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Office of the Aboriginal and Torres Strait Islander Children's Commissioner  
Submission to the Child Safety Commission of Inquiry

# Child protection decision-making reform: A child rights-based resolution model

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## ACKNOWLEDGEMENT OF COUNTRY

The Office of the Aboriginal and Torres Strait Islander Children's Commissioner acknowledge Aboriginal and Torres Strait Islander peoples as the Traditional Custodians across the lands, seas and skies where we walk, live and work.

We recognise Aboriginal and Torres Strait Islander people as two unique peoples, with their own rich and distinct cultures, strengths and knowledge. We celebrate the diversity of Aboriginal and Torres Strait Islander cultures across Queensland and pay our respects to Elders past, present and emerging. We acknowledge the important role played by Aboriginal and Torres Strait Islander communities and recognise their right to self-determination, and the need for community-led approaches to support healing and strengthen resilience.

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## Purpose

This technical note proposes a structural reform to child protection decision-making in Queensland, aimed at aligning legal processes with children's rights obligations and strengthening independent oversight and accountability for State intervention under the United Nations Convention on the Rights of the Child (UNCRC) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

The proposal focuses on long-term decision-making (orders of 12 months or more), where the consequences for children's rights, identity, and life trajectory are most significant.

## Problem definition

Current child protection decision-making processes in Queensland are characterised by:

- adversarial proceedings, limiting early, holistic resolution
- a point-in-time assessment of risk, rather than whether sufficient efforts have been made to support families
- limited capacity to scrutinise whether supports and services have been demonstrably available, accessible and effective
- insufficient mechanisms to ensure decisions remain necessary and proportionate over time
- inconsistent application of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP).

While legislation establishes that the child's best interests are paramount and that families should be supported, current processes do not consistently operationalise these principles in decision-making.

## Policy rationale

The proposed reform addresses a structural gap between legislative intent and system operation.

Under the UNCRC, States are required not only to act in the best interests of the child (Article 3), but to:

- prevent unnecessary separation (Article 9)
- ensure meaningful participation (Article 12)
- implement rights through effective legislative, administrative and judicial mechanisms (Article 4).

This includes the obligation to implement the General Measures of Implementation, requiring States to establish independent oversight, accountability frameworks, effective remedies, and functioning review mechanisms that give practical effect to children's rights.

Similarly, UNDRIP requires that decision-making affecting Aboriginal and Torres Strait Islander children is grounded in self-determination and cultural authority.

Current arrangements do not adequately test whether:

- removal is a measure of last resort, or
- it is occurring in the context of insufficient, inaccessible or ineffective supports.

This creates a structural risk that removal functions as a substitute for service system failure, rather than a proportionate and rights-compliant response to harm.

This reform recalibrates the legal threshold for State intervention, requiring demonstrable evidence that sufficient and appropriate supports have been provided to families as a precondition to lawful separation.

## Proposed reform

### Establishment of a child protection resolution jurisdiction

Amend the *Child Protection Act 1999 (Qld)* and/or *QCAT Act 2009 (Qld)* to establish a specialist, independent oversight jurisdiction (within or alongside the Queensland Civil and Administrative Tribunal) with:

- inquisitorial, non-adversarial processes
- jurisdiction over:
  - long-term orders (12+ months)
  - all newborn removals (of any duration)
  - placement, contact, reunification and permanence decisions
  - disputes relating to access to supports and services
- capacity for ongoing supervisory oversight of long-term matters.

This shifts the system from adversarial adjudication to early, supported, evidence-based resolution focused on children's long-term wellbeing.

### Statutory proportionality and “active efforts” test

Introduce a legislative requirement that, prior to making or extending long-term orders, decision-makers must be satisfied on evidence that:

- removal is necessary and proportionate
- all reasonable and active efforts have been undertaken to support the child to remain safely at home
- supports and services have been available, accessible, and demonstrably effective.

The burden of proof rests with the State to demonstrate that these conditions have been met.

This must include a dual harm assessment framework, requiring consideration of:

- harm of remaining at home
- harm associated with removal and time in care.

For Aboriginal and Torres Strait Islander children, this must include:

- demonstrable compliance with ATSI CPP across all elements
- evidence of active efforts.

## Establish service provision as a justiciable obligation

The jurisdiction should explicitly recognise that access to supports and services is a justiciable precondition to lawful State intervention, not a discretionary administrative function.

To give effect to this, decision-makers must be empowered to:

- issue binding directions to government agencies and funded services
- require evidence of:
  - service provision
  - timeliness and accessibility
  - cultural safety
  - outcomes achieved
- mandate compliance reporting and review within defined timeframes.

This ensures that the State is accountable not only for its decisions, but for the conditions it creates to enable families to safely care for their children.

## Multi-disciplinary and culturally authoritative decision-making

Enable panel-based decision-making comprising:

- legally qualified members
- experts in child development, trauma, disability, and health
- recognised Aboriginal and Torres Strait Islander cultural authority.

This ensures that determinations of best interests are substantively informed, culturally grounded, and evidence based.

For Aboriginal and Torres Strait Islander children, this reform strengthens system legitimacy by embedding cultural authority and self-determination within decision-making structures.

## Mandatory review and anti-drift safeguards

Introduce statutory requirements that:

- all long-term orders are subject to regular, mandatory review
- reviews must assess:
  - progress toward reunification or permanence
  - maintenance of family, community and cultural connections
  - continued necessity and proportionality.

This addresses the risk of system-induced drift, where decisions persist without active reassessment of their justification.

## Participation and procedural fairness

Legislate requirements to ensure:

- meaningful and supported participation of children and young people in all decisions affecting them
- access to:
  - independent advocacy
  - culturally appropriate participation mechanisms
  - disability-inclusive communication supports
- trauma-informed, accessible and culturally safe processes.

Participation should be treated as a legal condition of valid decision-making, consistent with Article 12 of the UNCRC.

## Strengthen prevention and family support integration

To ensure the model operates effectively, reform must be accompanied by:

- strengthened early intervention and family support systems, including intensive family preservation services
- clear pathways to ensure families can access supports prior to and during proceedings
- alignment between the jurisdiction and community-controlled and place-based services.

This ensures that the requirement to demonstrate “active efforts” is real and achievable, not purely procedural.

## Implementation and accountability

Effective implementation will require:

- legislative reform to establish jurisdiction, powers, and evidentiary thresholds
- workforce capability development, including:
  - inquisitorial practice
  - trauma-informed approaches
  - cultural capability and authority
- service system alignment, ensuring agencies can respond to binding directions
- data, monitoring and public reporting, including disaggregated data to assess:
  - compliance with “active efforts” requirements
  - service accessibility and effectiveness
  - outcomes for children and families.

The reform should be evaluated against measurable outcomes, including:

- reductions in unnecessary separation
- increased rates of safe reunification
- improved placement stability

- strengthened cultural connection for Aboriginal and Torres Strait Islander children.

This ensures the model functions as an accountability mechanism tied to outcomes, not solely a procedural reform.

## Conclusion

The proposed reform addresses a fundamental system design issue: current processes prioritise adjudication of risk over accountability for the conditions that produce that risk.

It reorients decision-making toward:

- prevention of unnecessary separation
- enforceable accountability for State action
- long-term outcomes for children, families, and communities.

It also gives practical effect to the State's obligations under the UNCRC to implement General Measures of Implementation, ensuring that children's rights are realised through functioning systems of decision-making, review, and remedy, supported by independent, enforceable oversight.

A system that removes children without first demonstrating that all reasonable and effective supports have been provided to their families is not operating in accordance with its protective obligations but instead reflects a failure in the conditions required to enable safe family/kinship care.