



Our ref: CSU/00007

28 September 2012

The Honourable Tim Carmody SC  
Queensland Child Protection Commission of Inquiry  
PO Box 12196  
George St QLD 4003

**Submit electronically to:**

**<https://www.childprotectioninquiry.qld.gov.au/submissions/submission-to-queensland-child-protection-commission-of-inquiry>**

Dear Mr Carmody

I am pleased to provide the following submission from the Office of the Queensland Ombudsman to the Commission of Inquiry into Queensland's Child Protection System.

My submission concerns one key area of the child protection system: that is, the use of Child Protection Orders to provide extended or full-time out-of-home care for children with disabilities.

This Office has previously received a complaint about the current legislative and policy requirements for parents to relinquish custody for children with disabilities who require more than 50% out-of-home care.

After conducting an investigation on my own initiative into this issue and raising it with the then Department of Communities, I wrote to the then Director-General on 30 June 2011 advising that I had formed the following proposed opinion:

**Proposed Opinion 1**

The practice of providing extended or full-time out-of-home care to certain disabled children by way of a Child Protection Order under the Child Protection Act because the Disability Services Act does not have a clearly defined mandate to provide extended or full-time out-of-home care for children with a disability is unreasonable (see s.49(2)(c) of the Ombudsman Act) because:

- a. the Child Protection Act facilitates 'protection' for children. In cases such as the complaint described above, the child does not require 'protection'. Instead, the child requires 'care' and
- b. for many parents of a disabled child, the thought of declaring that they are in danger of abandoning their children, and the thought of their child's case being put before the Children's Court, may cause them severe and unnecessary emotional trauma.

I also made the following proposed recommendation to the Director-General:

**Proposed Recommendation 1**

That the practice of providing extended or full-time out of home care to certain disabled children by way of a child protection order under the Child Protection Act be reviewed at the earliest opportunity.

The Department accepted the recommendation, but to date has not been able to advise me of any progress in implementing the recommendation.

I am aware that the Commissioner for Children, Young People and the Child Guardian has made a submission to your inquiry outlining her views on the appropriateness of the current approach to using the child protection system to provide disability support (at pages 53-54 of the Commissioner's submissions).

I support the Commissioner's views on this matter, and particularly her recommendation 24. In my view, the present framework requires urgent attention to ensure that children with disabilities and their families can be adequately cared for with due regard to their human rights as a family as well as their individual dignity.

Thank you for the opportunity to provide submissions to your inquiry.

Yours faithfully



Phil Clarke  
Queensland Ombudsman