

Queensland Independent
Disability Advocacy Network

Guide to Child Safety for advocates

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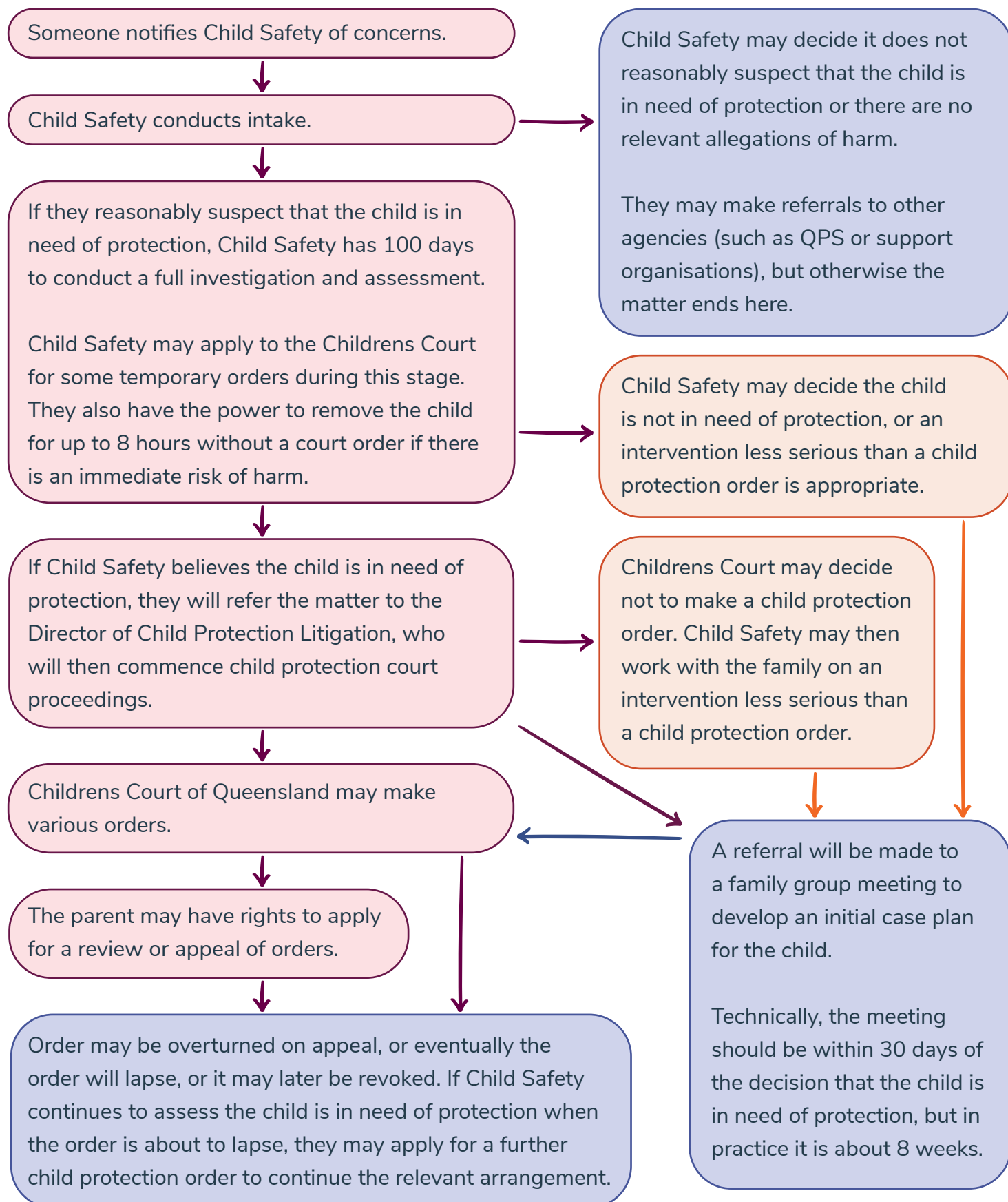
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This guide has been written by Queensland Advocacy for Inclusion (QAI), an independent, community-based systems and advocacy organisation for people with disability in Queensland, and Chair of the Queensland Independent Disability Advocacy Network (QIDAN). QAI would like to thank MinterEllison for their pro bono work that supported QAI to create this guide.

This publication is for general information only. It is not legal advice and must not be relied on as legal advice. You must seek legal advice about your own particular circumstances.

Queensland Child Safety at a glance

This flowchart shows the general steps that may play out in Child Safety removal processes. Note that there may be a right to review any Child Safety decision along the way. Although Child Safety does have some guidance in relation to how to approach matters that involve parents with a disability, generally the Child Safety process is the same when it involves parents with, or without, disability.



Child Safety intake processes

When Child Safety has a reasonable suspicion that a child or unborn child is in need of protection, they are legally required to respond to those concerns. They start this process by following the below steps.



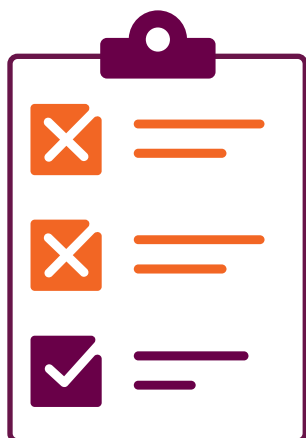
Someone notifies Child Safety of concerns

Anyone may notify Child Safety of Child Protection concerns, verbally or in writing. Certain people are obligated by law to make reports to Child Safety, such as teachers, doctors and police officers. All adults in Queensland have a legal obligation to report sexual offending against a child by another adult to the police.



Child Safety gathers information

Child Safety will gather information relevant to the investigation and assessment of child protection concerns. This may include personal information, like names and dates of birth, addresses, cultural identity, disability information and information about the risk posed and the ability of the parent/s to protect and care for the child.



Child Safety assesses if the child is in need of protection

If they reasonably suspect that the child is in need of protection, Child Safety has 100 days to conduct a full investigation and assessment.

Child Safety may apply to the Childrens Court for some temporary orders during this stage. They also have the power to remove the child for up to 8 hours without a court order if there is an immediate risk of harm.



Child Safety records intake response

They will then record one of the following responses:

Limited intake response

Information received does not relate to Child Safety's core business or contain allegations of harm. No further action is taken by Child Safety.

Intake enquiry

Information relates to specific types of harm or to the death of a child. Child Safety will complete a child protection record for the family and provide information to the Queensland police and other jurisdictions as necessary. No further action is taken by Child Safety.

Child concern report

Child Safety does not reasonably suspect that a child is in need or protection or duplicate concerns have previously been received. Child Safety will refer the family to another agency and/or provide information to the police. No further action is taken by Child Safety.

Notification

Child Safety reasonably suspects that a child is in need of protection. Child Safety will escalate the matter to the investigation and assessment stage.

Additionally, Child Safety officers have the power to move a child under the age of 12 to a safe place to be cared for until a parent or family member resumes care of the child. If this power is exercised during the intake stage, Child Safety will record the use of this power as a safe place movement record.

Investigation & assessment processes

Once Child Safety has completed the intake stage, if it reasonably suspects the child is in need of protection, it will record a 'notification' and escalate the matter to the investigation and assessment stage. Below is a summary of what happens during this stage.

In total, the investigation and assessment stage should be completed within 100 days from the time of recording of the notification.

Note: Child Safety does have some guidance on how to approach matters that involve parents with a disability. This will impact the approach they take and questions they ask during the investigation and assessment process. For example, when assessing the risk to the child they will take parent's disability into account. However, generally, the child safety process is the same when it involves parent/s with disability, compared to parent/s without a disability.

Step

1 Child Safety plans their investigation

Child Safety will plan the investigation and assessment process, considering relevant activities that may need to be undertaken, and will refer the matter to the Queensland Police Service if they have a reasonable belief that any harm to the child involves a crime.

Some considerations during the process may include:

Referral to
Queensland
Police Service

Joint service
response with
Queensland
Police Service

Identifying
all the key
people
involved

Staff
safety

Cultural
factors

Referral to
suspected
child abuse &
neglect team

Assessment
and service
connect
co-response

If the child was
assessed as
unsafe by an
intensive family
support service

2 Investigation starts

Once Child Safety has planned their investigation and assessment process, they will decide on the appropriate timeframe to respond to the notification.

Each notification from the intake stage is assigned a response priority for starting an investigation and assessment. These are:

- For a child, either 24 hours, 5 or 10 days
- For an unborn child, either 5 or 10 days

Child Safety take multiple factors about the child's situation into account, especially the immediate risk of harm to the child, when assessing which response time to assign.

If Child Safety needs to start their investigation within 24 hours, they must see and interview the child as age and developmentally appropriate. If travel distance or weather prevents a rapid response from Child Safety, they may rely on other professionals in regular contact with the child (such as health professionals, medical practitioners or support services) to assist with an immediate investigation. This may involve organising transport or making arrangements for the child. If there are no other professionals in contact with the child, Child Safety will ultimately exercise powers under legislation to be able to see the child.

Child Safety will seek information that informs their assessment about the safety of the child.

3 Child Safety informs parent/s

Child Safety or police must give details of the alleged harm or risk to at least one parent or guardian and must not disclose notifier's details.

If the parents are estranged, Child Safety will only provide information specific to the alleged harm and will not release information about one parent's circumstances to the other parent. Child Safety will consider the child's wellbeing and best interests, whether there is domestic violence, or whether an adult in the household has a criminal matter that presents unacceptable risk. If so, Child Safety may discuss with the police.

Child Safety will not provide information to a parent where that may jeopardise a criminal investigation, or expose the child to significant harm.

4 Interviews

Child Safety will interview both the child / children and parents. There must always be 2 officers present when conducting interviews.

When conducting interviews, Child Safety must:

- Make reasonable attempts to accommodate requests for legal representation.
- Consider all requests for support people, but will consider the appropriateness of the support person. In the case of children, Child Safety will ensure the child feels safe and supported during interviews (for example, if having a support person present will make it less likely the child will disclose abuse, this may not be appropriate).
- Provide their name, role, department, show their identity card, explain the purpose for their visit and give a brochure, titled 'When child safety officers visit your home', outlining their rights.

Generally, Child Safety will gather the following information from interviews:

- Name, date of birth of all children and adults in the home.
- Home environment context, cultural factors and available support.
- Presence and impact of risk.
- Response to the specific concerns raised.
- Parenting ability (parental disability).
- Understanding the of the child's physical and cognitive development.
- The response of the alleged person responsible for harm or risk of harm.



Interviewing children

Child Safety must seek permission from the parent, guardian or care provider to contact children.

If permission is denied, Child Safety may exercise powers to:

- Enter the place where the child is living to search the place or speak to the child, if the child is in immediate risk of harm.
- Apply to the Childrens Court for a temporary assessment order (see page 25 on Orders).

If Child Safety reasonably believes that it is in the child's best interests for them to speak with the child before telling the parents or guardians about the investigation, they may enter the child's school or care service to speak to them. If physical injuries are present, Child Safety may seek a second professional, consider a medical examination, or photograph the injury.



Interviewing parents

Child Safety will interview all parents in the home, parents who live outside the child's home, and those accused of harming the child.



Interviewing others

Child Safety may also seek interviews with anyone else alleged to be responsible for harm to the child, any children identified during the investigation or other adults living in the home.

Step

5 Safety assessment

Child Safety will carry out an initial safety assessment during the first face-to-face contact with a child and family. Safety assessments can occur throughout the entire investigation and assessment process and there can be multiple safety assessments throughout the course of the investigation.

A safety assessment is used to determine if the child:

- Can stay at home safely; or
- Can stay at home with protective interventions; or
- Must be placed outside the home to keep them safe.

Safety assessments are also conducted if immediate harm is indicated. Practically, safety assessments often occur at this stage in the process.

When working with a person who has a disability, Child Safety will take into account their knowledge of parents with a disability when evaluating the harm. If harm is indicated, Child Safety may work with the parent to devise an immediate safety plan so the child can remain at home, or decide the child needs protection or placement. Child Safety is aware that a parent's disability does not preclude them from being able to parent, and many parents who have diagnosed disabilities successfully raise their children with no intervention or assistance.

At times, however, a parent's physical, psychosocial or intellectual disability may limit their capacity or willingness to protect their children from harm, or may result in behaviours that create imminent danger to the child.

If Child Safety considers the child to be in immediate harm, they may:

- Enter and search the home to see the child if they have been denied contact or access to the child
- Take the child into custody while they apply for a temporary custody order or temporary assessment order, for a maximum of 8 hours, or less if the order is decided earlier.

If a safety plan cannot be made, Child Safety can use a care arrangement before placing the child. This could be an assessment care arrangement, a temporary assessment order or temporary custody order (see page 25 on Orders).

If no immediate harm indicators are identified, Child Safety will continue with their investigation and assessment.

Step

6 Assessment of harm and risk of harm

After gathering all the relevant information during interviews, Child Safety must make a professional judgement about:

- Whether the severity of harm to the child is likely to be significant.
- Whether the likelihood of future harm to the child is probable.
- The overall risk of significant harm to the child.

Some key questions they will consider are:

- Has the child experienced significant harm?
- What is the likelihood the child will suffer harm in the future?
- What is the parent's ability and willingness to protect the child from harm, including their capacity to act protectively?

Child Safety officers may conclude that a parent's disability meets the harm indicator:

'Parent's mental health concern, emotional instability or intellectual or physical disability results in behaviours that create imminent danger to the child'

See the Child Safety Practice Manual for more information on how Child Safety assesses risk.

7 Potential outcomes

There are six possible investigation and assessment outcomes that Child Safety may decide on. Three are where the notification of harm was substantiated and there is need for intervention, two are where the notification of harm was unsubstantiated and there is no need for intervention and one is where there was no possible outcome from the investigation and assessment. The below details what leads Child Safety to its decision, and what happens next for each possible outcome.

Substantiated - Child in need of protection

There is an unacceptable risk of significant harm to a child and one of the following applies:

- The child has experienced significant harm and there is an unacceptable risk of significant harm as the child does not have a parent able and willing to protect them.
- No harm has occurred, but there is unacceptable risk of significant harm, as the child does not have a parent able and willing to protect them.
- There is an unacceptable risk of significant harm to the unborn child after birth and neither parent will be able and willing to protect the child from the harm.



What next?

Child Safety will decide which of the below of interventions is suitable.

Intervention with parental agreement

This involves the parents working with Child Safety to develop and implement a safety plan. The child will not be removed from the home. This is only appropriate if Child Safety believes the risk of harm can be addressed this way, the parents consent, and at least one parent is able and willing to work with Child Safety to develop and implement a case plan.

Child Protection Care arrangement

Child Safety may arrange care with someone other than the child's parents, like a relative. The parents have to agree with the arrangement for this option to happen.

Recommend a child protection order

If Child Safety is satisfied that the child is in need of protection and a child protection order is appropriate, it will refer the matter to the Director of Child Protection Litigation (DCPL) (see page 52). Child Safety will need to recommend to the DCPL what type of child protection order it considers appropriate (see page 23 on Orders). The DCPL will then follow its own processes to determine whether it will begin court proceedings to apply for that child protection order.

Substantiated - Existing intervention continues

Where the child is already subject to ongoing intervention and:

- Has suffered significant harm, but no unacceptable risk of significant harm has been identified during the current investigation;
- Has suffered significant harm and is at unacceptable risk of significant harm, without a parent able and willing to protect the child;
- Has not suffered harm, but is at unacceptable risk of significant harm, without a parent able and willing to protect the child; or
- An unborn child will be at unacceptable risk of significant harm after birth.



What next?

The type of intervention that was already in place will continue.

Substantiated - Child not in need of protection

The child has experienced significant harm, but there is no unacceptable risk of significant harm as the child has a parent able and willing to protect them.



What next?

The case will be closed. However, if appropriate, Child Safety may refer the parents to another agency or support service.

Unsubstantiated - Existing intervention continues

Where the child is already subject to ongoing intervention and:

- No significant harm has occurred and no unacceptable risk of significant harm has been identified during the current investigation and assessment; or
- An unborn child is not at unacceptable risk of significant harm after birth.



What next?

The type of intervention that was already in place will continue.

Unsubstantiated - Child not in need of protection

It is assessed that either:

- No significant harm has occurred and there is no unacceptable risk of significant harm, as the child has a parent able and willing to protect them; or
- An unborn child will not be at unacceptable risk of significant harm after being born.



What next?

The case will be closed.

No investigation and assessment outcome

Happens on rare occasions if:

- The investigation and assessment could not be done because the child and family could not be located.
- There is insufficient information to decide on an outcome.
- The parent has refused contact with the child and a Temporary Assessment Order (TAO) or Court Assessment Order (CAO) has been applied for (see page 23 on Orders), but the order was not granted by the magistrate or the court.
- The child has died before the investigation and assessment was completed and there is insufficient information to decide on an outcome.
- A pregnant woman advises she is no longer, or has never been, pregnant.



What next?

The case will be closed.

Child protection court proceedings

Child Safety may decide from its investigation and assessment that the child's need for safety and protection cannot be met by providing any type of ongoing intervention other than a child protection order. If this is the case, Child Safety will recommend the Director of Child Protection Litigation (DCPL) begin child protection proceedings in court.

The DCPL will follow its own processes to determine whether to begin child protection proceedings.

Below is an overview of what happens at child protection court proceedings.

What court will the proceedings take place in?



Child protection proceedings take place in the Childrens Court. The Childrens Court is part of the Magistrates Court, the lowest level of court in Queensland. The Childrens Court (Magistrates Court) deals with things that happen to people under 18 years of age and protects the rights of parents and children.

Who can be involved in child protection proceedings?

Ordinary parties

A 'party' to a legal proceeding is a person, group or entity who is directly involved in the court case. The parties to a child protection proceeding are:



The child or young person.



The applicant (the party who started the child protection proceeding, which is generally the Director of Child Protection Litigation).



The respondent (the party who is being taken to court, which may include a parent, long-term guardian or a person the child lives with).

[Click here for more information on who may be involved in child protection proceedings.](#)

Non-party participants

People who are not parties to a child protection proceeding and wish to be involved may become a 'non-party participant' to the proceedings.

Non-party participants may take part in the proceeding by doing all or some of the things a party is or may be allowed to do. The court will determine the extent to which a non-party participant may participate in the proceedings.

In deciding whether to include a non-party participant, the court will consider:



Whether the person can give relevant information to help the court
(for example, information about the child and parents).



The person's relationship with the child.

Examples of non-party participants who have previously been approved by the courts includes grandparents, family members and child carers.

People who wish to make a non-party participant application with the court should seek legal advice. If a non-party applicant cannot afford to pay for legal advice, they should contact Legal Aid Queensland or their local Community Legal Centre to see if they can provide advice on making their application, although it is very difficult to get free advice to assist with these applications.

If a court makes an order to grant a non-party participant the right to be involved in the proceedings, the participant should contact Legal Aid Queensland for assistance.

[Click here to find out more about non-party participants.](#)

What does the court process involve?

The length and number of steps involved in child protection proceedings can vary greatly depending on factors like:

- What order the DCPL is applying for.
- The nature of the case.
- Whether the court orders specific extra steps, like a court-ordered conference.
- Whether the DCPL applies for 'interim' orders, which means temporary orders while the final decision is being made.

However, a child protection proceeding generally follows the steps shown on the next page.

General steps to a child protection proceeding

Application is made. The DCPL file an application at a Magistrates Court registry. This will then be given to the parent(s) of the child.

First court appearance, called a 'mention'. At the mention the parents of the child are usually present when the Court considers various procedural matters. The Court may decide to postpone or 'adjourn' the case while other steps take place. The Court could also make any of the below interim orders that will last for the period of adjournment.

They could order:

- Temporary custody of the child to Child Safety or a family member.
- A parent not have contact or only have supervised contact with the child.
- Child Safety or police are allowed to enter and search a place to find the child.
- A family group meeting to develop or review a case plan for the child or make recommendations about the child's wellbeing. These meetings are typically organised by a family group meeting convenor. (See page 52 for the Who's who in child protection section).
- A separate representative for the child be appointed.

For an in-depth explanation of child protection proceedings see the Queensland Courts Child Protection Benchbook.

- If the parents argue a child protection order should not be made, the Childrens Court can order the different parties to have a conference. The purpose of this is to identify issues in dispute, consider alternatives and try to reach an agreement over actions in the child's best interests.
- If there is a dispute about the child continuing to remain in the custody of Child Safety, or in relation to contact arrangements for the child pending the final outcome the case, the Court may adjourn the case for an 'interim hearing'.
- The Court may also appoint an expert with special knowledge or skill to help the court, for example by providing psychiatric assessments, parenting capacity assessments, paediatric reviews and medical opinions.

Within 10 days of the first court appearance or by another date set by the Court, the DCPL must file a formal statement (referred to as an 'affidavit') to support the application. They will also give this to the parent(s) of the child. In some cases, the DCPL may provide this earlier, if they have gathered all the information they need.

Second court appearance called a "review mention". This is generally listed for 4 weeks before the final hearing.

Final hearing happens.

The Court hands down its final orders.

What will the Court consider?

What information is the court interested in?

The Children's Court will make its decision by looking at:

- Information from Child Safety and/or the DCPL about a family. This may include information from the police, a school or doctors. The court will be told about the participation and effectiveness of the child's case plan. This information is generally contained in an affidavit of a child safety officer.
- Information from the child's parents about what has happened in the past and what they are doing to make sure the child is safe in the future.
- For First Nations children, Child Safety, the DCPL and the court are required to seek cultural advice from an independent entity or independent person about the child's connection to their family, culture and community.
- Information from any separate representatives about the child and family. This includes information from the child, the parents, and other important adults in the child's life. A separate representative might also ask someone like a social worker to write a social assessment report for the court that explains the child's family situation. In their report, the report writer will make recommendations about what should happen to look after the child and keep them safe.
- Information about the child's views and wishes. The court might get this information from Child Safety, parents, a separate representative, a child advocate or a direct representative. The court might also get the information directly from the child with their consent.

What witnesses can the Court call on?

DCPL can request the following witnesses attend a hearing:

- The Child Safety Officer (CSO) who completed the investigation and assessment with an outcome recommending a child protection order.
- The CSO with current case responsibility.
- The Child Safety senior team leader.
- Previous CSOs with case responsibility.
- The parent/s. Parents are especially likely to be called as a witness if they have filed a formal statement (an "affidavit") as evidence to support their position. However, in practice, this is only likely to occur if the parent/s have a high level of legal capacity. If the parent/s' disability means they have a low level of legal capacity, the Office of Public Guardian or other support services may be called to provide written evidence (or sometimes oral evidence) instead.
- Non-party participants in the proceeding, like grandparents, family members and child carers.

Any party (including the respondent, which may include a parent) to a child protection proceeding may call on witnesses or provide an affidavit from a witness to the court.

Witnesses must be available to be examined by the other party, in a process referred to as 'cross-examination'. For example, the witnesses of a parent will be questioned in court by the DCPL and vice-versa.

What type of documents will the Court look at?

Examples of the types of documents the Childrens Court will normally consider are:



Submissions

Submissions by the parties. These are written or verbal reasons why the court should make a certain decision.

Affidavits.

These are written statements sworn 'under oath' where the person writing it promises the information in it is true.

Social assessment reports

Prepared by child protection experts, such as a psychologist or social worker.

Reports

About a parent's criminal, domestic violence and traffic history.

Other documents

Any other relevant documents.

Principles

The Court must follow general principles that are outlined in the Child Protection Act 1999 (Qld), relating to the safety, wellbeing and best interests of a child (see page 62 for more information on the key principles in the Act).

What can the Court decide?

The Childrens Court makes decisions that are necessary to keep children safe. The Court can make several different 'child protection orders' to enforce these decisions (see page 23 for more).

Certain child protection orders may be made by the Childrens Court without notifying the child's parents in advance or hearing from the parents during the hearing. Usually, a child protection order will be made by the court if it thinks:



The child is not safe at home

Or



The child's parents are not 'able' and 'willing' to take care of the child.

The words 'able' and 'willing' have a specific legal meaning.

Able

A parent may be 'willing' but not 'able' to protect a child if they lack capacity to do so. For example, they could lack capacity due to health issues or because they are a victim of domestic violence.

Willing

A parent may be 'able' but not 'willing' to protect their child where they choose not to do so. For example, because the parent chooses an ongoing relationship with a person who is harming their child.

What if the parent disagrees with the decision?

There may be rights to appeal the Court's decision regarding the child protection order.

To find out more about appeal rights, see page 30 on review rights.

Family group meetings & case plans

Where Child Safety decides from its investigation and assessment that a child is in need of protection or needs ongoing help (such as support services or a care agreement), Child Safety must develop a 'case plan' for the child.

Case plans are made at a meeting between the parents, Child Safety and anyone else involved in a child's care or welfare. The first meeting is called a 'Family group meeting' however additional 'case plan review' meetings may occur also.

Family group meetings

What is it?

A family group meeting brings together a child or young person with the most important people in their life to empower the child, the child's family and community to be involved in decisions about the child and make a plan for the child's protection and care needs that focuses on safety and solutions.

Family group meetings are organised by a convenor (See page X for the 'Who's who in Child Safety'). The convenor prepares and facilitates the meeting. They may be a Child Safety officer or an independent convenor, but will not be the Child Safety officer involved with the child or young person or their family.

What happens at a family group meeting?

At the meeting those in attendance will discuss why the child is in need of protection, what has happened to the child, what has worked well and what the safety and wellbeing concerns are for the child. Participants at the meeting will be asked to share their concerns and hopes for the future of the family. Actions and goals will be developed with the input of all parties to best achieve the child's protection.

These discussions will be used to prepare a case plan.

When must a family group meeting be held?

A family group meeting must be held by Child Safety or a private convenor if Child Safety considers through its investigation and assessment that a child is in need of protection or needs ongoing help.

The Childrens Court may also adjourn a child protection proceeding and order that a family group meeting be convened. The court will generally consider whether to order a family group meeting at the first appearance during a child protection proceeding.

A child must have an appropriate case plan before a Court can make a final child protection order.

Who attends a family group meeting?

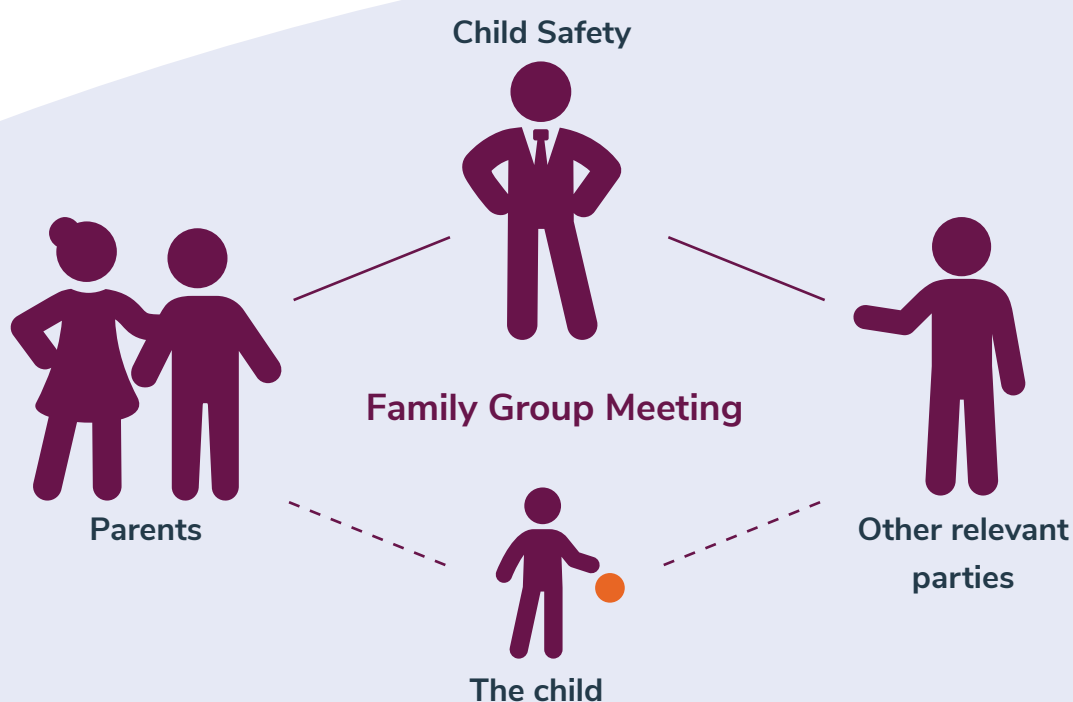
The family group meeting convenor must give the following people an opportunity to attend and participate in a family group meeting (even if a parent does not agree with their attendance):

- The child (unless it would be inappropriate because of the child's age or ability to understand)
- The child's parents*
- Other members of the child's family group who the convenor believes are likely to make a useful contribution to the development of a case plan*
- Other persons who have a significant relationship with the child (such as an approved carer)*
- Any legal representative of the child
- A representative of the Office of the Public Guardian (which protects the rights, interests and wellbeing of children and young people in the child protection system)
- Child Safety (where the convenor is not a Child Safety Officer)
- A representative of the Director of Child Protection Litigation
- A person who is providing help or support to a child or parent (such as a youth worker, advocate or legal representative)*
- Anyone else who the convenor believes can contribute to the development of a case plan

Persons marked with an * in the above list may be stopped from attending a family group meeting if the convenor believes their attendance or participation would have a negative impact on or would obstruct the purpose of the meeting, or is not in the child's best interests.

Not all of the participants to a family group meeting have to attend the same meeting at the same time. For example, if there have been allegations of domestic and family violence made against a parent, it might be more appropriate for there to be two family group meetings. One for each parent to attend with their supports, without the other parent present.

The same convenor would conduct both meetings.



What happens if I don't go to a family group meeting?

While it is not mandatory to attend a family group meeting, attendance is important so that you may be involved in discussions and planning around a child's safety, health and wellbeing.

If a person invited to a family group meeting tells the convenor that they cannot attend, the convenor must still take reasonable steps to ascertain that person's views. For example, the convenor may ask the person to write a statement or record a video with their views. The convenor will then make that person's views known in the family group meeting, for example by presenting the person's recorded material.

How many family group meetings may happen?

Whilst a family group meeting must be held to develop an initial 'case plan' for a child, additional family group meetings may be called to:

- Review an existing case plan and prepare a revised case plan if necessary.
- Consider, make recommendations about or otherwise deal with, another matter relating to the child's wellbeing and protection and care needs.

Can family group meetings be used as evidence?

Evidence of anything said or done at a family group meeting cannot be used in court as part of a criminal proceeding other than:

- With the consent of all persons participating in the family group meeting
Or
- In a proceeding for an offence committed during the family group meeting.

However, anything a person says or does at a family group meeting may be used as evidence for the purposes of a child protection proceeding. The mere fact that a person attends or participates in a family group meeting however does not mean the person is taken to have admitted anything alleged in a child protection meeting.

Case planning

What is a case plan?

A case plan is a written plan for meeting a child's protection and care needs. Each case plan lasts for 6 months. Family group meetings, discussed above, are used to help prepare case plans.

The following matters must be included in a case plan:



The goal for best achieving permanency for the child and the actions to be taken to achieve this goal. (See page 61 on the Act for more).

If the goal for best achieving permanency for the child is returning the child to the care of a parent – an alternative goal must be specified in the event that the timely return of the child to the care of the parent is not possible (known as 'concurrent planning').

For a child that is 15 years or older and does not have a long-term guardian – actions for helping the child transition to independence.

Goals included in a case plan should have due dates or be measurable in nature.

Additional matters to be included in a case plan

A case plan may include any of the following matters:

- Any other goals to be achieved by implementing the plan.
- Arrangements about where or with whom the child will live, including interim arrangements.
- Services to be provided to meet the child's protection and care needs and promote the child's future wellbeing.
- Child safety matters including particular supports or services.
- The child's contact with their family group or other people they are connected to.
- Arrangements for maintaining the child's ethnic and cultural identity.
- Matters for which a parent or carer will be responsible.
- A proposed review day for the plan.

General overview – what to know about orders

What is an order?

An order is a decision made by a court which contains rules that must be followed for a particular period of time that is specified in the order. In the context of child safety proceedings, an order will make “rules” about who is able to make decisions about day-to-day matters that impact the child including:



Where the child lives



Who cares for the child



Long-term issues affecting the child including health care, international travel and education.

What orders can the Childrens Court make?

The Magistrate in the Childrens Court will make a child protection order if it believes a child is in need of protection (not safe). A child will be in need of protection if the child has been harmed or there is an unacceptable risk the child will be harmed. Usually, the magistrate will make a child protection order if they think:

- The child is not safe at home
And/or
- The child's parents are not 'able' and 'willing' to take care of that child and keep that child safe in their care.

There are different types of child protection orders, depending on a family's situation.

The different types of child protection orders are summarised in the next section. To learn more about the principles that the Childrens Court has to consider when making an order, see page 61 on the Act.

Child safety orders vs family law orders - what takes priority?

Child Safety can sometimes become involved after family law proceedings have started in the Federal Circuit and Family Court of Australia (FCFCOA). Most often, this happens where there are concerns for children being in contact with a particular parent. In some situations, Child Safety may believe one parent of a child is not able and willing to protect the child from an unacceptable risk of harm, but another parent or relative is. Child Safety may assist that parent / relative to care for the child, but take no formal steps to initiate child protection proceedings. If there is no formal family law order in place, the parent or family member will be encouraged to commence family law proceedings.

The Director of Child Protection Litigation may apply for a child protection order for the child until the appropriate family law order has been made. Families in these circumstances should be mindful that the amount of assistance provided by Child Safety after the family law order is made will be very limited and may not, for example, extend to supervising contact with the parent who poses a risk to the child.

Any child protection orders made by the Childrens Court will override any parenting orders in place under the Family Law Act 1975 (Cth) (Family Law Act).

Pre-existing family law orders do not impact the ability of the Childrens Court to make an order or prevent an intervention, but may impact on Child Safety's assessment of whether a parent is "able" to protect a child.

If a child is in the care of a child welfare authority, the FCFCOA cannot make an order under the Family Law Act unless:

- The family law order will begin when the child stops being under the care of Child Safety
- Or
- A welfare officer of the relevant State or Territory has given written consent.

Nothing in the Family Law Act stops a Court or child welfare authority from making an order or taking other action to place a child in care under a child welfare law. The FCFCOA may, and usually will, adjourn family court proceedings until the child protection proceedings are finalised.

Types of orders the Childrens Court can make

The following section summarises the types of orders that the Childrens Court can make at different stages.

They are broken down into:

- During the investigation and assessment stage
- After the investigation and assessment stage
- After a child protection order has been made

During the investigation and assessment stage

These are the types of orders an authorised Child Safety officer can apply for, and the Childrens Court can make, while Child Safety is still conducting the investigation and assessment into the matter (and before it decides whether the child is in need of longer-term protection).

Temporary assessment order (TAO)

This order allows Child Safety to collect information as part of an investigation to assess whether the child is in need of protection. The child may live in care while this happens, but also may be taken into custody. However, guardianship rights and responsibilities remain with the parents. If a TAO is made for a child who already has a separate order in force, the TAO will overrule / decide any inconsistency between the orders.



Who has custody of the child?

Child Safety or the Parent/s



Who has guardianship of the child?

Parent/s



Timeframe of order

Can only be granted for a period of 3 business days but can be extended by 1 business day if there is an intention to apply for a court assessment order or a child protection order.

Temporary custody order (TCO)

This order authorises the actions necessary to secure the immediate safety of a child, pending a decision of what further action is necessary to meet the child's protection and care needs. A TCO can provide the authority to take a child into the custody of the chief executive, but guardianship rights and responsibilities remain with the child's parents.

It may also order specific provisions considered appropriate, for example, authorising a medical examination or directing contact. If a TCO is made for a child who already has a separate order in force, the TCO overrules any inconsistency about the child's custody or guardianship.



Who has custody of the child?

Child Safety



Who has guardianship of the child?

Parent/s



Timeframe of order

Can only be granted for a period of 3 business days but can be extended for 1 business day if there is an intention to apply for a child protection order.

Court assessment order (CAO)

This order allows information to be collected about a child as part of an investigation to assess whether the child is in need of protection. This order will only be made if:

- The child's parent/s have not provided their consent for these actions or the parents' consent cannot be obtained; and
- It is considered that it will take more than 3 business days to complete the investigation and assessment.



Who has custody of the child?

Parent/s if CAO does not include a custody order, or Child Safety if it also includes a custody order.



Who has guardianship of the child?

Parent/s



Timeframe of order

Usually lasts for 28 days. May get 28 day extension if in the child's best interests, the investigation has not concluded and cannot be carried out without a CAO.

After the investigation and assessment stage

If Child Safety finish their investigation and assessment and decide the child is in need of protection, it can refer the matter to the Director of Child Protection Litigation (DCPL) and recommend that the DCPL apply to the Childrens Court for a particular type of order. The DCPL will then consider the matter and decide what type of order, if any, they believe is appropriate to apply for, and begin child protection proceedings. During child protection proceedings, the Court may make temporary 'interim' orders that only last for a period of time while the proceedings are underway, pending a final decision.

Directive order (DO)

This is the least intrusive child protection order. A directive order tells a parent to do, or not do something to care for a child and keep them safe. There are two types of directive orders:

- Directing a parent to do, or refrain from doing, something related to a child's protection; or
- Directing a parent to not have direct or indirect contact with the child, or only have contact with the child when another person is present.



Who has custody of the child?

Parent/s



Who has guardianship of the child?

Parent/s



Timeframe of order

Can last for up to 1 year.

Protective supervision order (PSO)

This order requires Child Safety to work with the parent/s of a child to supervise the child's care and keep them safe. It is common for this type of order to be made together with a directive order (see above) which requires parents to take or refrain from certain actions.

For example, a directive order may require a father to participate in a domestic and family violence rehabilitation program, while a protective supervision order requires Child Safety to protect a child from exposure to domestic and family violence.



Who has custody of the child?

Parent/s



Who has guardianship of the child?

Parent/s



Timeframe of order

Can last for up to 1 year.

Guardianship order

This order requires a person approved by a court (such as a foster carer or family member) to have responsibility to make long-term decisions and short-term decisions about the child, including where they live. It also gives the guardian custody of the child.

Child Safety or another person the court thinks is suitable will be responsible for long-term decisions about the child. For example, where the child will go to school.

The guardian will have:

- The right to have the child's daily care.
- The right and responsibility to make decisions about the child's daily care.
- All the powers, rights and responsibilities in relation to the child that would otherwise have been vested in the person having parental responsibility for making decisions about the long-term care, wellbeing and development of the child.



Who has custody of the child?

Whoever is granted guardianship under this order.



Who has guardianship of the child?

Child Safety or a suitable family member or other person.



Timeframe of order

Can be for the short term for up to 2 years, or for the long term until the child turns 18.

Custody order

This requires a person approved by Child Safety (such as a foster carer or family member) to make day-to-day decisions that affect the child.

These decisions include, for example, what food they eat, what clothes they wear, and when they see a doctor. Practically, this has the effect of the child living with the person who has custody.



Who has custody of the child?

Child Safety or a suitable family member other than a parent of the child.



Who has guardianship of the child?

Parent/s



Timeframe of order

Short term for up to 2 years (to facilitate the reunification of a child to their parent/s).

Permanent care order (PCO)

This order is used when a child cannot be safely reunited with their parent/s and requires a permanent home to give them stability as well as physical, relational and legal permanency.

This order will only be made if the Childrens Court is satisfied that the permanent guardian will meet their obligations under the order.

Once this order is made, it is unlikely to change. The Director of Child Protection Litigation can only vary it in very limited circumstances. Also, the parent/s cannot apply for it to be revoked or varied – they will only be able to make a complaint to Child Safety, who will determine if an investigation is needed. Once the order is made, Child Safety will not have ongoing involvement.



Who has custody of the child?

The permanent guardian



Who has guardianship of the child?

The permanent guardian



Timeframe of order

A permanent care order can last until the child is 18 years old.

After a child protection order has been made

If a child protection order has previously been made by the Childrens Court, but it is either coming to an end or the DCPL or a parent has applied to have it revoked or overturned, the Court can make a transition order.

Transition order (TO)

A transition order can be made when the court:

- Revokes a child protection order
- Decides, on appeal, that the child protection order should not be made
- Refuses to extend the order or grant a further order before the order ends.

A transition order has the effect of continuing an existing child protection order for a period of up to 28 days, to allow the child's gradual transition from care arrangements to their parent's full-time care. A transition order cannot be extended.



Who has custody of the child?

Child Safety



Who has guardianship of the child?

Parent/s



Timeframe of order

Can apply for up to 28 days.

Review rights

Overview

What is an order?

If a parent or guardian is impacted by a child protection decision they are not happy with, there may be several things they can do to have that decision changed or overturned. There are two main paths they can take to have a decision challenged, depending on the type of decision:

- **QCAT Review** – they can seek a full review of certain reviewable decisions made by the Department of Child Safety (the Department) in the Queensland Civil and Administrative Tribunal (QCAT)
Or
- **Court Appeal** – they can appeal a temporary or final child protection order made by the Children's Court to the Children's Court (District Court) or the Queensland Court of Appeal.

QCAT

QCAT Review



Court Review

Time limits

28 days from original decision
(or from receiving reasons for
original decision).

28 days from original decision
(or from receiving reasons for
original decision).

Which decisions can be reviewed?

Certain 'contact decisions'
and 'placement decisions'
made by the Department
(see 'reviewable decisions'
on page X for more).

Temporary or final child
protection orders made by a
Magistrate of the Children's
Court.

Who may request the review?

Any 'Aggrieved person'
(see page X for more).

For contact decisions, only
family members may apply.

Applicant, child or child's
parent/s.

QCAT Review

Court Review

Do you need to show there was an error in the original decision?

No – QCAT freshly reviews the matter and makes the ‘correct and preferable decision’.

Yes – you must demonstrate that the original decision maker made an error.

Can you do a full fresh review or just a review of errors?

Full review, or a ‘merits’ review.

Review limited to errors in original decision (unless Court orders ‘fresh’ appeal).

Can you seek a stay or ‘pause’ of the decision under review?

Yes - meaning the decision would not take effect until the review has been decided.

Yes - meaning the decision would not take effect until the review has been decided.

What outcomes can you receive?

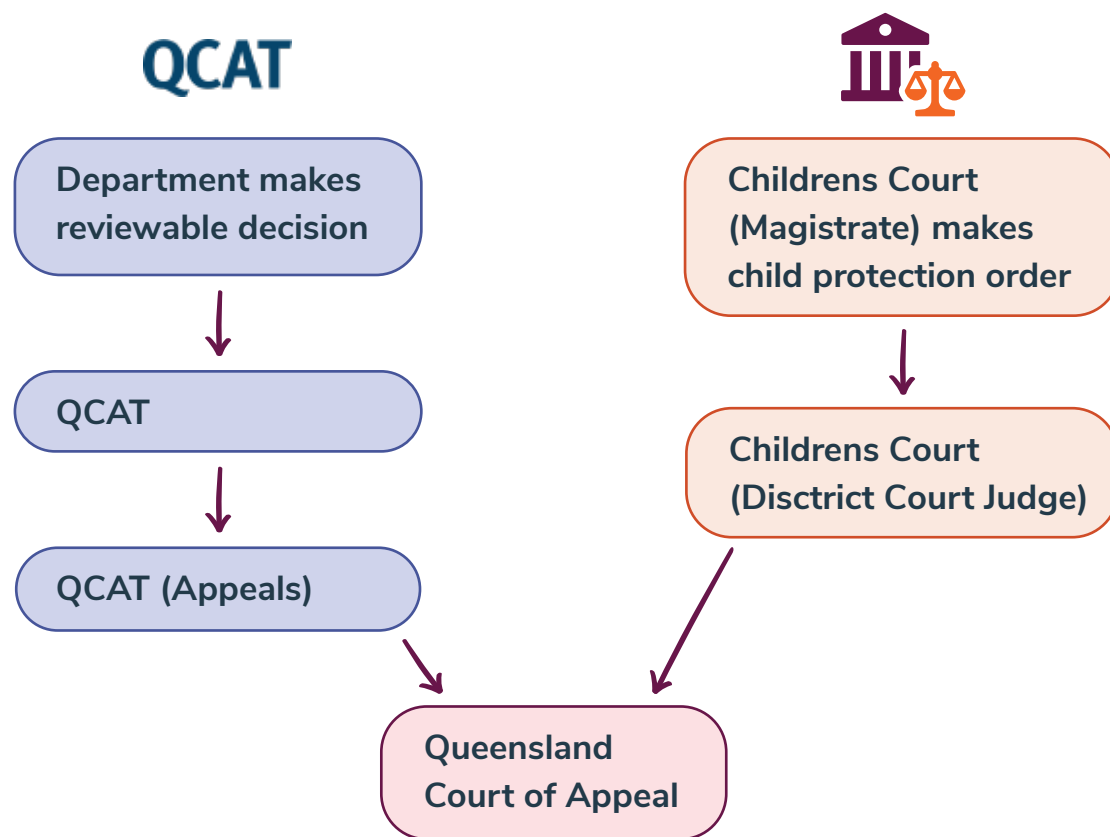
QCAT can:

- Confirm or change the original decision
- Set aside the decision and substitute its own decision
- Tell the Department to reconsider and re-make its decision

The court can:

- Confirm the decision
- Vary the decision
- Set aside the decision and either substitute another decision or remit the matter to the magistrate/Children's Court.

The below flowchart shows a summary of what bodies conduct a review depending on which one made the original decision.



Reviews by QCAT

Before starting a review

Before starting a review with QCAT, a parent or anyone else who is not happy with a Child Safety decision should speak to a representative from the Department of Child Safety to make their views known and see if anything can be done first.

If a child protection order is made by the Children's Court, the Department is able to make a range of decisions about the child's care, including with whom the child lives and who can have contact with the child. Some of these decisions can be reviewed by QCAT, these are called 'reviewable decisions'.

If the decision is a reviewable decision, the Department should provide the parent with a letter that has information about review rights, called a "reviewable decision letter". In practice, the Department often does not provide a reviewable decision letter until a parent requests it.

Who can apply to review a decision?

A parent can apply to have a decision reviewed if they are an 'aggrieved person'. If they have been given a reviewable decision letter by the Department, they are an aggrieved person.

The list of aggrieved persons includes:

- A parent given a direction by the Department in relation to a supervision matter (for example, if a parent is directed to undertake regular drug testing). For example, this may be relevant to a parent with a disability who has been directed to engage with medical professionals or undergo certain medical tests of a nature which are not relevant to a child's welfare.
- A person who has made a complaint about a permanent guardian.
- In relation to a decision not to inform a parent about the child's location or care, the parent or child.
- In relation to a contact decision, a person affected by the decision (note that this is limited to the child's family).

Which decisions are reviewable?

Only 'reviewable decisions' made by the department can be reviewed by QCAT. These are certain decisions made by the Department pursuant to a protection order of the Children's Court.

The following decisions are reviewable:

- Refusing a request to review a case plan if a child has a long-term guardian.
- Directing a parent in relation to a supervision matter stated in a child protection order.
- Refusing to deal with a complaint about a permanent guardian.
- Deciding who the child will live with.
- Not informing the parents of the child's address.
- Restricting or imposing conditions on contact.
- Removing the child from the care of a particular carer.

Unlike an appeal to the Court, a review with QCAT is a 'fresh' hearing and the parent does not need to prove that the original decision made a mistake to have it reviewed by QCAT. Once the parent demonstrates that they are affected by the decision and the decision is of a type that is reviewable, QCAT will set aside the original decision and freshly review the matter.

Legal representation

Usually, parties involved in a matter before QCAT must represent themselves. However, QCAT may automatically grant a person permission to have legal representation in certain circumstances, including where a person has impaired capacity. A person can also apply to QCAT for leave to be represented by submitting a Form 56.

More information about legal advice and representation can be found on QCAT website.

Legal Aid Queensland will provide funding for legal representation in child safety matters after QCAT has made an order allowing legal representation.

Steps in the review process

Step

1 Making an application

Once the parent has decided to seek a review of a decision, they should immediately contact the Department to ask for a written statement of reasons for the decision (if they have not already provided these). The parent must make this request within 14 days of receiving the decision, and the Department is required to respond within 28 days.

Once the parent has received reasons for the decision, they have 28 days to apply for a review of the decision. If the time limit has expired but they have a reasonable excuse for the delay, they can submit an online QCAT Form 40 requesting an extension of time.

To apply for a QCAT review, they must complete QCAT Form 17.

This application requires providing some details, including:

- Who made the decision.
- Details of the decision.
- When the decision was made.
- When the decision was received.
- Why they think the decision is wrong.

In the application, there is also the option to apply for a 'stay' of the decision. If QCAT decides to make an order staying a decision, that decision will not come into effect until QCAT has reviewed it. For example, if they are reviewing a contact decision and QCAT grants a stay, the contact decision will not come into effect until after QCAT has reviewed the decision and confirmed it is the correct one.

To apply for a stay, fill out the relevant section on the Form 17 application with reasons why the decision should be stayed.

In particular, QCAT will consider things like:

- The interests of any person who may be affected by the stay.
- Any submissions made to QCAT by the department.
- Most importantly, the well being and best interests of the child.

You can submit evidence such as a witness statement with the application. There will also be an opportunity to do this before the QCAT hearing, and QCAT may request evidence from you.

Once the application is completed, it must be lodged with QCAT by:

- Email to applications@qcat.qld.gov.au
- Or
- Post to QCAT, GPO Box 1639, Brisbane 4001

Finally, if the parent has applied to QCAT for review of a contact decision and they are also a party to child protection proceedings relating to the same child in the Children's Court, QCAT will suspend its proceedings until the Children's Court has made its decision, or has referred the decision about contact back to QCAT.

Step

2 Compulsory conference

Before the hearing, QCAT may order a compulsory conference which will be chaired by a QCAT member. The purpose of a QCAT conference is to talk through the issues in dispute, including going through the reasons provided by the Department, what the parent/s wants to achieve in reviewing the decision, and what compromises they are willing to make.

If the dispute is resolved at the compulsory conference, the QCAT member can record the agreement that is reached. If no agreement is reached, the QCAT member will make directions about the process going forward, including any further compulsory conference. Nothing said at the compulsory conference will be admissible in the proper QCAT hearing.

While compulsory conferences can be a useful way to quickly and informally resolve the dispute, they can also delay the proceedings. If the parent is concerned about this and have a particularly urgent situation, they can contact the QCAT registry and request the proceedings be expedited to the proper QCAT hearing.

3 The QCAT review

At the main review hearing, the parent/s will be required to attend to give evidence. Parties must attend in person, unless they apply for and are granted permission to attend by telephone or video by submitting a form online in advance. The hearing will be held in private, and parties may bring a support person if they wish.

At the hearing, the tribunal must 'stand in the shoes' of the original decision maker and make the decision it considers to be in the best interests of the child. In making its decision, the QCAT tribunal must consider a number of principles. For example, QCAT should maintain sibling relationships as far as possible and should encourage the child's identity and values, including cultural, ethnic and religious identity and values, (see page 62 for more on the principles). In giving evidence to the tribunal, the parent/s should try to explain why the outcome they are asking for aligns best with these principles.

QCAT can provide appropriate support to those with a disability to attend the hearing, including to those with hearing impairments or who require wheelchair access. More information can be found at QCAT's access and support webpage.

4 The QCAT decision

After the main hearing, QCAT will make its final decision by either:

- Scheduling a final hearing and delivering its decision verbally.
- Deciding 'on the papers' without the parties present.
- Reserve its decision and making its decision with written reasons after the hearing.

QCAT has the power to:

- Confirm or change the original decision.
- Set aside the decision and substitute its own decision.
- Tell the department to reconsider and re-make its decision.

If the parent still believes the decision is unfair, they can appeal the decision to the QCAT Appeal Tribunal within 28 days of receiving the decision. The decision can only be appealed on specific grounds, and they will need to apply for permission from QCAT to appeal. A decision of the QCAT Appeal Tribunal (or of a judicial member of QCAT) can be appealed to the Supreme Court (Court of Appeal). More information on this can be found on the QCAT Website – Appealing a Decision.

Appeals to the Children's Court / Court of Appeal

The key difference between the QCAT appeal process and the Court process is that a Court will only review the decision if the original decision maker has made an error and that error needs to be remedied. If the parent/s can show an error was made, the Court will either replace that decision, make a new decision in its place, or remit the matter to the original decision maker.

Which decisions can be appealed?

The following child protection orders made by the Children's Court may be appealed to an appellate court:

- Temporary assessment order
- Temporary custody order
- Court assessment order
- Child protection order

If the decision was made by a Magistrate in the Children's Court, the appeal goes to the Children's Court, constituted by a District Court Judge. If the decision was made by a Judge sitting in the Children's Court, the appeal goes to the Queensland Court of Appeal.

Temporary assessment orders or temporary custody orders can be appealed by the applicant for the order, the child or the child's parent/s. However, a final child protection order may be appealed by any party to the proceedings.

Starting an appeal

An appeal is started by filing a Notice of Appeal within 28 days of the decision being made (although the court may extend this deadline). A Form 42 Notice of Appeal is available on the court's website. The parent/s will need to provide details of the decision (including whether you are appealing against all or part of the decision) and outline the 'grounds' of appeal. These do not need to be overly detailed, and the parent/s are able to file an amended Notice of Appeal later (eg. when you file an outline of argument). To file the Notice of Appeal, email or post it to any registry of the District Court, or the Court of Appeal, as appropriate.

On the Notice of Appeal form, you have the option to seek a stay of the decision, which will temporarily suspend the decision until the appeal is decided. A court may grant a stay on reasonable conditions for a fixed period, this cannot extend to a time past the appeal decision date. If the relevant child protection order has particularly severe consequences (for example, removal of a child), the Court is likely to grant a stay.

Outline of Argument and grounds of appeal

Within 28 days of filing a Notice of Appeal, the parent/s must file an Outline of Argument. If the grounds of appeal have changed, the parent/s can file an amended Notice of Appeal at the same time as filing an Outline of Argument.

The Outline of Argument should:

- Briefly state the 'error' which caused the court to make an incorrect decision (this is the 'ground' of the appeal).
- Summarise the facts underpinning this error.
- Identify the legal conclusions the court should have made from these facts.
- State the outcome being asked for to fix this error.

Some common grounds of appeal are:

The Court failed to take relevant considerations into account

This ground applies if, in deciding what is in the best interests of the child, there is something relevant the Court failed to take into account. Many factors are relevant to the protection of a child, and this ground may be relevant, for example, where a magistrate has failed to consider the effect of breaking up a sibling bond or removal of the child from cultural influences.

The Court took an irrelevant consideration into account

This ground may be difficult to establish, given the wide range of factors relevant to child protection. However, an example may be a dated and minor criminal history of a parent referenced by a Magistrate.

The Court failed to give sufficient reasons

In making a child protection order, the Court is required to give sufficient reasons that justify the inferences drawn from the evidence to reach the ultimate decision. If the conclusion reached by the Court doesn't match the reasons given, this may be a relevant ground of appeal.

The decision was unreasonable

This is the most common ground of appeal. An appeal court will not simply replace its own judgement or view with that of the original Magistrate. However, if the decision was so unreasonable that there was no rational basis for the conclusion, the appeal court will intervene. A decision will be 'unreasonable' only if it was not reasonable for the court to have made that decision based on the evidence.

First Nations families

First Nations children are over-represented in out-of-home care. They are 8.5 times more likely to be placed in out-of-home care than non-Indigenous children, and 43.5% of First Nations children who were placed in out-of-home care were not placed with 'kin' or Indigenous carers.

Recognising this prevalence and the need for more culturally appropriate child protection decisions, there are specific child protection processes in Queensland that relate to the care of Aboriginal and Torres Strait Islander children.

Key concepts

In addition to key concepts that apply generally (see page 61) in the Child Protection Act 1999 (Qld) (Act), this section summarises some key concepts and definitions which are frequently used in the Act that are relevant to Aboriginal and Torres Strait children.

'Aboriginal tradition'

The body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people, and includes any such traditions, observances, customs and beliefs relating to particular persons, areas, objects or relationships.

'Island custom'

This is known in the Torres Strait as Ailan Kastom. The body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular community or group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships.

'Kin'

Kin is defined to mean the following persons:

- A member of the child's family group who is a person of significance to the child.
- If the child is an Aboriginal child – a person who under Aboriginal tradition, is regarded as kin of the child.
- If the child is a Torres Strait Islander child – a person who, under Island custom, is regarded as kin of the child.
- Another person –
 - Who is recognised by the child, or the child's family group, as a person of significance to the child; and
 - If the child is an Aboriginal or Torres Strait Islander child – with whom the child has a cultural connection.

'Parent'

A parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child.

A parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child.

Key players

In addition to the key players (see page 52) in Child Safety processes generally, this section summarises some key players who feature in the child safety process when it involves an Aboriginal or Torres Strait child.

Cultural Practice Advisor

Who are they?

A Cultural Practice Advisor is a First Nations (identified) position that provides individualised and culturally appropriate casework support to children and families, and cultural leadership in the Child Safety service centres.

What do they do?

They facilitate positive family connection and reunification based on their special knowledge of the community and cultural protocols and kinship care options. They can also refer you to culturally specific services and support transition to adulthood plans, provide high quality practice advice and direction to assist in making decisions about the safety needs of children and provide cultural leadership to support the delivery of well-planned and culturally appropriate support to children and families.

Family Participation Program (FPP)

Who are they?

A free and confidential service which provides support to Aboriginal and Torres Strait Islander families, delivered by local independent Aboriginal and Torres Strait Islander community controlled organisations, and operates independently of Child Safety.

What do they do?

Assists families to develop family-based solutions, with the aim of ensuring the safety of First Nations children within family, community and culture. The FPP recognises that children and families have the best knowledge about the strengths and risks that exist in their own families and communities.

A family may be referred to the FPP with the consent of the child and family during the investigation and assessment stage, during a reunification process or six months prior to a child protection order expiring. Alternatively, a family can refer themselves to the FPP at any time throughout the child safety process.

Independent entity

Who are they?

An individual First Nations person, or entity whose members include individuals who are First Nations persons. The person must also be a suitable person to be an independent entity for the child, and either:

- Provides services to First Nations people.
- Represents the child's community or language group. Is a person of significance to the child or their family, a suitable person associating on a daily basis with the child, is a person with appropriate authority to speak about First Nations culture in relation to the child or the family, and is not a Child Safety employee.

For example, this may be an elder, or a government-funded entity that provides cultural services to First Nations people. Child Safety will consult with the family to determine whether a person meets this criteria based on information from the child, family, nominated person and their own records.

What do they do?

When making a significant decision about a First Nations child, Child Safety and the Director of Child Protection Litigation must facilitate the participation of the child and the child's family in the decision-making process in consultation with the child's "Independent entity".

Significant decisions are decisions which are likely to have a significant impact on the child's life. This includes, for example, decisions about whether to place the child in care, keeping the child safe, whether ongoing intervention will be undertaken, where the child will live or whether a matter will be referred to the Director of Child Protection Litigation for consideration regarding a child protection order.

Key principles

In addition to key principles that apply generally (see page 62) in the Child Protection Act 1999 (Qld) (Act), there are particular principles in the Act that are relevant to Aboriginal and Torres Strait Islander children. These must be complied with at all stages of the child safety process.

Kinship

One of the 14 general principles that are relevant to decision-making about a child's safety, wellbeing and best interests is that if a child is removed from the child's family, consideration should be given to placing the child, as a first option, in the care of kin

Functions

In performing any function involving an Aboriginal or Torres Strait Islander person, whether a child or not, Child Safety and the Director of Child Protection Litigation must, as far as reasonably practicable:

- Perform the function in a way that allows the full participation of the person and the person's family group.
- Perform the function in a place that is appropriate to Aboriginal tradition or Island custom.

Permanency

The concept of 'permanency' underlies child protection decisions made under the Act. See page 63 for more information about this general concept.

The Act contains the following additional principles which should be taken into account in respect of achieving permanency in decision making for Aboriginal and Torres Strait Islander children:

- Aboriginal and Torres Strait Islander people have the right to self-determination.
- The long term effect of a decision on the child's identity and connection with the child's family and community.

Aboriginal and Torres Strait Islander child placement principle

The following principles, together with the Aboriginal and Torres Strait Islander child placement principle, also apply in relation to decision-making in respect of First Nations children.

The prevention principle

The principle that a child has the right to be brought up within the child's own family and community.

The placement principle

The principle that, if a child is to be placed in care, the child has a right to be placed with a member of the child's family group.

The partnership principle

The principle that Aboriginal or Torres Strait Islander persons have the right to participate in:

- Significant decisions under the Act about Aboriginal or Torres Strait Islander children; and
- Decisions relating to the development and delivery of services, provided by the department that support Aboriginal or Torres Strait Islander families or provide for the care or protection of Aboriginal or Torres Strait Islander children.

The participation principle

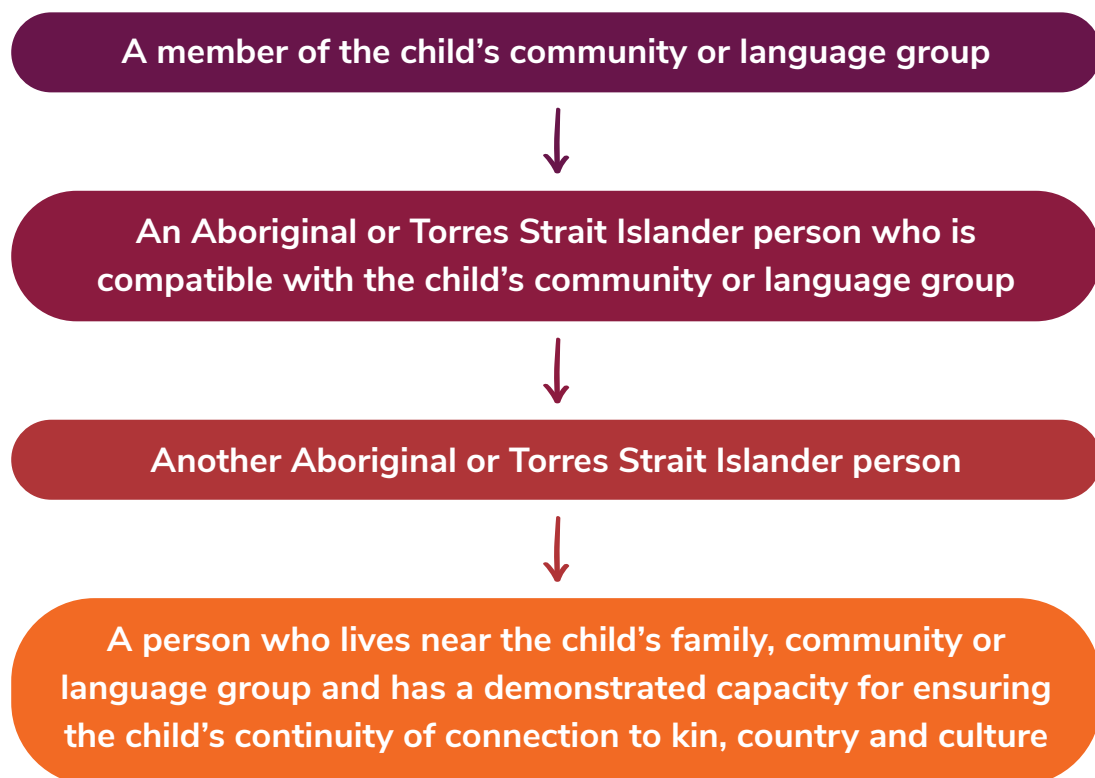
The principle that a child and the child's parents and family members have a right to participate, and be enabled to participate, in an administrative or judicial process for making a significant decision about the child.

The connection principle

The principle that a child has a right to be supported to develop and maintain a connection with the child's family, community, culture, traditions and language, particularly when the child is in the care of a person who is not a First Nations person.

Placement hierarchy

If practicable, Aboriginal and Torres Strait Islander children are to be placed with a member of the child's family group. If it is not practicable to place the child with a member of the child's family group, when making a decision about whose care the child should be placed in, Child Safety must place the child, in order of priority, with:



Child Safety must give proper consideration to the views of the child and the child's family and ensure the decision provides for the optimal retention of the child's relationships with parents, siblings and other people of significance to the child under Aboriginal tradition or Islander custom.

Before placing a child in the care of a family member or other person who is not an Aboriginal or Torres Strait Islander person, Child Safety must give proper consideration to whether the person is committed to:

- Facilitating contact between the child and the child's parents and other family members, (subject to any limitations Child Safety imposes on the contact under s 87(2) of the Child Protection Act).
- Helping the child maintain contact with their community or language group.
- Helping the child maintain connection with their Aboriginal or Torres Strait Islander culture.
- Preserving and enhancing the child's sense of Aboriginal or Torres Strait Islander identity.

Intake

Generally, the same intake process applies to First Nations and non-First Nations children. However, note that the information Child Safety will gather during an intake assessment will include information about the person's cultural identity, including whether they are an Aboriginal or Torres Strait Islander person.

Investigation and assessment

In addition to the information that applies generally to the investigation and assessment stage there is particular information that applies to the investigation and assessment stage where it involves an Aboriginal or Torres Strait Islander child.

Generally

Throughout the investigation and assessment process, Child Safety may engage a cultural practice advisor, independent entity, Family Participation Program or Aboriginal and Torres Strait Islander staff to seek advice on how to approach an investigation and assessment that involves a First Nations child.

Advice these parties may provide to Child Safety might include:

- How best to engage the family
- Relevant cultural protocols including gender or relationship protocols (e.g. women's business, 'sorry' business or current issues impacting the community, such as recent suicides)
- The cultural context for issues relating to adolescence and sexual or gender identity.

However, commencing an investigation and assessment or action to ensure a child's safety will not necessarily be delayed for the purpose of engaging the Family Participation Program.

Interviews

Child Safety will consider Aboriginal tradition or Island custom when deciding how and where to interview the child.

If a parent, or other adult, asks for a support person to be present during an interview, Child Safety will assist in identifying an appropriate person, separately from the role of an independent entity. For example, this could include someone like an Aboriginal or Torres Strait Islander elder.

At the beginning of an interview with a parent or other adult, Child Safety must provide a copy of the 'Know Your Rights' handout. This provides information about resources like the Family Participation Program, family wellbeing services, and legal providers. It also highlights the right to an independent entity in the decision-making processes.

During interviews, Child Safety will ask the family about their Aboriginal tradition or Island custom.

Care arrangement

If the outcome of the investigation and assessment is that Child Safety makes a care arrangement with someone other than the child's parents, Child Safety must take active efforts to apply the Aboriginal and Torres Strait Islander child placement principle.

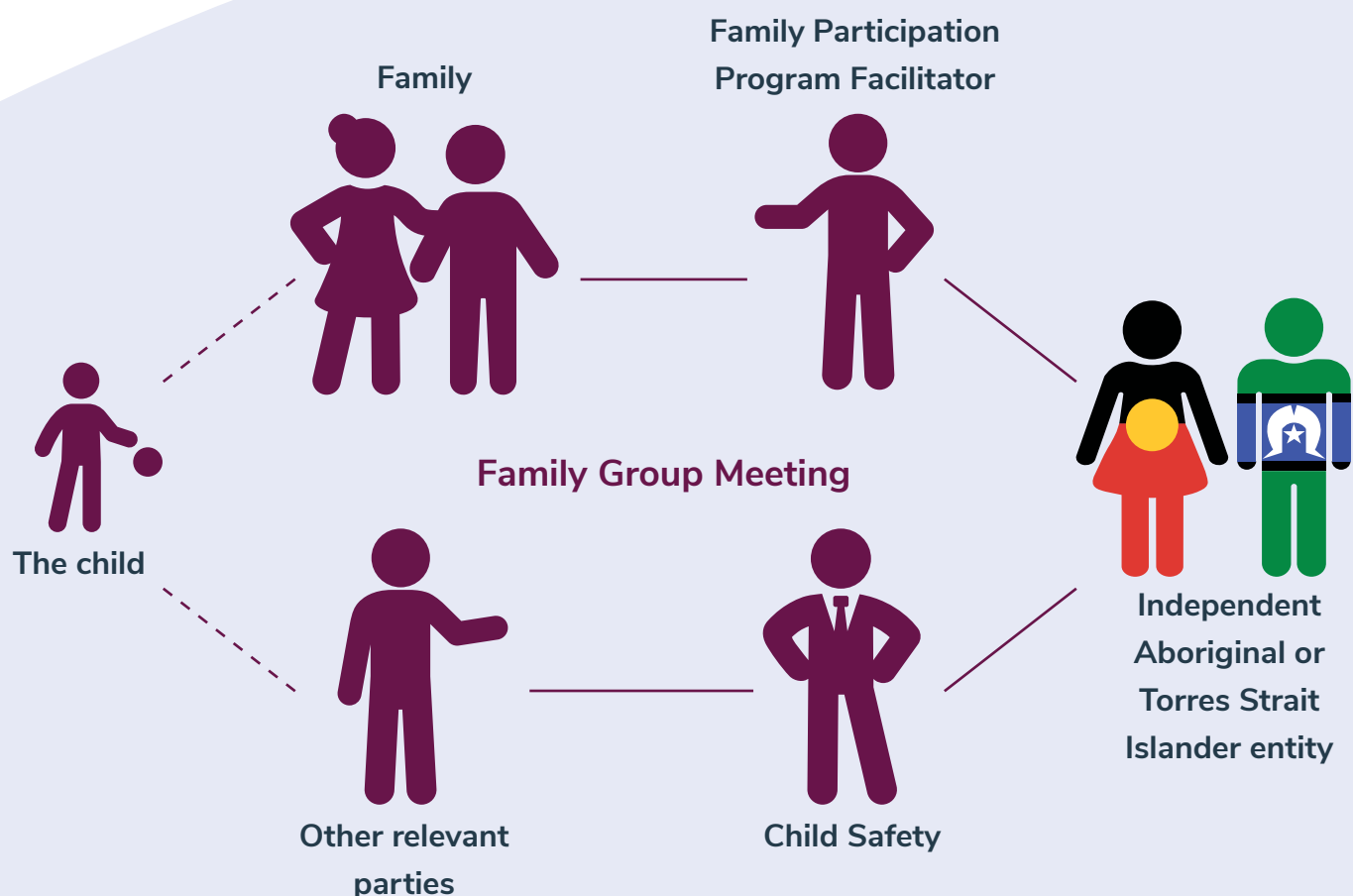
If efforts to place an Aboriginal or Torres Strait Islander child with their family, community group or another Aboriginal or Torres Strait Islander person have been exhausted and the child is to be placed with a person who is not an Aboriginal or Torres Strait Islander child person, Child Safety will consider whether the person is committed to:

- Facilitating contact between the child and the child's parents and other family members
- Helping the child maintain contact with their community or language group.
- Helping the child maintain a connection to kin, country and culture.
- Preserving and enhancing the child's sense of Aboriginal or Torres Strait Islander identity.

Family group meetings

In addition to the information that generally applies in relation to family group meetings, this information applies to family group meetings that involve a First Nations child:

- The Childrens Court and Child Safety encourage the family group meetings to be a family-led process as far as possible.
- The family group meetings are facilitated by the Family Participation Program (FPP), unless the child or the child's family does not consent.
- If the child and family consents, an independent Aboriginal or Torres Strait Islander entity will attend.
- A person who is providing help or support to a child or parent who could attend, may include someone like an Aboriginal or Torres Strait Islander elder (unless the convenor considers their attendance or participation would be contrary to the purposes of the meeting or not in the child's best interests).



Case plans

In addition to the information that generally applies in relation to case planning, a case plan for an Aboriginal or Torres Strait Islander child must include details about how the case plan is consistent with the 'connection principle'.

Court processes and orders

Generally, the Childrens Court can make the same type of child protection orders in relation to children that are Aboriginal or Torres Strait Islander as for children that are not. Child protection proceedings generally also run the same way.

However, the Court does need to consider some additional principles and has additional powers to make directions in proceedings that involve Aboriginal or Torres Strait Islander children.

Additional considerations for the Childrens Court

In exercising powers in relation to Aboriginal and Torres Strait Islander children, the Children's Court needs to consider:

- Additional principles in the Act that apply to Aboriginal and Torres Strait Islander children, including the Aboriginal and Torres Strait Islander child placement principle.
- Aboriginal tradition.
- Island custom.

To inform itself about the above matters, the Court may have regard to the views of an Aboriginal or Torres Strait Islander independent entity for the child, the child, or a member of the child's family, and the outcome of any family group meetings.

Also, the Childrens Court may only make an order relating to an Aboriginal or Torres Strait Islander child if it is satisfied that:

- The case plan for the child includes appropriate details about how the child's connection with their culture, and community or language group, will be developed or maintained.
- The decision to apply for the order has been made in consultation with the child, if the court considers consultation is appropriate.

Directions

Under the Childrens Court Rules 2016 (Qld), the Children's Court must do the following in proceedings involving Aboriginal or Torres Strait Islander children:

- Consider how the Court is to be informed of, and whether to issue directions to ensure that the Court is informed of the additional principles relevant to Aboriginal and Torres Strait Islander children.
- Consider whether to issue directions to ensure the Court is informed of the views of an independent Aboriginal or Torres Strait Islander entity for the child and a member of the child's family about Aboriginal tradition or Island custom relating to the child.

Evidence

Under the Childrens Court Rules 2016 (Qld), if an Aboriginal or Torres Strait Islander child is to give evidence in a child protection proceeding, the Court may receive submissions from a person who may appropriately speak for the child in accordance with Aboriginal tradition or Island custom.

Review rights

If the Department makes a decision or the Children's Court makes an order in relation to an First Nations child, it must follow the additional principles outlined on pages 41-44.

Any failure of the Department or Children's Court to follow these principles, or to take them into account properly, gives rise to legitimate grounds to appeal the decision.

If the appeal is before QCAT, the parent should refer to the specific principle that the department failed to properly consider when they file the Form 17 application. If the appeal goes before an appeal Court, the applicant should identify the failure to take into account the principle as the 'ground' of appeal in the Outline of Argument.

Cultural support plans

What is a cultural safety plan?

Some outcomes of a child safety process involving an Aboriginal or Torres Strait Islander child may require a cultural support plan to be put in place.

This is a plan that:

- Details information about the child's family, community and personal history.
- Helps increase the knowledge and understanding of the child's place in their family, kinship and community structure.
- Helps nurture and support the child while strengthening their cultural identity and connections.
- Assists with the child's understanding of their community networks and cultural heritage.
- Documents arrangements for connection time with family, kin, elders, and community members of significance to the child and each of the parents.

When is a cultural safety plan needed?

Whether, and to what extent, a cultural support plan is needed depends on the outcome of the child safety process (including after the investigation and assessment stage and/or child protection proceedings stage). The below table summarises the different circumstances in relation to a cultural support plan.

Child Safety process outcome

The child remains at home, because the outcome of the investigation and assessment stage was that there will be intervention with parental agreement, or the Court decides to impose a directive order or protective supervision order.



Is a cultural support plan needed?

Child Safety may decide it is appropriate to only record minimal information in the cultural support plan or to state that the family will continue to meet the cultural needs of the child. However, a comprehensive cultural support plan can be developed if the child and the family request assistance with their cultural identity and connectedness.

Child Safety process outcome

The child will be subject to a care agreement (as decided in the investigation and assessment stage).



Is a cultural support plan needed?

If the outcome of an investigation and assessment is that the child will be subject to a care agreement, Child Safety may decide it is not necessary to complete a comprehensive cultural support plan for the child, after considering:

- How long the child will remain in care
- Whether the child is living with a kinship or culturally appropriate carer
- How much time the child is spending with their parents and family
- If there is a specific identified cultural need.

However, a comprehensive cultural support plan can be developed if the child and the family request assistance with their cultural identity and connectedness.

The Court imposes a custody order.



A comprehensive cultural support plan needs to be put in place.

The Court imposes a guardianship order or permanent care order.



Generally, the guardian assumes full responsibility for identifying and responding to the child's cultural needs on an ongoing basis. The guardian may be eligible for financial assistance in some circumstances, to meet the child's cultural needs.

If the guardian is the Chief Executive of Child Safety, a comprehensive cultural support plan needs to be put in place.

Who develops a cultural support plan?

A cultural support plan is developed in partnership with:

- The child (where age appropriate).
- The child's carer.
- A child safety officer.
- A cultural practice advisor.
- An independent entity.
- Family Participation Program representative.
- Workers from relevant local Aboriginal and Torres Strait Islander agencies.
- Significant elders and community members.
- Relevant members of the child's safety and support network.
- Any other individuals who have been identified as significant in the child's life.

Who's who in child protection

The different types of parties typically involved in child protection matters are summarised below.

Child Safety (CS) also commonly known as 'the Department'

Who are they?

Child Safety is a department of the Queensland Government with the purpose of protecting children and young people from harm or who are at risk of harm, and whose parents cannot provide adequate care or protection for them. Child Safety Services is part of the Department of Child Safety, Seniors and Disability Services.

What do they do?

The department's role is to investigate concerns that a child or young person has been harmed or is at risk of significant harm and provide ongoing services to children and young people who are experiencing, or are at risk of experiencing significant harm.

Are they a decision maker?

Yes – Child Safety can evaluate or make decisions related to risk, safety, case opening, substantiation, removal, and reunification.

Child Safety Officer (CSO)

Who are they?

CSOs are authorised officers under the Child Protection Act 1999.

What do they do?

They investigate notifications received by Child Safety Services and provide support and protective intervention to families. The CSO that is assigned to a case is usually the main point of contact with Child Safety Services for that case.

Are they a decision maker?

Yes – CSOs have limited decision making power but can assess notifications received by CS and determine whether intervention is required. Some decisions are required to be made by Senior Team Leaders who the CSOs report to.

Child Safety Support Officer (CSSO)

Who are they?

CSSOs support and assist the Child Safety Officers and often work directly with families.

What do they do?

CSOs provide prevention and early intervention support services to children and families to meet agreed case plan goals. They can refer families to support services and assist with accessing them. They often supervise contact visits, transport children and manage correspondence with parents.

Are they a decision maker?

No – CSSOs provide information to assist CSOs and Senior Team Leaders in making decisions about the safety, belonging and wellbeing of children, but are not the decision maker.

Senior Team Leader (STL)

Who are they?

Senior Team Leaders are responsible for managing a team of CSOs. The CSOs report to a Senior Team Leader who is involved in the case management for each case.

What do they do?

The CSOs report to a Senior Team Leader who is involved in the case management for each child the CSO is responsible for. Senior Team Leaders usually attend stakeholder meetings, Family Group Meetings, Court Ordered Conferences and interviews with experts.

Are they a decision maker?

Yes – The Senior Team Leader has the ability to make decisions about placements and contact arrangements for children. Senior Team Leaders are the person who parents or guardians should contact when they are seeking changes to any arrangements about their child.

Family group meeting convenor

Who are they?

The family group meeting convenor plans, prepares participants for and conducts the family group meeting. Family group meetings occur once Child Safety has decided that a child is in need of protection, either in the process of implementing a “parental agreement” or case plan, or in the process of child protection court proceedings.

What do they do?

The family group meeting convenor is a neutral party whose goal is to assist and enable all parties to participate, and ensure that all attending feel safe. The convenor also records the case plan developed at a family group meeting.

Are they a decision maker?

No - They are independent from the case and do not have decision-making responsibilities or powers.

Senior practitioner

Who are they?

Senior practitioners support and monitor the quality of child protection services provided to children, their families and the community.

What do they do?

They provide:

- Specialist knowledge of child protection practice
- Mentoring and developing the skills and knowledge of CSOs, CSOs and Senior Team Leaders
- Managing the ongoing improvement of child protection practice
- Participating in, or conducting reviews of, complex or sensitive cases

Are they a decision maker?

Yes – Senior Practitioners can review decisions about placements and contact arrangements for children and make new ones to ensure quality and compliance.

Cultural Practice Advisor

Who are they?

The Cultural Practice Advisor is an Aboriginal and Torres Strait Islander (identified) position that provides individualised and culturally appropriate casework support to children and families, and cultural leadership in the Child Safety service centres.

What do they do?

They facilitate positive family connection and reunification based on their special knowledge of the community and cultural protocols and kinship care options. They can also refer you to culturally specific services and support transition to adulthood plans, provide high quality practice advice and direction to assist in making decisions about the safety needs of children and provide cultural leadership to support the delivery of well-planned and culturally appropriate support to children and families.

Are they a decision maker?

No.

Service centre manager

Who are they?

Service centre managers are responsible for staff and operations at a Child Safety Service Centre.

What do they do?

They are responsible for establishing relationships with approved carers, parents, young people and children, the community and other government and non-government sectors and providing supervision, ongoing professional development and management of staff.

Are they a decision maker?

Yes – service centre managers make decisions to approve any expenses for a family that Child Safety needs to fund. This may include, for example, a fuel card, GoCard top up, bus fare, food package, parenting capacity assessment, psychiatric assessment, flights and accommodation if a parent needs to travel for contact, school uniforms, extracurricular activity fees.

The Office of the Child and Family Official Solicitor (OCFOS)

Who are they?

The OCFOS is a unit of the Department of Child Safety, Seniors and Disability Services (the same department as Child Safety Services). OCFOS is a team of legal officers who provide legal advice and assistance to Child Safety Officers.

What do they do?

They are usually the applicant in short term and emergency orders proceedings such as Temporary Custody Orders, Temporary Assessment Orders and Court Assessment Orders. OCFOS refer matters to the Director of Child Protection Litigation (DCPL) if they are satisfied that an application for a child protection order is required.

Are they a decision maker?

The OCFOS makes decisions about whether to apply for emergency orders like Temporary Custody Orders, Temporary Assessment Orders and Court Assessment Orders in consultation with Child Safety. However, they do not make the final decision about whether the order is granted – the Childrens Court (Magistrates) will do that.

The OCFOS does not make decisions about whether to apply for other child protection orders. OCFOS can choose to refer a matter to the DCPL but do not make the final decision about whether or not the DCPL applies for an order.

The Director of Child Protection Litigation (DCPL)

Who are they?

The DCPL is responsible for preparing and applying for child protection orders and conducting child protection order proceedings in the Childrens Court.

This office is independent from Child Safety Services.

What do they do?

If Child Safety believe that a child protection order is necessary, then they must provide a “brief of evidence” to the DCPL. Then the DCPL makes the decision about whether a Child Protection Order application should be made and the type of order that should be sought.

Are they a decision maker?

Yes – The DCPL are responsible for deciding whether an application for an order should be made to the Childrens Court and present Child Safety's case before the court.

Direct Representative

Who are they?

A direct legal representative is usually a lawyer who can be appointed by the child in a child protection proceeding, if the child is competent to provide instructions, to act on their behalf.

What do they do?

If a direct representative is appointed, this lawyer would act on the child's instructions and as an advocate for the child's views and wishes. They will act on this basis even if the child's views and wishes are not in the child's best interests.

Are they a decision maker?

No – The Direct Representative is responsible for advocating for the child but does not make any decisions.

Separate Representative

Who are they?

A separate representative is usually a lawyer who can be appointed to a child in child protection proceeding by order of the Children's Court.

What do they do?

The separate representative must act in the child's best interests regardless of any instructions from the child, which may at times conflict with the child's own wishes. For example, a child may wish to remain at home with a parent, however doing so may not be within the child's best interests. This is different to a child's direct representative, who acts on the instructions of a child.

Are they a decision maker?

No - The Separate Representative is responsible for advocating for the child but does not make any decisions. While they make an assessment on what they believe to be in the child's best interest, the Children's Court retains decision making power.

Childrens Court (Magistrates Court)

Who are they?

The Childrens Court (Magistrates Court) has jurisdiction to hear applications for child protection orders.

What do they do?

The Childrens Court (Magistrates Court) holds proceedings about applications by the Department of Child Safety or the Director of Child Protection Litigation regarding protecting children from harm.

Are they a decision maker?

Yes – Magistrates decide whether to make child safety orders based on the evidence presented to them by the DCPL and other parties involved.

Childrens Court of Queensland (District Court)

Who are they?

The Childrens Court of Queensland is a higher court than the Childrens Court (Magistrates Court).

What do they do?

The Childrens Court of Queensland hears appeals against child protection orders made by the Childrens Court (Magistrates Court).

Are they a decision maker?

Yes – they decide the outcome of an appeal about a child protection order based on the evidence presented.

Office of the Public Guardian (OPG)

Who are they?

The OPG is an independent statutory office established to protect the rights, interests and wellbeing of adults with impaired decision-making capacity, and children and young people in the child protection system.

What do they do?

The OPG can:

- Make personal, health and legal decisions (not related to property or finance) if the Public Guardian is the guardian or attorney for a parent involved in a child protection proceedings
- Investigate allegations of abuse, neglect or exploitation of adults with impaired decision-making capacity
- Advocate and mediate on behalf of adults with impaired decision-making capacity involved in a child protection proceedings.

Are they a decision maker?

No – if appointed the OPG can decide how they advocate for the individual with impaired decision making capacity but does not have authority over child protection proceedings.

Office of the Public Guardian (OPG) Child Advocate

Who are they?

Child Advocates perform child advocacy functions with the benefit of legal training. A Child Advocate's role is best characterised as an independent advocate facilitating children/young people's participation in the decision-making that affects them, and advocating for decision-makers to take into account a child/young person's views and wishes and to uphold their rights and interests in accordance with relevant legislation, policies and procedures.

What do they do?

Their role is to advocate for the rights and interests of children/young people in the child protection system and ensure their voice is heard, particularly when decisions are made that affect them and their care arrangements. A Child Advocate will usually only provide advocacy relating to legal issues, and only where other external stakeholders are not able to effectively respond to the child/young person's advocacy needs

Are they a decision maker?

No – if appointed the advocate can decide how they advocate for the individual if not provided with instructions but does not have authority over child protection proceedings.

Queensland Police Service (QPS)

Who are they?

Police officers are responsible for ensuring the safety of community, including children and young people.

What do they do?

Police can receive reports regarding children at risk of harm. These reports are then referred to Child Safety to investigate. Police can also make an application to the Childrens Court for a child safety order if a child is at immediate risk of harm.

Are they a decision maker?

No.

Chief Executive

Who are they?

The Director General of the Department of Child Safety, Seniors and Disability Services is the chief executive under the Child Protection Act and the Family Services Act.

What do they do?

The Chief Executive has overall responsibility for the functioning and operation of the child safety system.

When a child is considered to be harmed/ at risk of harm, the court may make a guardianship order or custody order which gives the Chief Executive rights to make decisions about the child.

Are they a decision maker?

Yes – depending on what order the court grants, the Chief Executive may have the right and responsibility to make decisions about the child's daily care and all powers, rights and responsibilities in relation to the child that would otherwise have been the parent's.

The Child Protection Act

Purpose of the legislation

The *Child Protection Act 1999 (Qld)* (Act) commenced operation on 23 March 2000.

The Act establishes Queensland's child protection system. Its purpose is to provide for the protection of children, promote the safety of children, and to the extent appropriate, support families caring for children.

The Act contains mechanisms through which the Queensland child protection system is administered, including mechanisms for reporting of suspected child abuse or neglect. Under the Act, anyone can contact the Department of Child Safety, Seniors and Disability Services (Child Safety) and report concerns about a child who has been, or is at risk of being harmed.

The Act also contains mechanisms for investigations and assessments of reported child abuse or neglect. Child Safety must investigate and assess the reported concerns if there is a reasonable suspicion that the child is in need of protection, and can provide ongoing assistance under the Act once it is established that a child is in need of protection.

Practitioners should consider the Act should in conjunction with the Child Protection Benchbook.

Key concepts

The following summarises some key concepts and definitions which are frequently used in the Act.

'Child'

An individual under 18.

'Custody'

The right to have the child's daily care and the right and responsibility to make decisions about the child's daily care.

'Parent'

A child's mother, father or someone else, other than Child Safety, having or exercising parental responsibility for the child. It does not include a person standing in the place of a parent on a temporary basis.

In cases involving Aboriginal and Torres Strait Islander children, a parent is someone who, under Aboriginal tradition or Island custom, is regarded as a parent of the child.

'Guardianship'

Additional rights in respect of the child that extend to all the powers and the responsibility to make decisions consistent with that of a parent for making decisions about the long-term care, wellbeing and development of the child.

'Child in need of protection'

Where a child:

- Has suffered significant harm, is suffering significant harm or is at an unacceptable risk of suffering significant harm; and
- Does not have a parent 'able' and 'willing' to protect them from harm.

The terms 'able' and 'willing' in this definition carry different meanings. A parent may be 'willing' but not 'able' to protect a child if they lack capacity to do so due to, for example, health issues or because they are a victim of domestic violence. A parent may be 'able' but not 'willing' to protect their child where they choose not to do so, for example, because the parent chooses an ongoing relationship with a person who is harming their child.

'Harm'

Any detrimental effect of a significant nature on a child's physical, psychological or emotional wellbeing, irrespective of how the harm is caused.

Harm can be caused by physical, psychological or emotional abuse or neglect, or sexual abuse or exploitation, and by a single act, omission or circumstance or a series or combination of acts, omissions or circumstances.

In identifying whether a child may be suffering significant harm for the purposes of reporting suspected child abuse or neglect, a person can consider the child's age, whether there are any detrimental effects on the child's physical or psychological state, and in relation to any detrimental effects, the severity and nature and likelihood the effects will continue.

Key principles

Paramount principle

The main principle for administering the Act is that the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child's life, are paramount.

This principle encourages decision-makers to not take decisions in this jurisdiction lightly, and to consider both the short and long-term consequences of decisions on children.

The Act contains a series of 14 other general principles that are relevant to decision-making about a child's safety, wellbeing and best interests, including but not limited to the following:

- A child has a right to be protected from harm or risk of harm.
- A child's family has the primary responsibility for the child's upbringing, protection and development.
- The preferred way of ensuring a child's safety and wellbeing is through supporting the child's family.
- A child should be able to know, explore and maintain the child's identity and values, including their cultural, ethnic and religious identity and values.
- A delay in making a decision in relation to a child should be avoided, unless appropriate for the child.
- A child has the right to express the child's views about what is, and is not, in the child's best interests.

Permanency principles

The concept of 'permanency' underlies child protection decisions made under the Act.

'Permanency' is about maximising the child's stability and identity and making decisions that not only prioritise stability in child placements, but establishing relationships, and feelings of belonging, connection and love in the child's life. Permanency principles in the Act refer to the following types of permanency:



Relational permanency

Ongoing positive, trusting and nurturing relationships with persons of significance to the child, including the child's parents, siblings, extended family members and carers.



Physical permanency

Stable living arrangements, with connections to the child's community, that meet the child's developmental, educational, emotional, health, intellectual and physical needs.

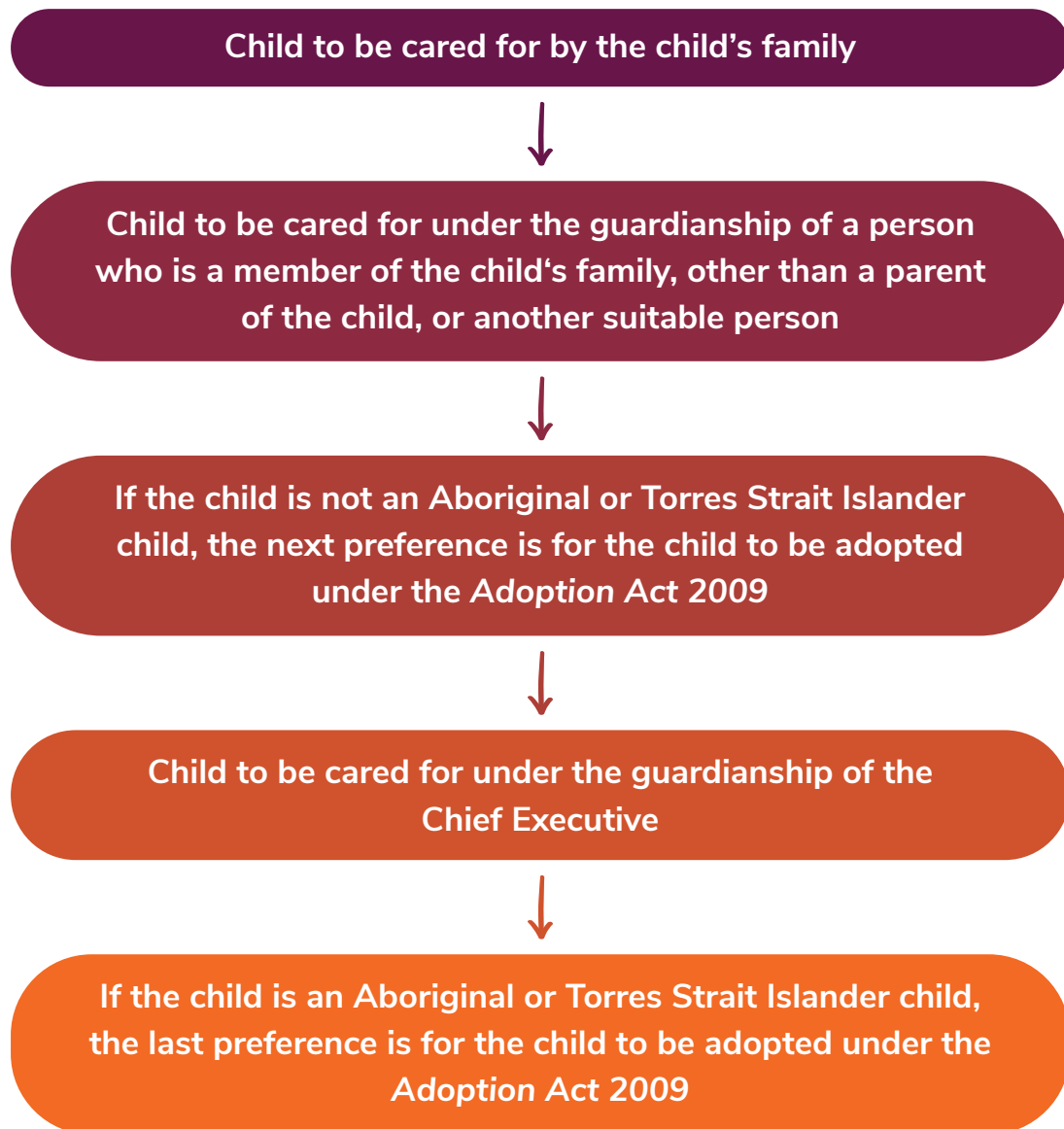


Legal permanency

Legal arrangements for the child's care that provide the child with a sense of permanence and long-term stability.

The Act contains principles that are relevant to making decisions about actions to be taken, or orders to be made that achieve permanency for a child. An action or order that achieves permanency for a child should be preferred.

When deciding whether an action or order best achieves permanency for a child, the following principles also apply, in order of priority:



Other principles

Decision-making under the Act should be in a way that is open, fair and respectful of the rights of the person affected.

The Act also contains provisions that allow for the participation of children in decision-making processes that involve them. Specifically, exercises of power under the Act that affect a child should, amongst other things, give the child meaningful and ongoing opportunities to participate. If the child decides to participate in the decision-making, the child is allowed to decide how they will participate and the person must make genuine attempts to listen and engage with the child.

Interaction with human rights

The Human Rights Act 2019 (Qld) (HRA) imposes obligations on government departments and public servants to act in a manner consistent with human rights.

Relevantly, the HRA requires that:

- Courts and tribunals, including the Childrens Court, to interpret statutory provisions, to the extent possible that is consistent with their purpose, in a way that is compatible with human rights.
- Public entities, including Child Safety, act in a way that is compatible with human rights and give proper consideration to human rights relevant to a decision.

There are various rights within the human rights act that intersect with and will influence the way that decisions are taken by the Childrens Court and Child Safety under the Act, including:

- The right to a fair hearing.
- The rights of family and children.
- The right to health services.
- Cultural rights.

The Child Protection Benchbook contains a list of actions and decisions that can be made under the Act and which human rights would impact upon how these decisions are taken.

References

Child Protection Act 1999 (Qld)

QCAT Act 2009 (Qld)

Human Rights Act 2019 (Qld)

Childrens Court Rules 2016 (Qld)

Family Law Act 1975 (Cth)

Child Safety Practice Manual

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