

Improving child protection matters in Queensland courts

A baseline evaluation of Work Package
36 reforms

Summary



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Overview

Implementation of the Queensland Child Protection Commission of Inquiry (Taking Responsibility: A Roadmap for Queensland Child Protection) is divided into 45 work packages. Reforms to the court system comprise work package 36 (WP 36) and are led by the Department of Justice and Attorney-General.

WP 36 contains 13 recommendations which will be implemented between 1 July 2014 and 30 June 2020.

Purpose and scope

Baseline data was collected in 2015–16, with follow up evaluations planned for 2018–19 and 2022–23 financial years.

The purpose of the 2015–16 evaluation is to:

- establish a comparison point to assess future implementation of WP 36 reforms
- identify emerging outcomes and implementation issues to date
- inform future delivery of WP36 recommendations, where appropriate.

The evaluation covers all recommendations under WP 36 except recommendation 13.10 (an expert assistance pilot project), which will be evaluated separately.

Evaluation approach and methods

Evaluation design

The evaluation includes both Queensland wide data collected in survey and an analysis of administrative data, as well as face to face qualitative data collection in three regions (Southeast Metropolitan region, South West Queensland and regional North Queensland).

The study included analysis of:

- administrative data
- survey data
- semi-structured interviews
- focus groups
- court file review results
- review of appeals.

Data was collected from a number of stakeholder groups including:

- Magistrates and Queensland Civil and Administrative Tribunal (QCAT) members
- members of the legal community
- members representing the Aboriginal and Torres Strait Islander community
- members of organisations representing children
- children and young people
- parents and carers (including kinship carers) involved in child protection proceedings.



Key questions

Four key evaluation questions guided the evaluation:

1. Have the reforms contributed to improving the functioning of courts and tribunals?
2. Have the reforms contributed to increasing the voices of children and young people in court and tribunal proceedings?
3. Have the reforms contributed to outcomes being in the best interests of the child?
4. What factors have enabled or hindered the achievement of outcomes?

Limitations

- The 2016 evaluation focussed on collecting baseline information and identifying emerging outcomes so it is too early to comment substantively at this time.
- Only a small numbers of respondents were able to be recruited for some parts of the evaluation, particularly parents and kinship carers.
- Views of Aboriginal and Torres Strait Islander parents and kinship carers have not been able to be documented as part of this evaluation, and this will require specific attention when this study is replicated.

Court process reforms

The purposes of these reforms are to ensure the outcomes in the Childrens Court are fair, timely and consistent outcomes, as well as to support evidence-based decision-making and to improve the access of children and families to legal representation.

Reforms include establishment of a court case management framework (including Childrens Court Rules, a bench book and practice directions), appointment of dedicated Childrens Court Magistrates, establishment of the Director of Child Protection Litigation (DCPL), and increased funding for Legal Aid Queensland (LAQ).

Key findings

- Magistrates have not engaged in a case management approach in a consistent way but were observed to engage in activities which had elements of a case management approach.
- Stakeholders supported the appointment of dedicated Childrens Court Magistrates and thought the benefits included increased specialist knowledge and a more respectful approach to ensuring orders are the least intrusive, holding Department of Communities, Child Safety and Disability Services (DCCSDS) to account, and increased efficiency.
- Stakeholders were generally positive about the establishment of the DCPL (on 1 July 2016).
- Over the last four financial years (2011–12 to 2014–15) there have been no clear changes in lodgements, finalisations, clearance rates or backlogs for child protection matters in the Childrens Court.
- although time to finalise child protection orders increased between 2011-2012 and 2015-2016 (from an average of 128 days to an average of 156 days).
- There were mixed feelings about the cultural competency of courts and tribunals.

- Respondents in focus groups acknowledged critical barriers to Aboriginal and Torres Strait Islander families with a significant lack of trust in the child protection and court systems.
- Respondents felt that changes to section 113 of the *Child Protection Act 1999* (to enable a broader range of people to be joined as parties) may improve participation particularly for extended family members (amendments commenced 25 May 2016).
- Recognised Entities mostly felt heard and respected by Magistrates, and Magistrates also appreciated the value they brought. However, because they lack party status in proceedings, this can leave them isolated, particularly when they oppose an application for an order, and they find it difficult to access relevant materials from DCCSDS.
- Recognised Entities wanted to see a clear definition of 'significant decision' to understand when their involvement is required.

QCAT process improvements

The purposes of these reforms are to enable children and young people to participate in tribunal processes, improve timeliness of proceedings and provide for QCAT outcomes to be published.

Key findings

- While average case length of QCAT matters improved, there was no statistically significant change in time to compulsory conference over the same period.
- Participation by children and young people in QCAT proceedings improved but they still face barriers to participation, and a number of specific barriers were raised by Aboriginal and Torres Strait Islander children and families.

Legal representation of children and families

The Queensland Child Protection Commission of Inquiry recommended that priority funding be provided to LAQ to ensure that resources are allocated to child protection proceedings and there is adequate legal representation for parents, children and young people. The Queensland Government has committed \$8.249 million to LAQ from 2016–20 for the provision of a child protection litigation service across Queensland. These changes aim to improve access by children and families to legal representation.

Key findings

- Respondents were unanimous about the importance of legal representation for parents, children and young people.
- The proportion of parties legally represented in child protection proceedings in the Childrens Court increased from 84 per cent in 2011–12 to 90 per cent in 2014–15. The majority of the legal representation was funded by grants of legal aid. Data from LAQ showed that nearly three quarters of funding relating to child protection proceedings was applied during the initial stages. If a matter proceeds to hearing, there is often inadequate legal aid funding at that point.
- Aboriginal or Torres Strait Islander families are potentially in a better position to be legally represented from a recognised Aboriginal and Torres Strait Islander legal service through to hearing, depending on access to an Aboriginal and Torres Strait Islander legal service.

Quality of evidence

The Queensland Child Protection Commission of Inquiry recommended a two-pronged approach to improve the quality of evidence in child protection proceedings: (a) enhancing in-house legal service provision within DCCSDS through establishing the Office of the Child and Family Official Solicitor, and (b) establishing an independent statutory agency (the DCPL) to make decisions as to which matters will be the subject of a child protection application and what type of order will be sought.

Key findings

- A study of 20 files found deficiencies or gaps in evidence. These were: insufficient information about the situation of parents and the involvement of relevant agencies, insufficient information to justify the order sought, lack of evidence to back up key assertions or not tying evidence to the legislative thresholds, and lack of evidence about the capacity of the family to retain care of the child, or to establish that parties could understand proceedings.
- File reviews also found there was a case plan appropriate to meet the child's protective needs.
- Key stakeholders echoed these themes but some reported improvements in the quality of evidence presented to the courts since the Queensland Child Protection Commission of Inquiry reported.

Participation of children and young people

The Queensland Child Protection Commission of Inquiry highlighted the importance of children's participation in child protection proceedings.

Key findings

- While children and young people have a range of options to communicate their views and wishes in court and tribunal processes, many interviewed did not feel they had been given adequate information about the proceedings that affect them or opportunities to provide input.
- File reviews revealed that the views of a child or young person sometimes have a significant impact on a Magistrate's decision, or at least appeared to be highly valuable to Magistrates in making their decision about an application.
- Legal representation and advocacy, support from a Child Support Officer and the active and encouraging approach by a Magistrate or QCAT member can facilitate children and young people contributing their views and wishes. An awareness of their right to participate, and knowledge about how they can participate appear to be barriers to their involvement in court and tribunal proceedings. In addition, the intimidating nature of courts or tribunals, and lack of child-friendly support and information, are further barriers.

Participation by parents or foster and kinship carers

Key findings

- From the very small number of parents consulted, there was an overwhelming negative view of the child protection system and their experience about the Childrens Court and QCAT, including a lack of understanding of processes and decisions, accessing information, and fear, intimidation and disempowerment.



- Many factors hinder parent's participation including socio-economic barriers such as mental health issues, domestic violence and drug and alcohol abuse.
- Factors that enabled participation included legal representation, advocacy, knowledge and understanding of the system and an active encouraging approach from Magistrates or QCAT members.
- Foster and kinship carers wanted to be more engaged in court and tribunal processes. Kinship carers in particular felt they have important insights to share about the child in their care.
- Currently there is limited participation by foster and kinship carers in Childrens Court proceedings, although they are more often involved at QCAT through reviews of placements and/or contact decisions.
- Foster and kinship carers wanted to be more informed about proceedings (before and after) and felt Child Support Officers could play a stronger role for this purpose.

