all families entering the child protection system, ensuring that they have qualified legal advocates from the outset.
- Developing information resources that are clear, accessible and available in multiple languages to help families understand their rights and the litigation process. These resources should be distributed early and regularly throughout their interaction with the system.
- Establishing a structured framework for early engagement, prior to litigation, between parents and Child Safety Officers, facilitated by trained mediators who can help navigate conversations and agreements from the outset.
- Creating accessible channels for parents and families to receive information and support about alternative dispute resolution options, including clear guidelines on how these processes work and the benefits they offer in comparison to court proceedings. Consideration needs to be applied to reducing the sense of coercion these documents can imply.
- Encouraging a culture of transparency and open communication within Child Safety services, where parents are regularly informed and involved in decision-making processes, reducing feelings of uncertainty and mistrust.

Timeliness

Ensuring the CPL model prioritises timely resolution of matters for children and families, while accounting for key milestones and seeking early reunification where appropriate, is fundamental to the child's development and overall family wellbeing. For the most part, young people felt that court processes were elongated and they did not understand why:

“The court process is really drawn out. That was really bad. Every time I had to go to the doctor, I need it to get an authority to care. It’s really annoying to have to keep getting contact information from my friends’ parents and doing house checks and police checks on my friends. That’s not normal.” (Child, 2024)

“I did have difficulty at school, getting permission for things and not knowing who was my guardian.” (Young person, 2024)

However, there was consideration regarding the timing of some child protection orders and whether this was sufficient for parents to truly meet case planning goals, prior to decisions regarding long-term orders being actioned:

“I feel like the order is like two year orders are a long time but if you go public or private that can be a long wait time for things like mental health and other services.” (Child, 2024)

CREATE recommends:

- Introducing expedited processes within the CPL model for cases where timely resolution is critical, ensuring any delays in decision-making are minimised and children's developmental milestones are prioritised.
- Implementing regular reviews of care plans and orders, with specific benchmarks to assess progress towards reunification or other permanency goals, ensuring decisions are revisited in a timely manner, reflecting the child's best interests.

Suggested improvements

Ensuring that the CPL system is simple to navigate and understand for all participants is fundamental to its effectiveness and fairness. Clear communication, accessibility of information, and proactive support and engagement are critical elements for achieving these goals. Some young people indicated the following would be useful improvements to the current model:

[In reference to making information more accessible regarding intervention] "To have something written down that I can refer back to. And for CSOs, even though there are time restraints, coming to talk to you about 70 things at once is really hard. Dedicating chunks of time to certain topics would be helpful." (Young person, 22, 2024)

"Just like the Sortli app, it would be really good if there's an app for people who have just entered care especially if you have just entered care for kids to get answers about what's going to happen next." (Young person, 2024)

CREATE recommends:

- Developing comprehensive and easy-to-understand resources, such as guides, flowcharts, and FAQs that clearly outline the CPL process, the key steps, and what participants can expect at each stage.
- As per young people's advice, implementing digital tools and platforms, such as mobile apps or online portals, to provide instant access to information, support services, and real-time updates on case proceedings, tailored to the needs of children and families.

Conclusion

Thank you again for the opportunity to provide feedback as a part of the Commission of Inquiry into Queensland's Child Safety System. By adopting comprehensive resources, digital tools, and support services, the system can become more transparent and navigable for children and their families. These efforts will foster a more empathic, informed, and effective approach to child welfare, ensuring that every child feels heard, supported, and valued throughout their journey in the CPL system.

Should you have any questions or require additional information, please contact the Queensland Project and Advocacy Leads, CREATE foundation. E: [REDACTED]