ChildProtectionPeak

Queensland Aboriginal and Torres Strait Islander
Child Protection Peak Limited

Submission to the QLD Child Protection Commission of Inquiry: Child Protection Litigation and Dispute Resolution Processes

November 2025

Contents

Acknowledgement of Country

QATSICPP acknowledges the Traditional Custodians across all the lands that make up the State of Queensland. We acknowledge the oldest living cultures of Aboriginal and Torres Strait Islander peoples and the continued connections to Country, language and tradition. We pay our respect to Elders past and present and acknowledge future generations of Aboriginal and Torres Strait Islander children and young people and the bright future they will have.

About QATSICPP

The Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) is the peak body for Aboriginal and Torres Strait Islander community-controlled organisations delivering child, youth and family support services in Queensland. QATSICPP is also Queensland's Youth Justice Peak, collaborating with Aboriginal and Torres Strait Islander and non-Indigenous service providers to strengthen outcomes across the child protection and youth justice systems.

Our membership includes 38 Aboriginal and Torres Strait Islander community-controlled organisations (ATSICCOs), delivering vital services, guidance and culturally grounded supports to ensure the safety and wellbeing of Aboriginal and Torres Strait Islander children, young people and families. QATSICPP's vision is that all Aboriginal and Torres Strait Islander children and young people are physically, emotionally and spiritually strong; live in safe, caring and nurturing environments within their families and communities; and are afforded the same life opportunities as other children and young people to reach their full potential.

Over its 21 years, QATSICPP has worked in partnership with Aboriginal and Torres Strait Islander leaders and the Queensland Government to promote approaches that are culturally responsive and community-led. With a strong history of collaboration, QATSICPP continues to lead the development of solutions that respond to the unique strengths and needs of Aboriginal and Torres Strait Islander children, families, and communities.

Executive summary

This submission responds to the Commission of Inquiry's call for evidence regarding Queensland's child protection litigation model, the processes used to apply for and make child protection orders, the roles of the Office of the Director of Child Protection Litigation (ODCPL) and the Office of the Child and Family Official Solicitor (OCFOS) and the effectiveness of dispute resolution processes such as Family Group Meetings (FGMs) and Court-Ordered Conferences (COCs).

Aboriginal and Torres Strait Islander families have been raising happy and healthy children, with strong minds and strong hearts for more than 5000 generations, longer than any other living culture in the world. Yet now, Aboriginal and Torres Strait Islander children now represent approximately 48% of all children in Out-of-Home (OOHC) care.[i] Our families are subject to a system that is driving escalating notifications, more children entering OOHC, extended periods in OOHC and increasing reliance on long-term orders for Aboriginal and Torres Strait Islander children.[ii]

Subsequently, Aboriginal and Torres Strait Islander families across the child protection continuum are disproportionately and detrimentally impacted by the current child protection litigation model and fixing this model is crucial to creating a child protection system that supports connection, restoration, the strengths of families and keeping children safe.

The current model was intended to strengthen oversight, improve the quality of applications before the Children's Court and ensure better outcomes for all Queensland children. Importantly, the current model sits within a broader context of state, national and international legal frameworks and policy commitments. Across this context, which is comprehensively evidence-based through decades of consultation, research and inquiries is unanimous agreement that connection, self-determination, rights-based approaches, holistic responses and cultural safety and within government institutions are critical to enabling improved Aboriginal and Torres Strait Islander outcomes.

Despite its intentions and the context in which the model operates, the Nous Independent Review (2024) found current litigation model is built around narrow legal thresholds with little regard for therapeutic or culturally safe

practice and legal processes governing child protection orders are frequently experienced as trauma-invoking, adversarial, culturally unsafe and structurally biased against Aboriginal and Torres Strait Islander families.[iii]

A particularly acute example that evidences the shift away from the the principles of necessity, proportionality, cultural safety and early intervention that underpin both the *Child Protection Act* and the *Human Rights Act*, rather than honouring the Aboriginal and Torres Strait Islander Child Placement Principle, is data over recent years showing an increasing trend in child protection litigation towards more intrusive orders, such as Court Assessment Orders (CAOs) as opposed to Temporary Assessment Orders (TAO).

In 2024, in recognition of identified issues with the current system, the Queensland Government commenced *The Child Protection Litigation Project* (the Project) to investigate new approach to child protection litigation matters, informed by the lived experience of children and families who journeyed through the system.

To ensure the perspectives of Aboriginal and Torres Strait Islander families, practitioners and organisations were considered within the project QATSICPP undertook a consultation process with its staff, members and partners about the Queensland child protection litigation system. The resulting experiences, ideas and expertise of Aboriginal and Torres Strait Islander leaders, practitioners and organisations working in the legal and child and family services sectors within Queensland and across Australia are central to this submission. A copy of the QATSICPP Child Protection Litigation Review Project Report was provided to the Commission.

This submission offers critical analysis of the current model and makes recommendations to address current system deficits. The analysis concludes that the current system fails to deliver a fair, transparent and culturally safe decision-making process and has evolved into one that is adversarial, procedurally complex and increasingly disconnected from the principles it was designed to uphold.

The systemic issues identified with the model are interconnected, complex and compound existing barriers experienced by Aboriginal and Torres Strait Islander families subject to intervention by Queensland's child protection system, leading to missed opportunities for early resolution, the unnecessary progression of children onto long-term orders and delayed reunification.

The recommendations offered, on behalf of QATSICPP members, centre self-determination and family, cultural and community connection as the only way to redress overrepresentation.

This submission concludes with nine recommendations that address complex and interwoven challenges within the child protection litigation model and the broader child protection system. These recommendations span critical areas including embedding Aboriginal and Torres Strait Islander Voice in all decision-making processes; significantly increasing investment in Family Wellbeing Services and Family Participation Programs; expanding family-based care models; strengthening safeguards through regional child safety teams; mandating alternative dispute resolution prior to child removal; adequately resourcing QCAT for timely resolution; clarifying legislation for unborn children to ensure early intervention; and ensuring culturally safe governance and accountability throughout the system.

The analysis and recommendations in this submission are informed by:

- Lived experiences, ideas and expertise of Aboriginal and Torres Strait Islander leaders, practitioners and organisations
- Data analysis of order types
- Jurisdictional scan of child protection litigation models across Australia

These recommendations will reform Queensland's child protection litigation model not only for the benefit of Aboriginal and Torres Strait Islander children and families, but for all families and young people.

QATSICPP's position

Queensland's Child Protection Litigation Model is not meeting the needs of Aboriginal and Torres Strait Islander children and families by prioritising legalistic, adversarial processes over culturally safe, family-led solutions. Instead of delivering safety and stability, the model can often compound harm, escalates conflict, and entrenches systemic inequities, leaving families disempowered and disconnected from decision-making.

Without urgent reform to embed genuine self-determination and uphold the Aboriginal and Torres Strait Islander Child Placement Principle, over-representation will worsen, perpetuating intergenerational trauma and undermining Queensland's implementing of national agreements such as The National Agreement on Closing the Gap and adherence with the Qld Human Rights and Qld Child Protection Acts.

Continuing with the current approach represents ineffective policy and is impeding the survival and wellbeing of the world's oldest living cultures.

Only through genuine self-determination can Queensland build a child protection system that is culturally strong, accountable and capable of healing the legacy of harm.

Comprehensive implementation of the recommendations will reform Queensland's child protection litigation model not only for the benefit of Aboriginal and Torres Strait Islander children and families, but for all families and young people.

Current context: Queensland's Child Protection Litigation System

Queensland's child protection litigation model, for the purpose of this submission, is defined as the processes used to apply for and make child protection orders, the roles of the Office of the Director of Child Protection Litigation (ODCPL) and the Office of the Child and Family Official Solicitor (OCFOS) and dispute resolution processes such as Family Group Meetings (FGMs) and Court-Ordered Conferences (COCs).

In 2013, the Queensland Child Protection Commission of Inquiry recommended changes to child protection legal processes to improve accountability, quality of applications made and timeliness of court decisions.[iv] In response, the Office of the Child and Family Official Solicitor (OCFOS) and the Office of the Director of Child Protection Litigation (ODCPL) were established in 2016. The intent of introducing an independent statutory agency within the Department of Justice and Attorney-General (DJAG) portfolio was to improve the State's approach to litigating child protection matters by increasing the accountability and oversight for child protection orders proposed by the Department with responsibility for statutory child protection.[v]

It is critical to note the litigation model sits within the broader child protection and Aboriginal and Torres Strait Islander policy context that impacts Aboriginal and Torres Strait Islander peoples living in Queensland, which is made up of state, national and international policy and legal frameworks.

It is evident that the current model is inconsistent with the commitments outlined in the following state, national and international policy and legal frameworks. Rather than delivering safety, stability and justice, the litigation model is contributing to outcomes that are misaligned with legislative and policy intent and best practice approaches.

- **Queensland Child Protection Act:** The Child Protection Act 1999 (Qld) seeks to protect children from harm while prioritising their safety, wellbeing and best interests as paramount (s.5A). In doing so, the Act requires that State intervention be only what is "warranted in the circumstances" (s.5B(e)) and that powers are exercised in a way that is open, fair, and respectful of rights (s.5D), ensuring decisions adopt the least intrusive approach consistent with achieving the child's best interests.[vi]
- **The Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP):** Arising from the landmark Bringing Them Home report and now enshrined in the *Queensland Child Protection Act*, the purpose of the ATSICPP is to preserve and enhance an Aboriginal and Torres Strait Islander child's sense of identity by maintaining connections with their family, community, culture and Country and enabling self-determination.[vii] It is aligned with the *United Nations Convention on the Rights of the Child* and the *United Nations Declaration on the Rights of Indigenous Peoples* and is key feature of the First Aboriginal and Torres Strait Islander Action Plan under *Safe and Supported: the National Framework for Protecting Australia's Children 2021-2031,* with all Australian jurisdictions committing to implement the Principle.[viii]
- **Queensland Human Rights Act:** Recognises families as the fundamental to our society and entitled to protection (Section 26) and specifies that any legislation or policy that allow for the removal of child from families, must not be adhered to in a way that ensures a person's life is not unlawfully or arbitrarily interfered with. The HRA also states that every child has the right, without discrimination, to the protection that is in their best interests as a child.[ix]

- **National Framework for Protecting Australia's Children / Safe & Supported:** The First Aboriginal and Torres Strait Islander Action Plan under Safe and Support: National Framework for Protecting Australia's children commits all Australian governments to Improve access to quality legal support for Aboriginal and Torres Strait Islander families in child protection, and ensure equitable access to justice. [x]
- **Child Safe Organisations:** Queensland's Child Safe Organisation scheme requires all organisations working with children to implement the Universal Principle of cultural safety, which involves implementing systems to prevent racism and bias, embedding respect for identity, kinship, and community connections, and ensuring children can practice culture as a protective factor for wellbeing.[xi]
- **National Agreement on Closing the Gap:** The National Agreement on Closing the Gap commits all Australian Government to reforming systems and supports for Aboriginal and Torres Strait Islander people, with a focus on shared decision making, building the community-controlled sector, transforming government systems and equitable access to data. The agreement's Outcome 12 makes a commitment by 2031 to reduce the rate of over-representation of Aboriginal and Torres Strait Islander children (aged 0–17) in out-of-home care by 45%, from a 2019 baseline of 54.2 per 1,000 First Nations children.[xii]
- **United Nations Declaration on the Rights of Indigenous People (UNDRIP) :** An international framework for recognising and protecting the rights of Aboriginal and Torres Strait Islander peoples, of which Australia is signatory to, UNDRIP asserts Indigenous peoples' rights to both participate in significant decisions affecting their lives and to ongoing their cultural traditions, realised through connection to family and community. [xiii]
- **United Nations Convention on the Rights of the Child (CROC):** CROC enshrines the right of all children to protection from harm and the right to participate in significant decisions that affect their lives, including state intervention into their care arrangements. [xiv]

Across this policy framework there are consistent themes and principles, all which are comprehensively evidence-based through decades of consultation, research and inquiries, which almost unanimously point to the following elements of best-practice and settings essential to enabling better First Nations outcomes:

- The critical importance of maintaining connections with their family, community, culture and Country as central to an Aboriginal and Torres Strait Islander child's wellbeing
- Self-determination and rights-based approaches
- Aboriginal and Torres Strait Islander community and family led solutions including Family -led, or at the very least, shared decision making.
- Holistic responses that are cognisant of the need to address social and cultural determinants and enabling environments such as racism, poverty and system barriers, placing community healing and culture at the heart
- The importance of cultural safety and building the cultural capability of government institutions and improving the level of accountability of government agencies to Aboriginal and Torres Strait Islander Peoples.

Considering the current child protection litigation model against the best-practice and settings outlined above reveals a system moving further away from the principles of self-determination, cultural safety, strengthening culture as a protective factor and early intervention that underpin Queensland child protection policy and legal framework commitments.

Issues and analysis

Five years after the introduction of the current model, in 2022, the Nous Group led a review, which found the model was implemented with an emphasis on improving the standard of evidence presented to the court without adequate consideration of its place in broader reforms to the child protection legal system.[19] The review noted while the model had generally achieved its stated aim of improved accountability, it needed to be re-balanced and re-oriented to be 'more responsive and family-centric in its approach to improve outcomes for children, young people and families'.[20]

The Nous review found the current model:

- does not support Aboriginal and Torres Strait Islander children and families' engagement in the litigation process (beyond Family Participation Program and Independent Entity).
- lacks any specific measures designed to improve the cultural safety and responsiveness of the child protection legal system
- lacks clarity regarding how the system operationalises its responsibility to uphold the Aboriginal and Torres Strait Islander Child Placement Principle to the standard of active efforts.

In 2024, in recognition of identified issues with the current system, the Queensland Government commenced *The Child Protection Litigation Project* (the Project) to investigate new approach to child protection litigation matters, informed by the lived experience of children and families who journeyed through the system. The review assessed the model five years after implementation, finding it improved evidence standards but became overly legalistic and adversarial. It highlighted systemic delays, limited family participation, and insufficient cultural responsiveness, with Aboriginal and Torres Strait Islander families disproportionately impacted.

The report recommended rebalancing the model toward early, family-led and therapeutic responses, introducing mandatory pre-court mediation, and improving collaboration, cultural capability, and access to legal representation.

Lived experiences, ideas and expertise of Aboriginal and Torres Strait Islander leaders, practitioners and organisations

> "I felt like I had to learn law on the run so I could protect my kids. But they still told me I was too slow"
>
> SE Qld (FIN) Child Protection Litigation Model – Parent Consultation Report 2024

To ensure the perspectives of Aboriginal and Torres Strait Islander families, practitioners and organisations were considered within the project QATSICPP undertook a consultation process with its staff, members and partners about the Queensland child protection litigation system to:

- develop a comprehensive understanding of the issues and impacts of the current system on children and families
- explore options to improve the cultural safety and responsiveness of the system to improve outcomes for First Nations children and families.

Several key themes consistently emerged from the stakeholder consultation and case studies (see Appendix A) undertaken throughout the project that also align with literature and evidence-base on enhancing child protection, wellbeing, health and life outcomes for Aboriginal and Torres Strait Islander peoples.

1. Introducing the current child protection litigation model has led to a noticeable change in child protection practice. Evidence gathering to support litigation appears to have become more important than working with families to ensure the safety and wellbeing of their children. Lawyers, rather than practitioners, are directing the process and practice.

2. The current approach is profoundly distressing and traumatic for children and families. The adversarial nature of the litigation model causes significant shamefor families, leaving them trying to defend their sense of self and dignity. It acts to compound intergenerational cycles of trauma, disadvantage and institutional harm, perpetuating mistrust and avoidance between families and the child protection system.

3. The current approach is not improving outcomes for children and young people. Since 2018, the rates of First Nations children subject to care and protection orders and placed in out-of-home care have increased year on year. Alarming numbers of children are living in residential care placements, including infants and

young children, despite an acknowledgement that these settings can be harmful and lead to poorer life outcomes.

4. The system views families as the problem, not the solution. It removes children from their families to keep them safe, rather than supporting the family in caring for their child safely. As of March 2025, 38 per cent of Aboriginal and Torres Strait Islander children on orders were under the age of five.[xv] Removing infants and young children from their families disrupts bonding and attachment, making it harder to reunify children with their family and potentially leading to lifelong difficulties in forming safe and secure relationships.

- **5. The system has little ability to respond with cultural competence. Current child protection practice and litigation does not value or embed cultural knowledge at the heart of their systems and preferences Western decision-making**. This results in deeply flawed assessment processes that fail to acknowledge, understand or preference First Nations knowledge, leaving families isolated, traumatised and consigned to alienating Western approaches. This is a consistent theme in child protection systems nationally.

These themes informed the development of solutions and recommendations highlighted in the project report, which are present below.

Data analysis of order types

A clear example of the impact of Queensland's child protection litigation model is the continuing disproportionate use of Court Assessment Orders (CAOs) and Temporary Custody Orders (TCOs), rather than less intrusive Temporary Assessment Orders (TAOs). Under the *Child Protection Act 1999 (the Act)*, CAO's are intended to only be used where an investigation cannot be properly carried out without the order, but are now being used at rates that suggest normalised practice, rather than as an exceptional.

State-wide, CAOs are in place for approximately 31.5 percent of children on orders referred to DCPL, with TCOs representing 30.2% and TAOs making up 0.1%. Of the 3,096 matters for children on orders referred to DCPL by Child Safety in 23/24, only 3.6 percent were referred back for Child Safety for further evidence or action.[xvi]

Given the rise in intrusive orders and their disproportionate impact on Aboriginal and Torres Strait Islander children this data pattern raises concerns about Queensland's compliance with legal requirements under the Child Protection Act and Human Rights Act to ensure only necessary, proportionate intervention in the lives of children and families, as well as the cultural rights of Aboriginal and Torres Strait Islander peoples.

Jurisdictional scan of child protection litigation models across Australia

The Project undertook a jurisdictional scan to identify innovative approaches being implemented nationally to understand to draw lessons from models that prioritise cultural safety and self-determination.

Other jurisdictions are moving to develop and implement culturally safe and responsive court models for Aboriginal and Torres Strait Islander children and families in contact with the child protection system. Each of these models has been co-designed and developed with Aboriginal and Torres Strait Islander peoples, communities and organisations to reflect the local cultural context and protocols. Proceedings are held in less formal environments and more time is allowed to enable meaningful participation.

Full details of the scan are provided in Apprendix B.

Aboriginal and Torres Strait Islander Elders and respected community members play an important role in guiding and advising the family and Magistrate about what is needed to keep children safe and connected to their family, community and culture. First Nations court staff, advocates and legal services support families throughout the process. There is a real focus and commitment to upholding the Child Placement Principle and supporting family healing through a therapeutic justice approach.

It is important to note that although these modified court processes and proceedings may be seen and experienced as a positive step towards improving the system for First Nations children and families, they ultimately still occur within a Western justice framework. There remain strong calls for genuine self- determination and valuing of Aboriginal and Torres Strait Islander cultures through structural change that enables First Nations control over First Nations child welfare.

Recommendations

The following recommendations are provided to the Commission to improve the child protection litigation system for Queensland First Nations children and families:

Recommendation 1. Queensland's current child protection model be reformed: The current child protection litigation system is not fit for purpose and needs to be re-designed. It has not achieved its intended aims as outlined by the Queensland Child Protection Commission of Inquiry, with rates of First Nations children in out-of-home care now more than nine times higher than non-Indigenous children. The solutions identified in this report could act as a starting point, with Aboriginal and Torres Strait Islander children, families, communities and organisations engaged in a genuine co-design process to determine what the new system should look like.[xvii]

Recommendation 2. Aboriginal and Torres Strait Islander Voice should be embedded: Aboriginal and Torres Strait Islander people must be involved at the earliest point in all child protection processes to ensure culturally safe, accurate and accountable decision-making. The meaningful involvement of families, communities and ATSICCO's will reduce reliance on statutory intervention and uphold children's rights to maintain connection to family, community, culture and Country.

This recommendation aligns with the Participation and Partnership elements of the ATSICPP and requires stronger resourcing for Aboriginal and Torres Strait Islander family-led decision-making, culturally informed practice panels and cultural governance over decisions to place children in out-of-home care. QATSICPP's evidence shows that the current model does not operationalise the ATSICPP, making this reform essential to improving outcomes for Aboriginal and Torres Strait Islander children[xviii].

Recommendation 3. Increased Investment in the Aboriginal and Torres Strait Islander Family Wellbeing Program: A doubling of current investment in Aboriginal and Torres Strait Islander Family Wellbeing Services is needed . This significant increase in resources will enable a tiered, more effective response to the range of needs of Aboriginal and Torres Strait Islander children and families. This recommendation aligns with the Prevention and Connection elements of the Child Placement Principle[xix].

Recommendation 4. Increase of Investment in the Aboriginal and Torres Strait Islander Family Participation Program: To significantly increase investment in the Family Participation Program to ensure all families in contact with the child protection system have access to family-led decision-making processes at all significant points along the child protection continuum. This recommendation aligns with the Participation, Connection and Placement elements of the Child Placement Principle[xx].

Recommendation 5. Expand Family Caring for Family Program: It was identified that increased investment in a staged rollout of the Family Caring for Family program across the state over the next three years would have impact to children and families involved with Child Safety. There is an urgent need to invest in new models of care for Aboriginal and Torres Strait Islander children who are not able to be cared for by their parents. Repurposing the current investment in residential care to support the extended family in caring for their children would reduce entry to and support exits from the statutory system. This recommendation aligns with the Prevention, Placement and Connection elements of the Child Placement Principle.[xxi]

Recommendation 6. Repurposing Regional Child Safety Teams: All Safety Concerns could be assessed through Regional Child Safety Teams such as the C teams. QATSICPP recommends that any report raising concerns about the safety and wellbeing of a child in care should go to one of the Department's regionally based teams for immediate triage and assessment. Furthermore, introducing independent auditing of Standards of Care Reviews (SOC) and establishing a culturally safe, third-party support mechanism; such as a dedicated toll-free hotline for Aboriginal and Torres Strait Islander parents and carers—would significantly strengthen safeguards. These reforms must be underpinned by transparency, with publicly reported, disaggregated data on harm reports, outcomes and departmental responses.[xxii]

Recommendation 7. Mandating Alternative Dispute Resolution: Should be an option for a family before a child is removed. As noted in ATSILS child protection litigation submission (2024) It was 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 family law model. In this approach, parents should have the right to legal representation and where agreement is reached, the matter could be formalised in a written agreement or if necessary, by consent orders (for example, a directive or supervision order). Community Legal Centres, including

ATSILS, could provide ADR services in the child protection space, noting that this would require adequate funding to meet this legal need. Resolving matters through ADR, rather than through court proceedings, would also create significant savings for taxpayers.[xxiii]

Recommendation 8. Adequately resourcing QCAT: and reconsidering the matters that QCAT can deal with and the matters that the court can deal with in the interests of expedient finalisation of child protection matters—There must be sufficient funding directed to the Queensland Civil and Administrative Tribunal (QCAT). Applicants that are seeking a contact review via QCAT are currently experiencing exorbitant delays when moving through the QCAT process and this has very real impacts for children and families.[xxiv]

Recommendation 9. Reform legislation for unborn babies to ensure attachment and connection: The legislation needs to be clear on what occurs with respect to unborn children. ATSILS and QATSICPP continue to hold concerns about the welfare of babies upon birth, where the parents are the subject of a notification or whilst the mother is pregnant. It is the experience of both organisations that Child Safety does not act until the baby is born on the basis that, once born, there exists a legal person but before then, there is no legal person. This is setting parents and the child up for failure. By engaging parents at the earliest possible stage and ensuring Child Safety is informed of their progress throughout early intervention, families receive the support they need to strengthen the connection and safety of both mother and baby within their support network[xxv].

Implementation principles

Drawing upon its key findings, QATSICP's Child Protection Litigation project identified a set of principles critical to achieving the vision of a reimagined child protection litigation system.

These principles include:

- Respect for Aboriginal and Torres Strait Islander cultural values and practices
- Involvement of First Nations peoples and organisations at all stages in the process
- Compliance with the Aboriginal and Torres Strait Islander Child Placement Principle
- Commitment to family preservation and reunification
- Family-centric practice
- Trauma-informed and attachment-sensitive approaches
- Equitable resourcing to enable participation
- Accountability and oversight

Principles represent what we value most and strive to achieve. They are the foundation of high quality, culturally safe and responsive practice.

Contact

For questions about this submission, please contact Ms Helena Wright, DCEO Policy and Strategy on [redacted] or [redacted]

Appendix A: QATSICPP Child Protection Litigation Project Case Stories

As part of the QATSICPP Child Protection Litigation project suitable case studies were identified through consultation with QATSICPP staff and member services. The case studies provide a snapshot of the real-life experiences of Aboriginal and Torres Strait Islander children and families from across Queensland as they navigate the child protection litigation system. The hope is that these stories bring a human element to the reform project and create a deeper understanding of how the current system impacts children and families.

All names have been changed to protect the identities of the individuals involved.

Case study one

Background

Mary was an Aboriginal mother residing in a regional city in central Queensland. She had two children aged eight and ten and was pregnant with her third child. The two older children were subject to Short-Term Custody Orders, with applications for Long-Term Guardianship Orders before the court. The children came into care due to concerns about domestic violence, drug use and neglect. They were residing in a kinship care placement with their maternal grandmother, supported by the Department. Mary and the children spent time together four times weekly through supervised and unsupervised contact. Mary and the children's father, Colin, were separated and had been for some time, with no intention of resuming their relationship. Colin worked away from home for three weeks each month, and when he did return home, he lived in a separate dwelling from Mary. Colin provided limited practical assistance to Mary during the pregnancy, such as lawn mowing. Police records regarding the domestic violence concerns found one Police callout for an argument. There was no ongoing pattern of violence or Domestic Violence Orders in place. Colin acknowledged smoking cannabis in the evenings to ease his anxiety, but no other current substance use concerns were noted. FWS was engaged with the family and supporting the reunification of the older children to Mary as the primary caregiver. Feedback from workers was positive, noting the significant changes Mary had made in her life to enable the children to be returned to her care.

Litigation process

FPP engaged with the family before the arrival of the new baby, as it became increasingly clear that the Department held concerns for the unborn child and was considering statutory intervention. Building on the progress demonstrated by Mary, through a family-led decision-making process the service developed a Family Plan, including identifying appropriate supports to enable Mary to care for her baby at home after birth. At this point, most Case Plan goals for the older two children had been met, a Family Plan for the unborn child had been developed, and support services had provided positive reports about the family's progress to address the original child protection concerns. Despite this, the Department advised Mary that they intended to apply for a Temporary Custody Order to remove the baby following birth based on their assessment that the child would be at risk of significant harm due to the unknown nature of the relationship between her and Colin and their alleged history of domestic violence.

Furthermore, the Department advised that they intended to proceed with an application for a Long-Term Guardianship Order for the baby to align with applications before the court for her two older children.

Outcome

Distressed by this decision and process, FPP approached a Child Safety Regional Practice Leader in another region to express their concerns and seek a review of the decisions to pursue or progress orders for all three children. FPP provided substantial evidence to support the claims made by the community that the older children could be safely reunified with Mary and the baby could remain in her care following birth. The Practice Leader expressed serious concerns about the inadequate assessment, poor practice and lack of evidence to support applications for higher orders, taking their concerns up with the Service Centre. Subsequently, DCPL amended their applications for the older children and a Support Service Case was opened for the unborn child. Mary's baby was not removed. The mother-baby attachment was preserved for Mary and her newborn child, and the older children were eventually reunified to her care. Without the strong advocacy and support of FPP and FWS, all three children would have been in the care of the State until they were 18 years old.

Case study two

Background

Summer was a non-Indigenous mother residing in a regional city in south-west Queensland. She had four older children aged 12, 10, 8 and 5 years old and was pregnant with her fifth child. The children's father, Harry, was an Aboriginal man residing in a regional city in central Queensland, approximately 600 kilometres away. The older children were all subject to Short-Term Custody Orders and lived with family in a kinship placement supported by the Department. The children came into care due to concerns about the parents allowing unsafe individuals around them and suspected child sexual abuse of one of the older children. Summer and the children had family time twice a week, including unsupervised overnight contact every Friday night and watching the children play sports on the weekend. Feedback from family, support services and Child Safety indicated that contact was positive and safe. Summer was compliant with drug screen requests, which showed she was not using substances. While Summer wanted the older children restored to her care, she understood their need for stability and was happy that they were being cared for by family. Summer had made significant changes to her life and was hopeful that this would mean she would be able to keep her baby with her following birth.

Litigation process

FPP engaged with the family as the older children's orders were nearing expiry. Summer and Harry had been informed that the Department intended to apply for Long-Term Guardianship Orders. While the Department indicated they were worried about the unborn child based on historical concerns, Summer was not aware that they had an open investigation about her baby and was not offered a Support Service Case to enable her to demonstrate she was willing and able to care for the child once born. FPP met with Child Safety as part of the development of the Family Plan for all five children, with the Department not discussing their plans about the unborn child. Given no current concerns were identified, both FPP and the family were confident that the baby would remain in Summer's care. Summer's baby

was born in a Brisbane hospital due to complications. Following birth, Summer was informed that the Department had been granted a Temporary Custody Order and was applying to the courts for a Long-Term Guardianship Order. Summer was allowed to stay in the hospital with her baby for an extended five-day stay before they were separated. The baby was placed with the same family member caring for the older children.

Outcome

This case remains before the courts, with Summer contesting the application for a Long-Term Order for her baby. FPP noted that DCPL is relying on historical evidence in the application, with no current safety concerns identified about Summer and her baby. The primary motivation for seeking a Long-Term Order for the baby is to ensure all applications before the court regarding the five children are aligned. Summer has since informed FPP staff that while pregnant, Child Safety met with her individually and encouraged her to voluntarily agree to the Department assuming custody of her baby at birth. Summer reported that she was confused about why they suggested this action and did not understand what was being asked of her. There are concerns amongst stakeholders that these conversations occurred in the absence of appropriate support services and without Summer being fully informed of her rights or afforded access to legal advice.

Case study three

Background

Hannah was an Aboriginal mother residing in a metropolitan city in south-east Queensland. She had five children and was pregnant with her sixth child. Hannah's five older children were all on Long-Term Guardianship Orders. The children came into care due to concerns about domestic violence and drug use. Hannah had a long history of contact with the child protection system, including as a child in care herself. At age 14, Hannah self-placed with friends due to negative experiences in residential care and started a relationship with Ron, a man ten years her senior. Ron was an extremely violent man who regularly used illicit drugs and engaged in criminal activities. Ron and Hannah had five children together. Over the years, Hannah worked with Child Safety to mitigate the risk of harm to the children, including under two Short-Term Custody Orders. On the day the children were finally restored to Hannah's full-time care, Ron visited her home and assaulted Hannah in front of the children. The children were

subsequently removed from her on the basis that Hannah failed to protect them from their father and were placed into long-term out-of-home care. Ron was later incarcerated, and Hannah spiralled into a period of heavy drug use. It was during this period that Hannah started a relationship with Matt, who also used drugs and violence.

When she discovered she was pregnant, Hannah ceased using drugs and ended the relationship with Matt. She self-referred to her local FWS and FPP, recognising that the Department may take steps to remove her baby after birth due to her other children already being in care. Hannah completed a community-based rehabilitation program with a drug and alcohol service, accessed regular antenatal care through her local Aboriginal Medical Service, and installed extra security at her home in case Matt attempted to contact her. Under pressure from Child Safety, Hannah took out a Domestic Violence Order against Matt despite concerns that this could lead to an escalation in his behaviour. She also commenced semi-supervised contact with her older children. She was determined to have a different experience with this baby and was hopeful she would be allowed to parent her newborn child.

Litigation process

The Department received an unborn child notification for Hannah's baby but did not commence the investigation and assessment for six months. When they became aware that the Department had opened an investigation, Hannah and FWS attempted to engage the Department to demonstrate the positive changes Hannah had made in her life and advocate for the least intrusive intervention possible once the baby was born. The week before the baby's arrival, the service participated in a Practice Panel where it became increasingly apparent that the Department had pre-determined the assessment outcome based on Hannah's child protection history. The Department subsequently removed the baby from Hannah a mere three hours post-birth, placing the infant with non-Indigenous foster carers under a Temporary Assessment Order. FWS supported Hannah in engaging legal representation to challenge the removal. A Court Assessment Order was approved, with a subsequent 28-day extension, before DCPL initiated an application for a Short-Term Custody Order.

Outcome

FWS challenged the removal and Order, taking the case to the Child Safety Regional Director and Practice Leader. A change in Child Safety Officer finally allowed for a new approach on the part of the Department. Hannah was allowed a mix of supervised and unsupervised family time with her baby in her home. This enabled Child Safety to observe Hannah's parenting capacity and feel confident in their assessment that she was a willing and able parent. DCPL continued to push for a Short-Term Custody Order for eight months, finally amending their application to a Protective Supervision Order when the evidence was overwhelmingly in Hannah's favour. While Hannah's baby has now been restored to her full-time care, the early disruption of mother-infant bonding and attachment and the deep distress caused to the family by the protracted legal proceedings has had a lasting impact. This could have been avoided had the Department proactively engaged with Hannah during her pregnancy and completed a fair and balanced assessment of the current risks, taking on board the feedback from service providers involved in her care and support. This case illustrates how DCPL's unresponsiveness to changes in the risk and safety assessment, and subsequent failure to promptly amend or withdraw applications before the court, negatively impacts children and families.

Appendix B: QATSICPP Child Protection Litigation in other Australian jurisdictions

New South Wales

In 2008, the New South Wales Government introduced the Aboriginal Care Circle pilot program. Initially established in only one regional location, the program expanded to several regional sites following recommendations made by the Wood Inquiry. The program was innovative for the time, offering an alternative within the court system for deciding child protection care matters for Aboriginal children. The model uses an Alternative Dispute Resolution process to support Aboriginal families' engagement in Children's Court proceedings, loosely based on a combination of family group conferencing and sentencing circles.26 The model's scope is limited to 'care matters', that is, where the child should live, what family contact arrangements should be in place, and what services or support can be made available to the family.

At face value, the Aboriginal Care Circles model is a culturally appropriate form of Alternative Dispute Resolution. 'In taking the matter out of the courtroom space and into a community setting, and by involving a panel of local Aboriginal Elders and community representatives in the forum, Care Circles seek to reduce barriers that exist between Aboriginal people and the child protection system' (p14).28 While acknowledging that it is a marked improvement on the often alienating and adversarial court process, including mainstream models of Alternative Dispute Resolution, Ciftci argues that the Care Circle model is ultimately limited in its capacity to support Indigenous justice. Her thesis concluded that the model did little to disrupt the power imbalance between the State and First Nations families and that in the tension between the 'two worlds', the values of the mainstream child protection system continued to be prioritised.29

In 2016, the Family is Culture Independent Review was commissioned to examine the reasons behind the high numbers of Aboriginal children in out-of-home care. The final report was handed down in 201930 and noted concerns about the lack of compliance with the Aboriginal and Torres Strait Islander Child Placement Principle and Magistrates' understanding of the real intent and elements of the Principle. The report made a series of recommendations about reforming the Children's Court, including improving the quality of evidence presented to the court, allowing for the rules of evidence to apply in certain circumstances, and appointing specialist Children's Magistrates to hear child protection matters. Of particular note, the report recommended the establishment of an independent statutory agency to make decisions about child protection proceedings and to conduct litigation on behalf of the Department of Communities and Justice, similar to the role of the Office of the Director of Child Protection Litigation in Queensland.

The Family is Culture final report also recommended establishing a dedicated court list for Aboriginal families to ensure the court process was more meaningful and culturally appropriate. The report noted that such a model could help to rectify some of the deeply entrenched mistrust of the child protection system among Aboriginal families and communities. Key elements of the proposed model included the appointment of Aboriginal Magistrates, the involvement of Aboriginal Elders and other respected community members in decision-making, the inclusion of Aboriginal court staff and services, and a change to how court proceedings were conducted to make them more culturally safe and responsive.

In late 2023, the Winha-nga-nha List was established as an alternative court process for Aboriginal and Torres Strait Islander families involved in care and protection cases at the Dubbo Children's Court.31 Winha-nga-nha is a Wiradjuri word meaning 'to know, think, remember'. The Winha-nga-nha List provides a less formal courtroom setting and adequate time to listen, talk and think about what is important for children. Aboriginal court staff support families involved with the court. Aboriginal Elders and respected community members, extended family, other support people and non-legal advocates may be invited to attend by the family. Cases in the Winha-nga-nha List may be referred for earlier and more frequent dispute resolution conferences to enable greater participation of families in proceedings.

This new model was developed through a co-design process. Given the short time it has been operating, no published reports are available about how the court list operates or the outcomes achieved.

Victoria

The Aboriginal Child Specialist Advice and Support Service is a statewide program that provides cultural information, advice and consultation to statutory child protection practitioners.32 First established in 2002, the service is primarily delivered by the Victorian Aboriginal Child Care Agency (VACCA), except in Mildura and Swan Hill, where it is administered by the Mallee District Aboriginal Services (MDAS). Upon receiving a notification about an Aboriginal child, the Department of Families, Fairness and Housing must consult with VACCA or MDAS to seek further information and advice in deciding if the matter should be investigated. Where it is determined that it will proceed to an investigation, the Department must inform and involve the relevant service in all significant decisions related to the child as the case progresses. The service also plays a critical role in identifying members of the child's kinship or community network who may be able to care for the child should they be unable to continue living at home, in accordance with the Child Placement Principle placement hierarchy. Although the program has been operating for over two decades, no publicly available formal reviews or evaluations were found.

Marram-Ngala Ganbu is an innovative court response that aims to improve outcomes for Koori children and families involved in child protection legal proceedings.33 Marram-Ngala Ganbu means 'we are one' in Woiwurrung language. The program was initially established at the Broadmeadows Children's Court in 2016 and expanded to the Shepparton Children's Court in 2021. Marram-Ngala Ganbu provides a culturally safe environment for Koori families by taking place in a less formal courtroom setting where culture is acknowledged and celebrated, and Aboriginal court staff support families before, during and after court. More time is allowed for conversation, with the Magistrate and family sitting around the table together and talking directly to each other. Elders, extended family and other support people are encouraged to attend and provide input to the discussions. There is a strong emphasis on supporting healing through therapeutic justice practices, supporting child and family-centred approaches, and adhering to the Aboriginal and Torres Strait Islander Child Placement Principle. Court staff function with a high level of cultural competence developed over time through cultural induction and mentoring.34

A 2019 independent evaluation found that Marram-Ngala Ganbu provides a 'more effective, culturally appropriate and just response for Koori families through a culturally appropriate court process that enables greater participation by families and culturally-informed decision-making' (p4).35 Koori families are more likely to attend court, follow court orders and be satisfied with the court's decisions. There has also been improved compliance with the Child Placement Principle, with early indicators suggesting more children remain living with their families and, where they have been placed in out-of-home care, more children have been safely reunified with family or are living in Aboriginal kinship care. The evaluation noted opportunities to improve the model, including expanded access to Aboriginal community-controlled legal support services, better communication and promotion of Aboriginal family-led decision-making processes to families, and expanded roles for Elders beyond their involvement in individual family cases.

Western Australia

Dandjoo Bidi-Ak is a therapeutic pilot court within the Children's Court of Western Australia. Dandjoo Bidi-Ak means 'together on a path' in Nyoongar language. The primary aim of the adapted court process is to encourage reunification between families through a non-adversarial, solutions-focused approach that incorporates the principles of therapeutic jurisprudence.36 A less formal courtroom setting is used, with the courtroom decorated with Aboriginal art and everyone sitting around a table together. Court and legal staff use plain language to ensure everyone understands what is being discussed. Aboriginal court staff welcome families and are available throughout the process.

Limited information about the Dandjoo Bidi-Ak court process is publicly available. An external evaluation of the program conducted by Curtin University is expected to be completed by the end of June 2024.

Conclusion

Other jurisdictions are moving to develop and implement culturally safe and responsive court models for Aboriginal and Torres Strait Islander children and families in contact with the child protection system. Each of these models has been co-designed and developed with Aboriginal and Torres Strait Islander peoples, communities and organisations to reflect the local cultural context and protocols. Proceedings are held in less formal environments and more time is allowed to enable meaningful participation. Aboriginal and Torres Strait Islander Elders and respected community members play an important role in guiding and advising the family and Magistrate about what is needed to keep children safe and connected to their family, community and culture. First Nations court staff,

advocates and legal services support families throughout the process. There is a real focus and commitment to upholding the Child Placement Principle and supporting family healing through a therapeutic justice approach.

It is important to note that although these modified court processes and proceedings may be seen and experienced as a positive step towards improving the system for First Nations children and families, they ultimately still occur within a Western justice framework. There remain strong calls for genuine self-determination and valuing of Aboriginal and Torres Strait Islander cultures through structural change that enables First Nations control over First Nations child welfare.

It is also important to recognise that changing the court system alone is not enough to effect real change. The court system is one part of the statutory child protection litigation system. Efforts must also be directed at Prevention, that is, preventing contact with the system in the first instance and preventing entry to out-of-home care.

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