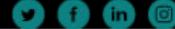




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28<sup>th</sup> August 2025

Paul Anastassiou KC  
Commissioner  
Child Safety Commission of Inquiry  
GPO Box 783  
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By email: [info@childsafetyinquiry.qld.gov.au](mailto:info@childsafetyinquiry.qld.gov.au)

Dear Commissioner,

**Re: Commission of Inquiry – Child Safety – Cairns Public Hearing**

Thank you for the opportunity to provide submissions in relation to the Commission of Inquiry into Child Safety in connection with the Cairns Public Hearing. We welcome the calling of this Commission of Inquiry and also welcome the opportunity to make submissions in relation to the experience in Far North Queensland (FNQ). FNQ continues to experience some of the highest rates of child protection involvement in Queensland, and the disproportionate representation of Aboriginal and Torres Strait Islander children within the numbers of children on referred matters from the FNQ region is by far and away the highest when compared to every other region in Queensland<sup>1</sup>. In this submission, we have sought to respond to relevant items on the 'List of Issues' document (**List of Issues**) that the Commission prepared and circulated in connection with this Call for Submissions. Our feedback is based on our coalface experience in providing legal assistance services in the context of child protection matters. We are hopeful that this submission assists the Commission in identifying meaningful, evidence-based reforms that have the potential to be transformative and significantly improve outcomes for children and families.

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<sup>1</sup> Director of Child Protection Litigation Annual Report 2023-24, page 52, available at < [https://www.dcpl.qld.gov.au/\\_\\_data/assets/pdf\\_file/0009/822996/annual-report-2023-2024.pdf](https://www.dcpl.qld.gov.au/__data/assets/pdf_file/0009/822996/annual-report-2023-2024.pdf)>.

## **Preliminary consideration: Our background to comment**

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (**ATSILS**), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander peoples across Queensland. The founding organisation was established in 1973. We now have 25 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by over five decades of legal practise at the coalface of the justice arena and we, therefore, believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

## **Comments in relation to the List of Issues**

As a preliminary comment, we note that we have had the opportunity to review the submission of the Queensland Aboriginal and Torres Strait Islander Child Protection Peak body (**QATSICPP**) to the Commission of Inquiry into Child Safety (Cairns Public Hearings) (**QATSICPP Submission**) and we broadly support the content contained therein.

We note that we have not responded to each of the items on the List of Issues, but only those upon which we consider that we can make meaningful comment.

## **A. Regional Child Safety Challenges**

### **1. Particular challenges facing participants in the child safety system in the FNQ region**

#### **1.1 Access to legal assistance services**

The demand for legal assistance services in FNQ in the context of child protection matters significantly exceeds supply

According to figures published in the 2023-24 Annual Report of the Director of Child Protection Litigation (DCPL), the overrepresentation of Aboriginal and Torres Strait Islander children in the numbers of matters referred by Child Safety to the DCPL is the highest in FNQ when compared with every other region in Queensland, with approximately 75% of children on referred matters from the FNQ region identifying as an Aboriginal and/or Torres Strait Islander child<sup>2</sup>.

In FNQ, individuals seeking legal assistance for child protection matters are primarily limited to the provision of services from three key service providers operating in the region including: the Aboriginal and Torres Strait Islander Legal Service (ATSILS), Legal Aid Queensland (LAQ) and the Queensland Indigenous Family Violence Legal Service (QIFVLS).

We note that ATSILS’ Cairns office has a very wide catchment area, including Innisfail, Cairns, Yarrabah, Mareeba, Mossman, Atherton, Weipa, Kowanyama, Pormpuraaw, Aurukun, Coen, Lockhart River, and Cooktown (including Hopevale and Wujal Wujal).

#### **Conflicts of interest and ‘preferred suppliers’**

We have observed that the majority of parents in child protection proceedings are self-represented, unless they actively seek out legal representation from any of the above services. If parents do seek out legal representation from these services, we have found it to be common that they are faced with a scenario where one or more and sometimes all three community legal services, i.e., ATSILS, LAQ and QIFVLS, are unable to offer legal representation due to a conflict(s) of interest.

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<sup>2</sup> Director of Child Protection Litigation Annual Report 2023-24, pages 52 and 163, available at: <[https://www.dcpl.qld.gov.au/\\_\\_data/assets/pdf\\_file/0009/822996/annual-report-2023-2024.pdf](https://www.dcpl.qld.gov.au/__data/assets/pdf_file/0009/822996/annual-report-2023-2024.pdf)>.

In this situation, the next viable option for legal assistance is LAQ’s ‘preferred supplier’ pathway, where private legal practitioners utilise LAQ grant funding to deliver legal aid services. In practice, due to the significantly limited number of preferred suppliers in FNQ that provide legal assistance in child protection matters, those individuals are likely to be linked up with preferred suppliers from somewhere other than in the FNQ region, such as, from Brisbane. In most circumstances, this means that the legal practitioner representing the client would contact the client and represent the client in court proceedings remotely, by video link/phone.

This poses incredible difficulties for clients in remote areas (such as the Cape) who already face a number of barriers to receiving legal assistance services including, language barriers and, fundamentally, difficulties in being contactable. It is very common in the FNQ region that individuals will either not have a phone or share a phone or phones with family. Additionally, during the wet season (November to March), these communities can be cut off due to seasonal flooding, which significantly exacerbates difficulties in being contactable and can also make it very difficult for them to travel. Ordinarily, local community legal centres would work in partnership with local community justice groups to locate clients.

Unfortunately, we often see preferred suppliers based outside of FNQ subsequently withdrawing representation for their client/s due to their not being able to contact the client/s by phone.

There are numerous effects of the above-mentioned issues on parents seeking legal representation for child protection matters in FNQ, including, but not limited to:

- parents not being able to, or effectively facilitated to, fully and meaningfully engage in child protection proceedings and, consequently, parents’ voices not being properly heard; and
- a parent’s right of representation being significantly compromised or not being able to be met at all.

### **Permitting electronic appearance for court dates except for final hearings**

As at the date of writing, lawyers are required to personally appear at some child protection matters in Cairns surrounding areas. This is in contrast with outer Cairns regional court locations where lawyers are permitted to appear by telephone link. It would significantly assist legal service providers to continue to support their clients if there is a consistent approach whereby lawyers are permitted to appear in court electronically via telephone/video link across all courts in the region for the first mention and all subsequent court dates (except for the final or interim hearings, which

should be in person). Unfortunately, sometimes it is simply not feasible for a lawyer to appear personally in these courts, when considering travel time, travel costs and how such would be managed with existing workloads. We understand that the Family Court already permits electronic attendance for relevant court dates and, therefore, see this to be low hanging fruit to improve access to legal assistance for matters heard in these courts.

### **Recommendation/s**

We recommend:

1. that consideration be given to significantly increasing the number of preferred suppliers of legal assistance services for child protection matters in the FNQ region, where possible;
2. that consideration be given to implementing measures to incentivise child protection/family lawyers moving to rural, remote and regional areas to work in the community legal centre sector to increase the number of child protection/family lawyers servicing those areas;
3. that lawyers be permitted to appear via electronic means, such as via telephone or video link, for all court appearances relating to a child protection matter, except for an interim or final hearing, in all relevant courts in FNQ (and Queensland generally).

### **The need for early access to legal assistance**

That parents receive early legal advice, preferably as soon as Child Safety has become involved, is critical and can, without question, improve outcomes for the family and child, especially where there is scope to support advocacy for the child to remain with family.

#### *Mandatory Alternative Dispute Resolution prior to a child being removed*

We strongly recommend that prior to a child being removed, consideration must be given to mandating Alternative Dispute Resolution (ADR) as an alternative to contested litigation, similar to the approach in Family Law. In the proposed model, parents should have a right to legal representation and if agreement is reached, the matter can be formalised in a written agreement or, if necessary, via consent orders (directive/supervision order by consent). Legal representation at ADR could be provided by Community Legal Centres, including ATSILS, in the child protection space. We note that resolving matters at ADR, rather than in court, will represent a

significant saving of taxpayer dollars. Whilst we acknowledge that court-ordered conferences form is part of the current mediation model, this is at the back end of the process, not prior to a child being removed. There are numerous benefits to mandating ADR at the outset including, notably, that it would avoid contested litigation, allow parents/caregivers to quickly and efficiently deal with issues, enable their voices to be heard and have more of a say in outcomes and reduce the stress associated with court appearances. This would also allow parents and care givers to be better informed of the current concerns, how to address these concerns, and could ultimately lead to better outcomes for children and families.

In the event that mandatory ADR at the front end of the child protection process is not considered, then at minimum, where an assessment process has been completed and the outcome is that the child is in need of protection, there must be a requirement to hold a stakeholders’ conference where parents are given the opportunity to have legal representation, with family members and social workers, etc. present. Discussions can be formalised by way of a written agreement or consent order. This process would be appropriate where Child Safety has engaged with the parents, and the Department is willing to work with the parents to address any relevant issues. Currently, families are experiencing their child being removed without any notice and no opportunity to discuss the situation.

*Imposing obligations on Child Safety to take ‘active efforts’ to support families to access early independent legal advice*

We are aware that in the NSW jurisdiction, in 2023:

- laws were passed which obligate the Department of Communities and Justice (DCJ) (the equivalent of our Child Safety) to take ‘active efforts’ to prevent children from being removed and restore children to their parents or place children with family, including supporting families to access early independent legal advice;
- In New South Wales, the Legal Assistance for Families Partnership Agreement (LAFPA)<sup>3</sup> was introduced and is an agreement between Legal Aid NSW, the Aboriginal Legal Service (NSW/ACT) and the DCJ set up for the purpose of keeping children safe at home with their families, a primary focus of which is early intervention assistance. The LAFPA notably obligates the DCJ to facilitate that referrals are made for legal advice for an individual or family to Legal Aid

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<sup>3</sup> LAFPA, at page 3, available at:

<<https://www.legalaid.nsw.gov.au/content/dam/legalaidnsw/documents/pdf/my-problem-is-about/my-family-or-relationship/care-and-protection/Legal-assistance-for-families-partnership-agreement.pdf>>.

NSW/ACT) or the Aboriginal Legal Service at key flash points including when they first come into contact with DCJ.

We are of the opinion that the Queensland jurisdiction is desperately in need of a similar approach which strengthens obligations, both in law and as part of a joint agreement between Child Safety, LAQ, ATSILS and QIFVLS, for early intervention and prevention particularly in the context of early referral to legal assistance as soon as Child Safety becomes involved. We have seen firsthand that where ATSILS or a legal service is involved in the early stages of a child protection intervention, it can significantly improve the outcomes for a child and alter their trajectory, for example, to prevent the child entering into care, where such is appropriate.

#### **Recommendation/s**

We recommend:

4. that amendments be made to the *Child Protection Act 1999* (CP Act), the Child Safety Practice Manual and other related practices and procedures to stipulate that prior to a child being removed, there is a mandatory requirement for ADR to be undertaken as an alternative to contested litigation with parties having the right to legal representation and, if agreement is reached, the matter can be formalised by way of a written agreement or, if necessary, via consent orders;
5. that if the above recommendation is not supported, then at minimum, the CP Act, Child Safety Practice Manual and other related practices and procedures be amended to stipulate that where an assessment process has been completed and the outcome is that the child is in need of protection, there is a mandatory requirement to hold a stakeholders’ conference where parents are given the opportunity to have legal representation, family members, Elders and/or respected members of the family’s local community and social workers, etc. present and discussions can be formalised by way of a written agreement or consent order;
6. that amendments be made to the *Child Protection Act 1999*, the Child Safety Practice Manual and other related practices and procedures to place direct obligations on Child Safety to refer families and individuals in need of legal assistance in a child protection proceedings to legal assistance services such as ATSILS and LAQ, and we recommend that the NSW framework be studied as a cross-jurisdictional example of a model that could be imported into the Queensland jurisdiction;
7. that an agreement be implemented between Child Safety, ATSILS and LAQ, similar to the LAFPA, to further embed obligations on Child Safety to make

referrals to ATSILS and LAQ at key flash points including as soon as there is involvement by Child Safety;

8. that training be provided to relevant staff within Child Safety with respect to the above recommendations.

### *Duty lawyers for child protection matters*

To our knowledge, in the NSW jurisdiction, where a child protection application is filed with the Children’s Court, DCJ’s practice is to notify the Aboriginal Legal Service (NSW/ACT) and Legal Aid NSW, and a duty lawyer will be allocated for all parents on the first return. This provides the duty lawyer an opportunity to contact the parents to get instructions prior to the first return and generally these duty lawyers may also provide ongoing representation to clients throughout the proceedings or refer them to appropriate services.

In Queensland, we understand that LAQ offers duty lawyer services with respect to child protection matters, however, this is only in very limited locations including, Cairns Children’s Court, Bamaga and Thursday Island, with no duty lawyer services available for the rest of FNQ. Although ATSILS provides legal assistance to parties who have contacted ATSILS for help with court matters, no duty lawyer services can be provided due to our limited resources.

### **Recommendation/s**

We recommend:

9. consideration of a centralised duty service to provide legal assistance across multiple locations or jurisdictions with a focus on the provision of consistent service quality and coverage across the region.

## **1.2 Access to support services that can help parents address risk issues**

We have observed that there is a significant lack of access to support services that can assist parents in addressing risk issues in FNQ, as outlined further below.

- There are no alcohol and other drug (AOD) rehabilitation centres based in Cairns, which means that for parents who have substance abuse issues their only option for addressing such is to attend the Alcohol, Tobacco and Other Drugs Service (ATODS), which is operated by the Cairns and Hinterland Hospital and Health Service. Whilst this is a beneficial service, ATODS is an outpatient service and not

a live-in rehabilitation service, which is of greater assistance to address substance abuse issues.

- We have been advised by local Community Justice Groups that the use of the substance ‘Ice’ (crystal methamphetamine) is a particularly big issue in the FNQ region and that the rehabilitation centres and program providers in FNQ struggle with providing support or assistance to people experiencing Ice addictions.
- Currently, only Relationships Australia offers domestic violence/ men’s behaviour change programs in the Cairns region. As at the date of writing, to access this program, it takes 4 weeks just to secure an intake appointment with Relationships Australia to determine whether the client is eligible for the service and the wait list is approximately 3 months’ long.
- We are not aware of any residential parenting programs offered in FNQ except for the Cape York Family Centre in Cooktown, which is a community-based residential wellness program delivered for Aboriginal and Torres Strait Islander peoples by Pinangba which is an Aboriginal and Torres Strait Islander-led service delivery arm of Uniting Care. We have positive feedback from local community justice groups about the Cape York Family Centre, however, it is worth noting that a family needs to reside in the local area to attend;
- We understand that Wuchopperen and Uniting Care are the only Family Intervention Services in Cairns and there are long waitlists for each of these services.
  - Wuchopperen provides a culturally safe service, taking a holistic approach to work with the whole family, including provision of a number of programs including Child Wellbeing Services, the Family Participation Program and the Children and Family Centre to support Aboriginal and Torres Strait Islander children and families during challenging times and empower families that are involved in Child Safety matters to make informed decisions;
  - Uniting Care provides a mainstream service which focusses on keeping children in schools, building strong family relationships, stopping violence at home, budgeting advice, substance use or gambling problems and housing, health care or access to community or government services.

#### **Recommendation/s**

We recommend:

10. the expansion of existing and/or establishment of new additional AOD live-in rehabilitation facilities, co-designed and operated by Aboriginal and Torres Strait Islander community-controlled organisations throughout the FNQ region;
11. the expansion of existing and/or establishment of new additional domestic violence men’s and women’s behaviour programs in the FNQ region co-designed

and operated by Aboriginal and Torres Strait Islander community-controlled organisations throughout the FNQ region;

12. the expansion of existing and/or establishment of new additional residential (i.e., live-in) parenting programs, co-designed and delivered by Aboriginal and Torres Strait Islander community-controlled organisations throughout the FNQ region;

13. the expansion of existing and/or establishment of new additional family intervention services/programs, co-designed and delivered by Aboriginal and Torres Strait Islander community-controlled organisations throughout the FNQ region.

### **1.3 Access to suitable housing**

Stability of housing provides parents with a secure and consistent environment in which to meet their children’s basic needs, reducing stress and instability that can otherwise increase the risk of Child Safety intervention. However, lack of housing is a significant and longstanding issue in FNQ, which can present at times as an insurmountable obstacle for parents who are seeking to be reunified with their children.

Communal living is common in Aboriginal and Torres Strait Islander communities. For our clients who reside with extended family, we have often observed Child Safety raising concerns about issues such as overcrowding, limited space for children to sleep and difficulties in maintaining routines. However, this approach appears to insufficiently consider the protective factors associated with living with extended family and appears to overlook the cultural significance of family and kinship structures in Indigenous communities, where extended family is a source of strength and resilience, rather than a weakness.

Example – we represented a mother who was living in a very remote community whose child was removed from her care, where the only risk concerns raised was in relation to the people living in her home (use of alcohol). Child Safety would not reunify the child with the mother and instead expected the mother to spend time with the child at a relative’s house. It placed the mother in a situation where her duty to her child was in conflict with her obligation to support family members who otherwise had nowhere to stay, forcing her to choose between her child and the family members. The child was then placed on a long-term guardianship order with the other relative as a solution. This meant that guardianship vested with the relative rather than with the chief executive, so the requirement for child safety to assess each household member no longer applied.

### Recommendation/s

We recommend:

14. that investment in the development and provision of suitable long-term housing in FNQ be prioritised (and in rural, remote and regional communities generally) to help address the current shortage of housing.

### 1.4 Lack of kinship placement exploration

A thorough investigation of possible kinship placement should be undertaken by Child Safety at the earliest opportunity, when working with family as parallel planning, in partnership with Elders from the child’s local community and/or a respected member of the child’s local community given their close connection with their community and valuable input/views as to where the child is best placed if they cannot remain with their parent/s. We have observed that Child Safety often only raise this issue (along with voluntary intervention options) at the time of removal, if at all. This is a point in time in which parents are often heightened and might not emotionally be in a position to give full consideration to kinship options. At this point, the children are then placed with foster carers causing trauma and anxiety to the child.

It is noted that in NSW, the ‘Family Group Conference’ is used as an Alternative Dispute Resolution process, often pre-removal, to bring in the parents and family/kin to support parents to explore kin options. Under the LAFPA<sup>4</sup>, there is now also legally assisted mediation in the pre-removal space.

### Recommendation/s

We recommend:

15. that amendments be made to the CP Act, Child Safety Practice Manual and other relevant policies and procedures to import a similar model to the NSW ‘Family Group Conference’ model as an Alternative Dispute Resolution process, pre-removal, to facilitate a thorough investigation of possible kinship placement for the child, and to allow scope for legally assisted mediation pre-removal.

## E. Residential Care

Concerns have been raised about the lack of qualifications required for residential workers. We have learned anecdotally that people without any relevant qualifications

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<sup>4</sup> NSW’s Legal Assistance for Family Partnership Agreement.

or work experience are being hired to be residential workers and are ill-equipped to deal with children’s behaviours/discipline/incidents. We note that QATSICPP’s Submission highlights significant concerns regarding the increasing use of residential care for Aboriginal and Torres Strait Islander children, including infants and children under 12. These concerns include the lack of cultural safety, inadequate relational support, and the unsuitability of residential care environments for young children. It also raises concerns regarding residential care workers themselves expressing that the current model does not allow them to provide the level of attention and nurturing relationships that children need (see p17, QATSICPP submission).

Additionally, we have concerns regarding the level of supervision provided by residential care workers in relation to these children and the impacts that poor supervision might have on a child’s behaviour. For example, we are aware of matters in which children that were doing very well academically at school were removed from their family and placed in residential care. When they returned to their parents’ home, they had developed negative behaviours, their grades had dropped, and they no longer respected their parent/s as, in the mind of the children, the effect of intervention by Child Safety was that it undermined the authority of the parent/s.

#### **Recommendation/s**

We recommend:

16. the urgent review and strengthening of qualifications, training and cultural competency requirements for residential care workers with a specific focus on improving outcomes for Aboriginal and Torres Strait Islander children including mandatory cultural competency training, specialised early childhood and trauma informed training and strengthening oversight, accountability and monitoring;
17. supporting Aboriginal and Torres Strait Islander designed models of care, as described and extrapolated upon in QATSICPP’s Submission.

### **G. Reunification principle**

#### **Difficulties for families in maintaining connection to family, kin, community and culture**

Due to the limited availability of foster care placements, often children from regional or remote areas are being placed in Cairns or further away including Southeast Queensland. This results in the parents needing to travel hundreds or thousands of kilometres from their homes to have contact with their child, which can be a significant financial burden and might, in fact, result in contact not being able to occur.

Geographical displacement also means that connection to kin, community and culture is significantly compromised, if not non-existent.

### **Barriers to reunification**

In FNQ, children and families face numerous barriers to reunification including, notably:

- the severe shortage of safe, stable and adequate housing which often prevents parents from demonstrating that they can provide a suitable home environment;
- the issues noted earlier with respect to Child Safety’s approach to communal living;
- the lack of supervision at residential care facilities, which can result in the child developing negative behaviours, the child getting involved in criminal activities, for example, where other children at the facility are doing so, being ‘on the streets’, and the child’s respect for their parent’s authority being undermined by the involvement by Child Safety;
- applications being based on ‘unacceptable risk of significant harm/significant harm experienced’ rather than ‘concerns’
  - Currently applications are overlaid with issues that Child Safety refers to as ‘concerns’ rather than risks. These concerns are more in the category of best practice parenting, but by including them in the Application, this means that parents have to deal with a significantly longer list of concerns (common examples being, that the child have their own room, that the child sleeps in a bed and not on the floor, that the child have shoes, that the child is not playing in the street), rather than a list that addresses the critical issues. The best practice parenting considerations in the view of the department are not synonymous with unacceptable risk issues, hence Child Safety should consider unacceptable risk issues only, rather than matters that fall into the ‘concerns’ category. In our experience, this approach by the department makes reunification much more challenging.
- Assessment of risk varies significantly between offices and/or teams within Child Safety leading to inconsistency
  - It appears that differing approaches are influenced by the inherently subjective aspects of the risk management tools used, coupled with the particular approach of the relevant Team Leaders and/or Managers within relevant Child Safety offices and the sensitivity to risk that informs the culture of the office in relation to particular risk factors. Furthermore, there appears to be different approaches to the same issues depending on the geographical area that the child is in.

We are aware that in the Victorian jurisdiction, the Department of Health and Human Services prepares a calendar within their reunification plan from when the child enters care. The calendar clearly particularises the things that are needed for reunification, including dates for milestones which need to be achieved, and how reunification is to progress (such as planned increases in contact). In Queensland, whilst Child Safety will develop a case plan which sets out what needs to be done in order to meet reunification requirements including timeframes, Child Safety has discretion relating to the manner of reunification, i.e., if/when contact will be increased and how that will occur. Reunification plans need to be better particularised and completion of actions by a parent tied to an increase in contact. There are clear benefits in doing this as it gives parents milestones to work towards, encourages engagement, and a clear timeline for reunification with their child.

#### **Recommendation/s**

We recommend:

18. that the Commission consider the Victorian approach and import a similar model in Queensland wherein the calendar or reunification plan:
  - ties completion of actions by a parent to increase in contact or, at minimum, specify when contact is reviewed and expectations for increase in contact until there is a final outcome (reunification); and
  - is filed with the court along with the initiating affidavit;
19. that there be a strong focus on consistency of the risk management approach used by Child Safety across all offices throughout the State (strengthening decision-making policies and procedures, coupled with ongoing training of Child Safety staff could be beneficial to address this issue).

## **H. Aboriginal and Torres Strait Islander children and young people**

### **Overrepresentation in the child safety system**

The Closing the Gap target to reduce the over representation of Aboriginal and Torres Strait Islander children in the out-of-home system is set at 45% reduction over ten years. The baseline figure for improvement was 37.0 per 1,000 in 2019. Instead of improving, the figure in 2022 was 45.0 per 1,000. As noted by the Inquiry in its first day of sittings, the number of children in out-of-home care has increased from 7,999 in 2011/12 to 10,092 in 2023/24. Over the same time period, the number of for Aboriginal and Torres Strait Islander children in out-of-home care has increased from 3,041 to 4,961. That points to a 26% increase generally in out-of-home care, but a 63% increase in out-of-home care for Aboriginal and Torres Strait Islander children. There

is more to the story than raw figures but of particular concern is increasing rates of removals that led to over 3 times the number of children in residential care in 2023/24 compared to 2011/12, but over 4 times, climbing up to 5 times the number of Aboriginal and Torres Strait Islander children in residential care over the same time period<sup>5</sup>.

In our view, the numbers have grown and not reduced for a number of reasons, including, but not limited to:

- (a) the socio-economic iniquities in the context of housing, employment, education and health;
- (b) difficulties in securing adequate housing, housing instability and the how communal living is viewed by Child Safety;
- (c) the lack of appropriate programs and services in the FNQ region to address risks (for example, in the context of mental health issues, domestic violence behaviours, substance abuse/addiction, etc.);
- (d) the lack of proper consultation and involvement with the parents of the child and the family’s support systems to allow a fair opportunity to address perceived risks before removing a child;
- (e) the practice of using emergent orders which has resulted in an increase in the numbers of children in care (as reported on in the DCPL’s Annual Report for 2023-24);
- (f) systemic racism within the service provision of, and risk assessment tools utilised by, Child Safety;
- (g) concerns that once a child is in the custody of the State, Child Safety requires parents/relatives to jump through an exorbitant amount of hoops before they would consider facilitating the child to be returned;
- (h) inconsistency in the approaches to risk by various Child Safety officers and offices.

With respect to the system responses of Child Safety and practical system changes, we refer you to our earlier comments and recommendations which address these issues, from our perspective.

## **Cultural Safety**

There is a significant need for properly embedding cultural understanding in the service provision of Child Safety. Ongoing cultural training of Child Safety officers and other departmental staff must be established and improved to ensure that when undertaking their duties, they are: eliminating conscious and unconscious biases and

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<sup>5</sup> Closing the Gap Dashboard, Productivity Commission (Target 12), available at <<https://www.pc.gov.au/closing-the-gap-data/dashboard/se/outcome-area12>>.

quashing systemic racism; giving sufficient consideration of the critical protective factors of keeping Aboriginal and/or Torres Strait Islander children within the safety of community, culture and kin; giving sufficient consideration to the objectives and targets in the National Agreement on Closing the Gap, in particular, relating to reducing the numbers of children in out-of-home care; and undertaking regular comprehensive reviews of the risk assessment framework utilised to move away from excessively conservative and subjective risk assessment which is currently achieving an overrepresented number of Aboriginal and/or Torres Strait Islander children being removed.

*Application of the Aboriginal and Torres Strait Islander Child Placement Principle*

Whilst we strongly support the embedding of the Aboriginal and Torres Strait Islander Child Placement Principle, we note that there is limited, if any, real accountability when it comes to implementation of the section 5C principles for Aboriginal and/or Torres Strait Islander children. It is essential that there be a robust enforcement regime to promote compliance with the obligations to apply the section 5 principles and to ensure that there are consequences when the same is not applied.

**Recommendation/s**

We recommend:

20. that the CP Act be amended to embed a robust enforcement regime to promote compliance with obligations to apply the section 5 principles, including section 5C which includes legal consequences where the same is not applied.

*Delegated authority*

The anecdotal evidence that we have with respect to the Delegated Authority model is that it is going well and is resulting in earlier reunification following proper and measured consideration within a culturally safe process. However, we note that delegated authority model currently only applies in a limited number of areas.

**Recommendation/s**

We recommend:

21. the continued expansion of the geographical areas within which the Delegated Authority model is implemented.

## I. Removal of newborn and children

### *Newborn children*

We continue to hold significant concerns about the welfare of children being removed upon birth where the parents are the subject of a notification whilst the mother is pregnant. The Child Safety Manual contains explicit obligations on Child Safety to collaborate with a pregnant mother as part of the assessment of risks the subject of a notification. However, despite these obligations, we have made the following concerning observations:

- When Child Safety is alerted to concerns about a pregnant mother, Child Safety often do not raise those concerns sufficiently, if at all, with the parent/s thereby removing pathway for the parent/s to address the perceived concerns and simply take the step of removing the child immediately upon birth.
  - Example – we represented a pregnant mother at an investigation and assessment meeting. In that meeting, Child Safety was requested to advise if there were any issues, so that such might be addressed proactively. We were not advised of any issues, and the next time we heard about the matter was when mother phoned us from the hospital to say that Child Safety had removed the child.
- We have found that Child Safety often make a determination early on in a pregnancy to remove a child when they receive a notification of high-risk birth alert, often before they did any work with the mother to support them.
- It is common for Child Safety to remove newborns as a knee-jerk reaction, instead of attempting to work with and support family first.
  - Example – we acted in a matter where Child Safety received a notification regarding concerns of excessive alcohol use and domestic violence when the mother was 4 months pregnant both of which concerns were later found to be untrue, it was found that:
    - Child Safety did not work with the family until after the child was born;
    - Child Safety then asked the mother to enter into an Assessment Care Agreement (ACA) after the birth of the child;
    - After the ACA was signed, Child Safety did not undertake any investigations in relation to this parent during the ACA period;
    - Child Safety then, right before the ACA ended, filed a Court Assessment Order (CAO) application in court;
    - We contested the CAO application and Child Safety then decided to withdraw the application and make safety plan instead.
  - Example – we acted in a matter where Child Safety received a notification two days after a baby was born. Child Safety then filed a Temporary Assessment

Order (TAO) application the following day and the order was made without notice without the parents being heard. Subsequently, Child Safety filed a CAO application in relation to the child, which ATSILS contested and was successful following which an Immediate Safety Plan was made instead.

Not only are the above practices in conflict with Child Safety’s own obligations, they create an immensely traumatic situation for the mother and father of the child as well as the child and the support system surrounding them. There have been instances where a mother’s baby is taken by Child Safety from the birthing suite of the hospital. These incredibly traumatic situations could have been avoided had Child Safety proactively addressed concerns with the child’s mother, as they are obligated to do. Furthermore, given the intergenerational trauma associated with the history of child removal from Aboriginal and/or Torres Strait Islander families, it is abhorrent that this practice be allowed to continue.

Another matter of note is that the CP Act is unclear with respect to unborn children and amendments are required to create a clear legal framework for what occurs in the context of notifications about unborn children.

We are aware that in the NSW jurisdiction, when the Department becomes aware of risks or concerns relating to an unborn child, the best practice is for a Pregnancy Family Conferencing (similar to Family Group Meeting under the CP Act) to be offered, to enable the Department to meet with the family to discuss concerns and how to address them.

#### **Recommendation/s**

We recommend:

22. that a mandatory obligation be placed upon Child Safety to facilitate ADR, or at minimum, a mandatory stakeholders’ conference involving the mother and father, their support system, Elders from their local community and/or respected members of the community, as soon as possible following Investigation and Assessment on an unborn child to allow for proactively addressing issues relating to unborn children with the aim of avoiding the removal of children in this manner.

#### *Systems abuse – Child Safety using emergent orders to circumvent due process*

Currently under section 26 and 51AD of the CP Act, a magistrate may decide an application for a temporary assessment or custody order without notifying the child’s

parents of the application or hearing them on the application. The current approach by the Court is to exercise this power in almost all Temporary Assessment Order (TAO) and Temporary Custody Order (TCO) Applications.

We note that the Director of Child Protection Litigation (DCPL) Annual Report 2023-24 states that, in respect of 2023-24:

- ‘The number of matters the DCPL received from Child Safety increased 2.2% from 2022-23, to an overall total of 3,572 matters’; and
- ‘the overall increase in matters received was due to a **14.2% rise in matters concerning children who were either on a CAO or a TAO** (both are emergency orders), which indicates there has been an increase in the number of children entering the statutory child protection system.’<sup>6</sup>.

We have observed it to be a common practice of Child Safety to apply for emergent orders after hours, with the effect that parents are not able to access legal representation or be served or heard in relation to the proposed removal of their child/children. Further, it is particularly difficult for parents to fight against Child Safety for custody as section 99 of the CP Act (‘Particular orders continue pending decision on application for extension, variation, revocation or substitution’) usually applies, which allows Child Safety to retain custody between removal and interim hearings. This equates to the child being in the custody of Child Safety for a minimum 4-6 weeks. We have observed that it can take between 3 to 5 months for a parent to be able to be heard to contest an interim custody, if not longer.

Whilst we appreciate that there may be circumstances that warrant emergent orders, what is apparent is that this approach is being used by Child Safety used as a common practice. It is an outrageous situation given the egregious breach of human rights of the parents and child associated with the State making a unilateral decision to take their child away from them and place the child in the custody of the State, without any notice nor opportunity to be heard. This practice does not afford procedural fairness to the parents. Given the significance and consequences of an ex-parte custody order, a magistrate’s discretion to decide such applications should be used sparingly rather than it being standard process currently utilised in almost all child protection matters.

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<sup>6</sup> Director of Child Protection Litigation Annual Report 2023-24, p7, available at <[https://www.dcpl.qld.gov.au/\\_\\_data/assets/pdf\\_file/0009/822996/annual-report-2023-2024.pdf](https://www.dcpl.qld.gov.au/__data/assets/pdf_file/0009/822996/annual-report-2023-2024.pdf)>.

### Recommendation/s

We recommend:

23. amending the making of a TAO under section 27 of the CP Act so that the order can only be made on an ex-parte basis in circumstances where the child would be at “immediate unacceptable risk of harm”
24. in the context of TCOs, amending section 51AE(a) of the CP Act to include the word “immediate unacceptable risk” rather than just unacceptable.

## K. “Self-Placing” or missing children in care

### *Inappropriate measures to prevent self-placing*

We are seeing that often children are ‘voting with their feet’ by choosing to self-place back with their parent/s. In response to this, we have seen cases where Child Safety has confiscated the children’s phones and/or suspended their contact with parents, so that they have no way to contact the parents, to prevent them from self-placing. We have also observed that where Child Safety has determined that a child’s contact with their parents should be supervised, residential care facilities tend to apply that to all contact including phone contact. For example, this is even in situations where it involved a domestic violence scenario, but the child was not at risk of harm for domestic violence. The residential care facility then will not approve such contact unless Child Safety approves it.

Example - Child Safety developed a safety plan in residential care for five siblings (ranging from 8 to 16 years of age) who had previously attempted to self-place back with their parents. As part of the safety plan, the children’s phones were removed. The contact was meant to be supervised by Child Safety, so the avenue to file an application for contact orders would have little merit (as Child Safety would need to support/approve the supervised contact).

### Recommendation/s

We recommend:

25. that amendments be made to the CP Act to reflect that an Application for a Child Protection Order for a child 15 years or older should not be sought without the consent of the child, except in exceptional circumstances.

## M. Definitions of Success in the Child Safety System

We respectfully submit that Question 55 in the List of Issues document under heading M contains somewhat of an inherent bias in its framing. It asks, “What does ‘success’ look like for children and young persons who have been made the subject of orders under the *Child Protection Act 1999* because they did not have a parent who was willing and able to protect them...”. As we have outlined earlier in this submission, we have observed a number of concerning practices whereby Child Safety is, in our view, is not consistently fulfilling its obligations in undertaking a proper assessment and investigation of risk, often not even consulting with the parent/s of the child and removing children under emergent orders with no notice or opportunity for parents to be heard.

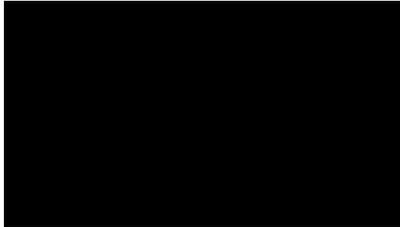
We respectfully suggest that the Commission instead consider, as a key issue, what success looks like for children and young persons and families who come into contact with Child Safety and the Child Safety System.

In addition to the recommendations that we have made earlier in this submission, which we won’t reiterate here, we are aware, based on our client facing work and our collaborative work with community justice groups in FNQ, that success includes:

- a collaborative shared decision-making framework with all relevant stakeholders involved in the child and parent/s life as soon as there exists a child protection notification in relation to the child, and that this consultation must include involvement by local Elders and/or community justice group representatives and/or respected members of the local community, on the basis that these key community members have an intimate knowledge of their communities and the families contained therein and should be empowered to be part of any decision-making process regarding risk assessments and where children should be placed;
- where it is determined that a child should be removed, proper application of the Aboriginal and Torres Strait Islander Child Placement Principle, with local Elders and/or community justice group representatives and/or respected members of the local community, being part of the decision-making process as to where that child should be placed, to ensure that there is thorough consideration of who within that child’s community, as a priority, could take care of the child (noting that we consistently receive feedback that Child Safety do not properly, if at all, consult with community as to where the child could be placed within kin and community; and
- a priority on the child being connected with kin, culture and community in consideration of the protective factors that such brings for a child and the stability it provides for their emotional, physical and cultural wellbeing’.

We thank you for the opportunity to provide submissions to the Commission of Inquiry – Child Safety, in relation to the Cairns Public Hearings.

Yours faithfully,



Shane Duffy  
Chief Executive Officer